

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

MICHAEL T. BARNES, #318499,

Applicant,

v.

STATE OF SOUTH CAROLINA,

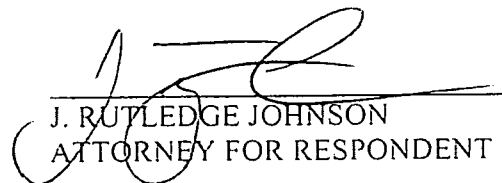
Respondent.

CERTIFICATE OF SERVICE

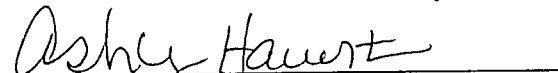
The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Michael T. Barnes, #318499
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210**

This 8th day of June, 2015.


J. RUTLEDGE JOHNSON
ATTORNEY FOR RESPONDENT

SWORN to before me this 8th day of June, 2015.


Notary Public for South Carolina.
My Commission Expires: 3-18-23

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AB

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Michael T. Barnes, #318499)

2011-CP-10-0146

Applicant,)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2015 JUN -2 AM 11:14
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 7, 2011. The Respondent (the State) made its Return and Motion to Dismiss on March 22, 2011, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated March 31, 2011, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated July 27, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant. The Applicant made a timely response dated April 11, 2011.

In the letter to the Clerk of Court and construed by Respondent as a response to the Conditional Order of Dismissal, the Applicant states that he placed his application for PCR in the mail on November 9, 2010, but was sent back to him due to postage. Additionally, due to an

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institutional lock-down, he was not able to mail it the application until November 16, 2010. On November 29, 2010, Applicant claims he received a letter from the Clerk Office that he submitted the wrong form for his PCR application. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

The Applicant has also presented no legitimate reasons why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a).

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on November 3, 2006. The Remittitur after the Applicant's unsuccessful appeal was issued on December 1, 2009. The Applicant was therefore required to file his application to challenge the revocation before December 2, 2010. This Application was filed on January 7, 2011 which was well beyond the time that the statutory filing period had expired.

Under South Carolina law, mailing does not constitute filing. S.C. Code Ann. §17-27-40 provides that a proceeding is "commenced" by **filing** an application with the clerk of court. (emphasis added). Mailing of a petition for post-conviction relief does not constitute filing, for

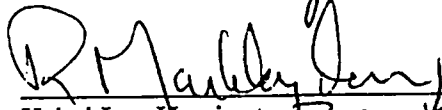
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statute of limitations purposes. Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001); Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955). This Court find that even though Applicant may have mailed his PCR application prior to his filing deadline, of which he has provided no credible proof, his application was not filed as per § 17-27-40 until more than a month after the filing deadline.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 20th day of May, 2015.


~~Kristi Lea Harrington~~ R. Markley Dennis, Jr.
Presiding Judge
Ninth Judicial Circuit

Monck Corner, South Carolina.

1 The Honorable R. Markley Dennis, Jr. presided over Applicant's trial.

Applicant's appeal. State v. Barnes, Op. No. 2009-UP-516 (S.C. Ct. App. filed November 12, 2009). The Remittitur was issued on December 1, 2009.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion, the Remittitur dated December 1, 2009, the current PCR application, and the State's Return and Motion to Dismiss thereto.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.

This Court finds that this PCR application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Here, the Applicant was convicted of these offenses on November 3, 2006. The Remittitur from the direct appeal was issued on December 1, 2009. Therefore, Applicant was required to file a PCR application by December 1, 2010. This application was filed on January 7, 2011, which was thirty-seven (37) days after the statutory filing period had expired.

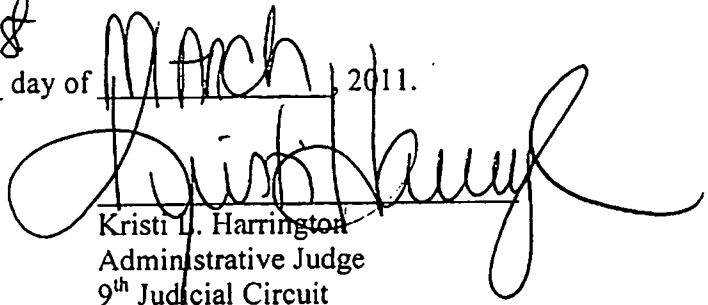
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

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(1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for failure to file within the time mandated by the Post Conviction Procedure Act.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Charleston County, South Carolina. Applicant must also serve a copy of his response to opposing counsel Matthew J. Friedman of the Attorney General's Office at P.O. Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this 31st day of March, 2011.


Kristi L. Harrington
Administrative Judge
9th Judicial Circuit

Charleston, South Carolina.