

Tommy A. Thomas

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JUN 25 2015

June 22, 2015

S.C. SUPREME COURT

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

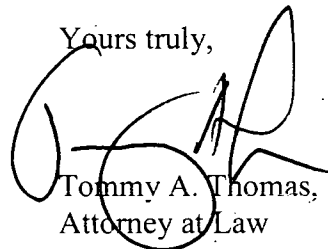
RE: George Adams #181283 v. State
Case No.: 2013-CP-40-1336

Dear Sir or Madam:

Enclosed please find for filing, an original and a copy of a Notice of Intent to Appeal regarding the above matter. I am also filing today a Motion to correct an issue Pursuant to Rule 60 (b). This Appeal is being filed as an abundance of caution to preserve my client's right to file an Appeal in this matter.

I appreciate your consideration in this matter.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Clayton Mitchell, Esq.
George Adams #181283

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post-Conviction Relief
Honorable L. Casey Manning - Presiding Judge

RECEIVED

JUN 25 2015

S.C. SUPREME COURT

Case No.: 2013-CP-40-1336

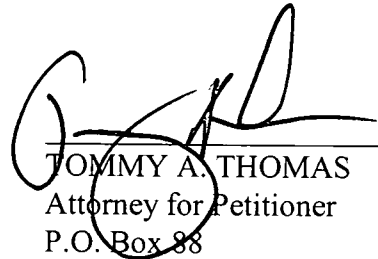
George Adams #181283Petitioner,

vs.

State of South CarolinaRespondent.

NOTICE OF APPEAL

George Adams #181283 appeals the Amended Final Order of Dismissal of the Honorable L. Casey Manning signed on April 21, 2015, filed on May 21, 2015 and received by Petitioner on May 25, 2015.


TOMMY A. THOMAS
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:
J. Clayton Mitchell, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
June 22, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 25 2015

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post-Conviction Relief
Honorable L. Casey Manning - Presiding Judge

S.C. SUPREME COURT

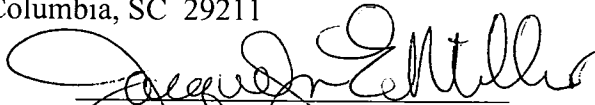
Case No.: 2013-CP-40-1336

George Adams #181283Petitioner,
vs.
State of South CarolinaRespondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for Petitioner certify that I have served an Notice of Appeal on J. Clayton Mitchell, Esq. on June 22, 2015 by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

J. Clayton Mitchell, Esq.
Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211



Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney for Petitioner
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063

June 22, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George M. Adams, #181283,

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-01336

AMENDED FINAL ORDER
OF DISMISSAL

JEANETTE W. McHENRY
C.C.P. & G.S.
2015 MAY 21 AM 11:12

RICHLAND COUNTY
FILED

This matter comes before this Court by way of Applicant's Motion to Amend Judgment filed on March 4, 2015, asking this Court to alter or amend its Final Order of Dismissal denying and dismissing Applicant's application for post-conviction relief.

I.

The record before this Court shows that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. On September 17, 1991, Applicant waived presentment to the Richland County Grand Jury and pleaded guilty to Burglary in the First Degree (91-GS-40-5731) and Larceny (91-GS-40-5730). Applicant was represented on this charge by Kathy Gettys, Esquire.¹ The Honorable William Byrd Traxler, Jr.,

¹ At the October 1992 term for the Richland County Grand Jury, Applicant was also indicted for Armed Robbery (92-GS-40-11316) and Murder (92-GS-40-11317). William M. Nettles, Esquire, and Franklin Draper, Esquire, represented Applicant. Applicant proceeded to a trial by jury and was found guilty as indicted on June 23, 1994. The Honorable L. Henry McKellar sentenced Applicant to confinement for life for Murder and twenty-five (25) years, consecutive, for Armed Robbery.

Applicant appealed his conviction and sentence and was represented by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction and sentence on April 29, 1996 (State v. Adams, Op. No. 24420).

Applicant subsequently filed an application for post-conviction relief on May 14, 1996 against the 1992 indictments only (96-CP-40-1786). An evidentiary hearing was held on October 17, 2000 before the Honorable L. Casey Manning. Applicant was present and represented by J. Preston Strom, Jr. and Mario Pacella, Esquires. On August 20, 2002, Judge Manning denied and dismissed Applicant's PCR with prejudice.

sentenced Applicant to fifteen (15) years' imprisonment suspended upon the service of twenty four (24) months' imprisonment followed by five (5) years of probation. Applicant did not appeal his guilty plea or sentence.

II.

Applicant filed this action on March 5, 2013. Respondent made its Return and Motion to Dismiss on or about March 31, 2014, 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 filed April 9, 2014, 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. A Certificate of Service was served on April 10, 2014. Respondent submitted a proposed Final Order of Dismissal on April 30, 2014. Applicant filed a Return to Conditional Order of Dismissal on May 7, 2014, urging this Court to grant a full evidentiary hearing to address the issues raised in his application. This Court issued its Final Order of Dismissal on February 7, 2015, finding that Applicant failed to respond within the twenty (20) days of service of the Conditional Order of Dismissal.

III.

In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent received Applicant's Return to Conditional Order of Dismissal on the same day it sent out a proposed Final Order of

Applicant filed a second application for post-conviction relief on July 22, 2004 (04-CP-40-3481). The Honorable J. Ernest Kinard, Jr. denied and dismissed Applicant's second PCR on August 4, 2005.

Applicant filed a third PCR application on September 26, 2006 (2006-CP-40-05620). The Honorable G. Thomas Cooper, Jr. denied and dismissed the application on October 1, 2007.

Applicant appealed Judge Cooper's Order and the Court of Appeals denied Applicant's Petition on November 25, 2009 and the matter was remitted to the lower court.

Dismissal that did address Applicant's objections. Applicant requests this Court grant him an evidentiary hearing on the issue that he was convicted of Murder and Armed Robbery and was sentenced to life imprisonment. Applicant's South Carolina Department of Corrections (SCDC) records showed he would be eligible for parole after serving twenty (20) years. Applicant received a letter on December 21, 2012, informing Applicant that he would not be eligible for parole as he is classified as a subsequent violent offender² and would remain in prison for his natural life. Applicant challenges the underlying violent convictions in this action used to classify him as a subsequent violent offender. Applicant argues this allegation should be considered newly discovered evidence and reviewed under S.C. Code § 17-27-45(C).

This Court finds it necessary to enter this Amended Final Order of Dismissal to address Applicant's allegations raised in the Return to the Conditional Order of Dismissal but not ruled upon in this Court's Final Order of Dismissal filed February 17, 2015. This Court finds the application should still be denied and dismissed with prejudice. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

This Court finds Applicant has not shown that the evidence meets *any* of the requirements for after-discovered evidence. Applicant has been deemed a subsequent violent offender because of his previous violent convictions, and therefore will not become eligible for parole. This Court notes that Applicant has numerous convictions for armed robbery and burglary which would

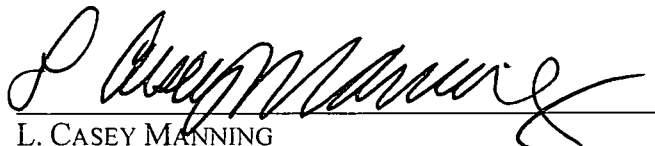
² See S.C. Code § 24-21-640 ("The [parole] board must not grant parole nor is parole authorized to any prisoner serving sentence for a second or subsequent conviction, following a separate sentencing for a prior convictions, for violent crimes as defined in Section 16-1-60.")

deem him a violent offender. This Court also finds Applicant complains of a collateral consequence which is not cognizable under the PCR Act because it does not challenge the validity of his conviction or sentence. See Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). This Court denies Applicant's request for relief, as no new grounds exist that could have not been raised in the previous applications.

This Court finds that as to all other allegations raised, this Court's Conditional Order of Dismissal and Final Order of Dismissal contain the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

This Court notes that if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty (30) days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 21 day of April, 2015.


L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George M. Adams, #181283,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-01336

CONDITIONAL ORDER OF DISMISSAL

FILED
2013 APR -9 AM 10:00
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed March 5, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. On September 17, 1991, Applicant waived presentment to the Richland County Grand Jury and pleaded guilty to Burglary in the First Degree (91-GS-40-5731) and Larceny (91-GS-40-5730). Applicant was represented on this charge by Kathy Gettys, Esquire.¹ The Honorable William Byrd Traxler, Jr.,

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Applicant appealed his conviction and sentence and was represented by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction and sentence on April 29, 1996 (State v. Adams, Op. No. 24420).

Applicant subsequently filed an application for post-conviction relief on May 14, 1996 against the 1992 indictments only (96-CP-40-1786). An evidentiary hearing was held on October 17, 2000 before the Honorable L. Casey Manning. Applicant was present and represented by J. Preston Strom, Jr. and Mario Pacella, Esquires. On August 20, 2002, Judge Manning denied and dismissed Applicant's PCR with prejudice.

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II.

Applicant filed this action on March 5, 2013. Respondent made its Return and Motion to Dismiss on or about March 31, 2014, 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 filed April 9, 2014, 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. A Certificate of Service was served on April 10, 2014. Respondent submitted a proposed Final Order of Dismissal on April 30, 2014. Applicant filed a Return to Conditional Order of Dismissal on May 7, 2014, urging this Court to grant a full evidentiary hearing to address the issues raised in his application. This Court issued its Final Order of Dismissal on February 7, 2015, finding that Applicant failed to respond within the twenty (20) days of service of the Conditional Order of Dismissal.

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In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent received Applicant's Return to Conditional Order of Dismissal on the same day it sent out a proposed Final Order of

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Applicant appealed Judge Cooper's Order and the Court of Appeals denied Applicant's Petition on November 25, 2009 and the matter was remitted to the lower court.

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 pleaded guilty to the offense he challenges in this Application on September 17, 1991. The Applicant did not appeal his conviction or sentence. The Applicant was therefore required to file his application on or before **July 1, 1997**. This application was filed on March 5, 2013, which was over fifteen (15) years 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 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Laches

Additionally, this Court finds this Application is barred under the doctrine of *laches*. The Applicant filed this Application over twenty-one (21) years after he pleaded guilty. The doctrine of *laches* bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276

S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. § 17-27-45(a) (1976). Applicant's delay has greatly prejudiced Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. If Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, the Court intends to summarily dismiss the Application based on Applicant's lack of diligence in processing his claim for relief.


III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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.

The Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 3 day of April, 2014.


L. Casey Manning
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

Tommy A. Thomas, P.C.
ATTORNEY AND COUNSELOR AT LAW
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