

RECEIVED

AUG 31 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

JAMES SPURGEON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001010

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Greenville)

James Spurgeon)
#070222

Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

Attorney General)

2014-CP-23-0

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL J. WICKENSIMMER
2014 OCT 30 PM 4 01

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Corr, east 386 Redemption Way
McCormick, S.C. 29817

2. Name and location of Court which imposed sentence Greenville County Court-
House Court of General Sessions.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 1987-GS-23-5180
(b) _____
(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
(a) Sept 24, 1987
(b) _____
(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty YES

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? NA

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. NA

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. NA

ii. _____

iii. _____

(c) the date of each such result:

i. NA

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NA

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) At that time counsel did not informed me a

(b) Right to direct of Appeal.

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Pursuant to SC Code of Law Ann 17-27-45(C)

(b) see Tilley v. State 511 SE2d 689

(c) see Oats v. State 575 SE2d 557

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) see Memorandum of Law Support Post Conviction Relief Application. S.C. Code of Law,
(b) 17-27-45(C)

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NA

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NA

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NA

(d) any other petitions, motions or applications in this or any other Court?

NA

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NA

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) NA
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NA

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. unknown
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. guilty plea
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Applicant seeks Relief that his parole date be Reinstated by PCR court.

19. Are you now under sentence from any other court that you have not challenged?

NA

STATE OF SOUTH CAROLINA)
)
COUNTY OF McCormick)

VERIFICATION

I, JAMES SPURGEON #070122, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

JAMES SPURGEON

Sworn to and subscribed before me

This 23 day of SEPT, 2014.

J Franklin L.S.

Notary Public for South Carolina

My Commission Expires 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JAMES SPURGEON #070122, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

JAMES SPURGEON
Applicant

Sworn to and subscribed before me

This 23 day of SEPT., 2014

J Franklin L.S.

Notary Public for South Carolina

My Commission Expires: 12-16-2019

State of South Carolina
County of Greenville

JAMES SPURGEON # 070122
Applicant

VS

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
c/a _____

MEMORANDUM OF LAW IN SUPPORT
OF POST-CONVICTION RELIEF
APPLICATION PURSUANT TO S.C. CODE
OF LAW ANN, 17-27-45(C)

TO RESPONDENT

Now comes the applicant moves before the
Honorable PCR Court pursuant to S.C. Code of
LAW ANN, 17-27-45(C) Newly Discovery Evidence etc.

Statement of The Case

I JEROME LONG, 151047 INMATE LAW CLERK TRAINED IN
LAW BY ASSISTANCE INMATE JAMES SPURGEON # 070122, I
JEROME LONG DISCOVERED THAT INMATE JAMES SPURGEON # 070122,
IS INELIGIBLE FOR PAROLE WHICH INMATE JAMES SPURGEON # 070122
PLEAD GUILTY TO A 1973, MURDER AND IN THE YEAR OF 1987, I
JAMES SPURGEON PLED GUILTY TO A SECOND MURDER AND ON JULY
23, 2014, I INMATE JAMES SPURGEON RECEIVED A REPLY FROM
THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS DIVISION OF
CLASSIFICATION

AND INMATE RECORDS RESPONSE TO INMATE CORRESPONDENCE FROM MICHAEL R. MATTHEWS STATED THAT I JAMES SPURGEON #070122 HAS MULTIPLE VIOLENT OFFENSES WHICH MAKES ME INELIGIBLE FOR PAROLE.

"FACTS NEWLY DISCOVERY EVIDENCE"

PURSUANT TO SC. CODE OF LAWS 17-27-45 (C) APPLICANT CLAIMS THAT HE MADE HIS DISCOVERY ON JULY 23, 2014, THAT APPLICANT HAS MULTIPLE VIOLENT OFFENSES WHICH MAKES YOU INELIGIBLE FOR PAROLE. SEE EXHIBITS (A) FROM MR. MICHAEL R. MATTHEWS. IN THE YEAR OF 1987 THE APPLICANT PLED GUILTY TO A 1987 MURDER AND WAS ~~SENTENCED THAT~~ NOT ADVISED BY THE TRIAL COURT DURING SENTENCING THAT IF ~~HE~~ THE APPLICANT DOES PLEA GUILTY TO THIS 1987 MURDER THE APPLICANT WOULD RECEIVE LIFE WITHOUT PAROLE, AND AFTER HE PLEAD GUILTY AND SEVERAL YEARS LATER APPLICANT WAS INELIGIBLE FOR PAROLE.

SUCCESSIVE APPLICATION

9

Respondent "must" not disfavor the applicants SUCCESSIVE APPLICATION based on NEWLY DISCOVERY EVIDENCE the applicant has burdened to establish that any new grounds raised in a subsequent application could not have been raised by him in a previous application, cite at Telley v State (S.C. 1999, 334 S.C. 24, 511 SE2d 689 REHEARING DENIED.

Inmate's Fourth application for Post-Conviction Relief (PCR), in which he challenged his guilty plea as involuntary on the grounds that he did not know he would be ineligible for parole due to sequence of his sentences was not successive; Inmate learned of his ineligibility in a letter from Parole board, he filed his fourth application less than one month later, and he could not have raised his claim in any earlier application because he was unaware of such claim. cite Telley v State (S.C. 1999) 334 S.C. 24, 511 SE2d 689. REHEARING DENIED.

SEE CITE AS Coats v State 575 SE2d 557 SC. 2003) IF THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED (PCR) APPLICATION MAY BE FILED WITHIN ONE YEAR AFTER DATE OF ACTUAL DISCOVERY.

CONCLUSION

Therefore Applicant should be granted a HEARING ON THE MERITS NEW DISCOVERY EVIDENCE UNAWARE OF THE APPLICANT BEING INELIGIBLE FOR PAROLE AFTER SERVING (20) YEARS ON HIS LIFE SENTENCES THAT IS REQUIRED BY LAW, AND A HEARING SHOULD BE SCHEDULED.

DATE 9-29-14 2014

S/JAMES SPURSEON
JAMES SPURSEON #070122
386 REDEMPTION WAY
MCCORMICK, S.C. 29899

State of South Carolina
County of GREENVILLE

JAMES SPURGEON #070122
APPLICANT

VS

State of South Carolina
RESPONDENT

IN THE COURT OF COMMON PLEAS
CA/

SUMMONS

S.C. Rules of Civil

PROCEDURE Rule 12(a)

To Respondent

You are hereby summoned and required to answer the Post-Conviction Relief application herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Post-Conviction Relief application upon the subscribed, at the address shown below within sixty (60) days after service hereof, and if you fail to answer the Post-conviction relief application, Judgment by default will be rendered you for the relief demanded in the Post-conviction relief application.

McCormick SC.

Date 9-29-14 2014

s/ JAMES SPURGEON

386 Redemption way

11111

11111

STATE OF SOUTH CAROLINA
County of GREENVILLE
JAMES SPURGEON #070122

Applicant

VS

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
GA

Proof of SERVICE

To Respondent

I CERTIFY that JAMES SPURGEON #070122
is hereby SERVING a TRUE COPY of Post-CONVICTION
RELIEF Application by PLACING a copy in the
UNITED STATES MAIL.

① Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, S.C. 29601

SWORN before me this
Day 25 of Sept 2014
Notary JCF Rankler
EX 07822 12-11-2019

S/ JAMES SPURGEON
JAMES SPURGEON #070122
386 Redemption way
Mt. Pleasant SC 29566

JAMES SPURGEON #070122
386 REDEMPTION WAY
McCORMICK, S.C. 29899

13

DATE 9-29-14 2014

PCR/CA _____

DEAR HONORABLE PAUL B. WICKENSIMER:

ENCLOSED PLEASE FIND A TRUE AND ORIGINAL
COPY OF MY POST-CONVICTION RELIEF APPLICATION
REQUESTING FOR A CLOCK-DATED STAMPED COPY ONCE
IT HAS BEEN FILED WITHIN YOUR OFFICE OF CLERK
OF COURT GREENVILLE COUNTY.

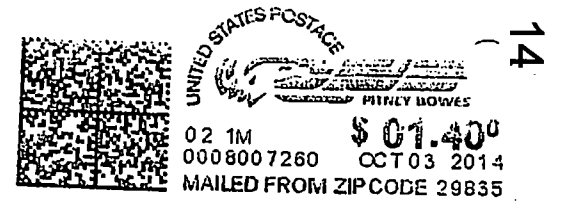
C.C: J.S:

C.C: H.P: B.W:

S/ JAMES SPURGEON

JAMES SPURGEON #070122
386 REDEMPTION WAY
McCORMICK, S.C. 29899

James Spurgeon #070122
McCormick Correctional Institute F4B-234
566 Redemption Way
McCormick, SC 29889



2014-CP-23-0594Z

The Hon. Paul B. Wicklinsimer
Clerk of Court - Greenville County
305 E. North Street
Greenville, SC 29601

1.40

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2014-CP-23-5942
COUNTY OF GREENVILLE)	
)	
James Spurgeon, Jr.,)	
S.C.D.C. No. 70122,)	
)	
Applicant,)	
)	RETURN AND MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief filed October 30, 2014, would respectfully show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the September 1987 term of the Greenville County Grand Jury for murder (1987-GS-23-5180). The Applicant was represented Robert Ray, Esquire.

On September 24, 1987, the Applicant pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to life imprisonment.¹ The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections.

¹ Respondent notes the Applicant pled guilty on October 21, 1973 to an unrelated murder charge. While he received a life sentence, he was paroled on January 4, 1983.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
 - a. “[W]as not advised by the trial court during sentencing [sic] that if the Applicant does plea guilty to this 1987 murder the Applicant would receive life without parole, and after he plead guilty and several years later Applicant was ineligible for parole.”

III.

The Respondent submits this application for post-conviction relief 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, *et. seq.* (2003). South Carolina 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 Applicant pled guilty to the offense he challenges in this application on September 24, 1987. This application was filed on October 30, 2014, which was several 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. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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, the Respondent requests that this Court summarily

dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged 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) (citation omitted) (emphasis added). The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Further, the Respondent notes the Applicant appears to be arguing he was not advised that pleading guilty to this charge would make him ineligible for parole. This is a collateral consequence, however, that the defendant does not to be specifically advised about before entering a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004). The Respondent submits the Court should summarily dismiss this allegation.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

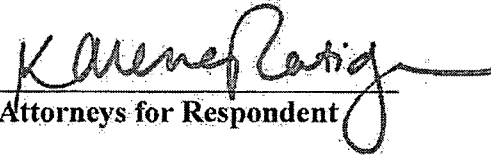
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

January 23, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 JAMES SPURGEON, JR., 70122)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-23-5942

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Spurgeon, Jr., 70122
 McCormick Correctional Institution
 386 Redemption Way
 McCormick SC 29899**

DATED this 23rd day of January, 2015.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 James Spurgeon, Jr.,)
 S.C.D.C. No. 70122,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-5942

CONDITIONAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 JAN 20 PM 4 22

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 30, 2014. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the September 1987 term of the Greenville County Grand Jury for murder (1987-GS-23-5180). The Applicant was represented Robert Ray, Esquire.

On September 24, 1987, the Applicant pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to life imprisonment.¹ The Applicant did not appeal.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

¹ The Applicant pled guilty on October 21, 1973 to an unrelated murder charge. While he received a life sentence, he was paroled on January 4, 1983.

1
 35

1. Newly discovered evidence:
 - a. “[W]as not advised by the trial court during sentencing [sic] that if the Applicant does plea guilty to this 1987 murder the Applicant would receive life without parole, and after he plead guilty and several years later Applicant was ineligible for parole.”

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina 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 Applicant pled guilty to the offense he challenges in this application on September 24, 1987. This application was filed on October 30, 2014, which was several 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. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

IV.

The Applicant has alleged after- or newly-discovered evidence. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-

²
ABS

discovered evidence, he must show the alleged 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) (citation omitted). This Court finds the Applicant has not shown the alleged evidence meets any of the requirements for after-discovered evidence. Further, the Applicant is arguing he was not advised that pleading guilty would make him ineligible for parole. This is a collateral consequence, however, that the defendant does not to be specifically advised about before entering a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004). This allegation is summarily dismissed.

V.

Based upon its review of the pleadings in this matter, this Court 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 her to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

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



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville South Carolina

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	2014-CP-23-5942
COUNTY OF GREENVILLE)	
)	
)	
)	
)	
JAMES SPURGEON, JR.,)	
PLAINTIFF,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
DEFENDANT.)	
_____)	

April 21, 2015
 Greenville, South Carolina

B E F O R E:

THE HONORABLE JUDGE EDWARD W. MILLER

A P P E A R A N C E S:

BRIAN P. JOHNSON, ESQ.
 Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.
 Attorney for the Defendant

CHERYL A. SMITH
 Circuit Court Reporter

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INDEX

(PW) - Denotes Plaintiff's Witness
(SW) - Denotes State's Witness

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EXHIBITS

There were no exhibits introduced.

P R O C E E D I N G S

1
2 THE COURT: All right, Ms. Ratigan.

3 MS. RATIGAN: Thank you, Your Honor. May it please
4 the Court. This is the case of James Spurgeon vs. The
5 State of South Carolina. The docket number is
6 2014-CP-23-5942.

7 Mr. Spurgeon was indicted for murder back in 1987. He
8 was represented by counsel and pled guilty
9 September 24, 1987, before Judge Pyle. He received a life
10 sentence and did not file an appeal. Mr. Spurgeon has
11 never filed a PCR action since his conviction. This is his
12 first application. It was filed in October of 2014.

13 I filed a return motion to dismiss dated
14 January 23, 2015, in which I argued that the application
15 should be dismissed because it's untimely. I submitted a
16 proposed conditional order of dismissal to the
17 administrative judge, Judge Stilwell. He signed a
18 conditional order in this case. However, he subsequently
19 wrote me a letter -- Judge Stilwell, I should say, wrote me
20 a letter February 4th of this year asking to set this
21 matter for a hearing. At that point, I requested counsel
22 be appointed for Mr. Johnson -- pardon me -- counsel be
23 appointed for Mr. Spurgeon, and I put it on this roster.

24 So we're here today on my motion to dismiss, Your
25 Honor. I would note that yesterday afternoon I filed an

1 amended return motion to dismiss in this case. I'd already
2 notified Mr. Johnson I was going to do so and gave him a
3 draft copy of what I was going to file. It's the same as
4 my original motion to dismiss, so I have added the
5 affirmative defense of laches as well, Your Honor, based on
6 the length of time since the 1987 guilty plea. And so at
7 this time, I will just make my motion to dismiss.

8 THE COURT: Okay. All right, Mr. Johnson.

9 MR. JOHNSON: Thank you, Your Honor. May it please
10 the Court. Mr. Spurgeon, one, would like to oppose a
11 motion to dismiss, and furthermore, he would like to have
12 leave of the Court to amend his application for
13 postconviction relief.

14 Your Honor, he has handed me today a number of issues,
15 mainly two issues, one regarding ineffective assistance of
16 counsel whereby essentially he's alleging that he was led
17 to believe that after 20 years, he would be eligible for
18 parole. However, obviously, 20 years later he's found out
19 that he's not eligible, and he would like to amend the
20 application for that purpose.

21 The second thing is he would like to amend the
22 application to attack the indictment. Two primary issues
23 that I have here before me that he would like to do the
24 amendment for is that, one, is the indictment didn't have
25 all the necessary elements on it, and the second is they

1 didn't put the proper code on the murder indictment as
2 well, Judge. So he would like to try to amend his
3 application for those purposes.

4 I will say, Judge, that the application as written
5 probably isn't very viable as far as moving forward. He
6 alleges after he acquired evidence, and we've talked about
7 it, and I don't think his reasoning -- reasons for a PCR
8 would apply to that. But maybe these are better issues
9 that we could look into if he were allowed to amend them
10 and potentially pursue.

11 THE COURT: Okay. Mr. Spurgeon, where are you?

12 PETITIONER SPURGEON: Sir?

13 THE COURT: Where have you been?

14 PETITIONER SPURGEON: I've been in McCormick, sir.

15 THE COURT: McCormick?

16 PETITIONER SPURGEON: Yes, sir.

17 THE COURT: What have you been doing?

18 PETITIONER SPURGEON: I go to school, I tried to get
19 -- I'm trying to get my GED.

20 THE COURT: Good.

21 PETITIONER SPURGEON: And trying to stay out of
22 trouble. I haven't had disciplinary in seven years.

23 THE COURT: Good. Great. How old are you now?

24 PETITIONER SPURGEON: I'm 58.

25 THE COURT: Look, you're in a tough place. No

1 question about that.

2 PETITIONER SPURGEON: Yes, sir.

3 THE COURT: But we can't just kind of have a law that
4 meanders around, you know. Because we need to have the law
5 be firm and straight.

6 PETITIONER SPURGEON: Yes, sir.

7 THE COURT: And why 22 years later?

8 PETITIONER SPURGEON: Well, because when I first came
9 in, I was under the impression that I have a parole date,
10 which I did. Judge Victor Pyle sentenced me to a 20-year
11 life sentence and that I had a parole date. After two
12 years, they took my parole. Said I -- sir?

13 THE COURT: Go ahead.

14 PETITIONER SPURGEON: The parole board took my parole,
15 so I was trying to figure out how did the parole board be
16 able to overrule the judge when the judge gave me a 20-year
17 life sentence. After 20 years, I go up for parole.

18 THE COURT: Well, that was 20 years ago.

19 PETITIONER SPURGEON: You know what I'm saying? And
20 after that, I lost my mother and all of that, and, you
21 know, it just didn't -- I had nothing to live for, Your
22 Honor.

23 THE COURT: Well, I tell you, I wish I had a magic
24 wand. We could wind the clock back and you'd never have
25 gotten in trouble to begin with.

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PETITIONER SPURGEON: Yes, sir. Me, too.

THE COURT: I know you do. But I can't. You know, I just can't. The law is clear on this issue.

PETITIONER SPURGEON: Yes, sir.

THE COURT: And I can't -- you know, I swore an oath to uphold the law so I've got to uphold the law.

PETITIONER SPURGEON: Yes, sir.

THE COURT: So I'm going to grant their motion. It's just too far out of time. And I wish you the best of luck. Keep your spirits up and take care of yourself.

All right.

MS. RATIGAN: Thank you, Your Honor.

*****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 21st day of June, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 1, 2015



Cheryl A. Smith, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 James Spurgeon, Jr.,)
 S.C.D.C. No. 70122,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-5942

**ORDER OF DISMISSAL
 WITH PREJUDICE**

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIME
 2015 MAY 5 AM 11 2
 ENTERED COMPUTER

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 30, 2014. The Respondent submitted a return and motion to dismiss dated January 23, 2015 and filed an amended return and motion to dismiss on April 20, 2015. A hearing was convened at the Greenville County Courthouse on April 21, 2015, at which time the Applicant was present and represented by Brian P. Johnson, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss on two grounds: (1) the expiration of the statute of limitations and (2) the doctrine of laches.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 1987 term of the Greenville County Grand Jury for murder (1987-GS-23-5180). The Applicant was represented Robert Ray, Esquire.

On September 24, 1987, the Applicant pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to life imprisonment. The Applicant did not file an appeal.

II. ALLEGATIONS

In his PCR application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Newly discovered evidence.
 - a. “[W]as not advised by the trial court during sentencing [sic] that if the Applicant does plea guilty to this 1987 murder the Applicant would receive life without parole, and after he plead guilty and several years later Applicant was ineligible for parole.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject conviction, the Applicant’s records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

A. Statute of Limitations

This Court finds this PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina 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 the statute of limitations shall apply to all applications filed after July 1, 1996. See *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant pled guilty on September 24, 1987. This application was filed on October 30, 2014, which was several years after the statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a

timely manner. This Court finds the PCR application must be dismissed because the Applicant failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations.

B. Laches

This Court notes the Applicant filed this application twenty-seven years after he pled guilty. This Court finds the doctrine of laches bars the Applicant from raising the allegations in his PCR application.

Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent a post-conviction relief 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). 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." Id. at 283, 277 S.E.2d at 890-91 (citation omitted).

This Court finds the Applicant's delay in filing a PCR application has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is no longer available. In addition, it is doubtful either that plea counsel has retained his file in this case or has any memory of his representation of the Applicant. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Accordingly, this Court finds the PCR application must be dismissed based on the Applicant's lack of diligence in processing his claim for relief.

C. Newly-discovered evidence

This Court notes the Applicant argued newly-discovered evidence in his PCR application. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged 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) (citation omitted) (emphasis added).

While the Applicant argues newly-discovered evidence in his PCR application, he provided no actual evidence to this Court. The mere statement that he "was not advised by the trial court" of his parole eligibility does not amount to newly-discovered evidence. See id.

IV. CONCLUSION

Based on the records, pleadings, and arguments of counsel, this Court finds the Respondent's motion to dismiss must be granted. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 29 day of April, 2015.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

 , South Carolina.

HOW COMES THE DEFENDANT

James Spurgeon Jr.
Who in open Court pleads guilty to the within indictment:

and consents to sentence this SEP 24 1987 day of SEP 24 1987 1987

ATTEST:
Caroline W. Smith
Clerk of Court

X SANDS SPURGEON

70122
PRE

R- 99.99.29
P- 3-8-90

SENTENCE

The defendant James Spurgeon Jr. is committed to the State Dept. of Corrections County for a term of life months/years and/or to pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus post/waiver costs and assessments as applicable*, the balance suspended with probation for _____ months/years.
Restitution For physical injury \$ _____
Yes / No property damage \$ _____
to be paid _____

to clerk for _____ **
Other conditions _____

Date SEP 24 1987 [Signature]
Presiding Judge

* Costs and Assessments

Not waivable	\$ _____
Not waived	\$ _____
Total	\$ _____

Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

A Certified Copy

[Signature] Clerk of Court C.P. & G.S.
Ex-Officio Clerk County Court
Greenville County, S.C.
Dated SEP 24 1987

RECEIVED

OCT 07 1987

Central Records Office

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on September 10, 1987
the Grand Jurors of Greenville County present upon their oath:

COUNT ONE - MURDER

That JAMES SPURGEON, JR.
did in Greenville County on or about May 21, 1987,
feloniously, wilfully and with malice aforethought, kill one Stanley Marcus Dubose
by means of shooting him with a gun
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

Joseph J. Watson
SOLICITOR

WITNESSES

D. H. Henderson

GPD, Det. Div.

5-22-87

ARREST WARRANT NO. B 871674

ACTION OF GRAND JURY

Richard N. [unclear]
FOREMAN

RETURN OF GRAND JURY

VERDICT

RETURN OF PETIT JURY

DATE:

DOCKET NO. ~~87-15-70~~ 5100-7

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

EMT 7
COMPTROLLER

September TERM 1987

THE STATE

*Not 2nd
HEAD GUILT*

VS.

JAMES SPURGEON, JR.

BIM 30 10-1-56

[REDACTED]

Will, SC

SST [REDACTED]

SCDC#T0122

DLH wak

B. Ray, ap.

Lanny

116

✓ INDICTMENT FOR MURDER

242

WITNESSES

E. Land, Ft. Inn Police

The State of South Carolina,

County of Greenville

COURT OF GENERAL SESSIONS

August Term, 19 73

PLEAD GUILTY

THE STATE vs. 31

Calvin Webb 16 W
Dorothy Ann Saldan Rainey

#9m

James Junior Spurgeon, Elias

Oct. 1 - 1955

NOL PROSSED GUILTY - Rec. to money

Bunker Hill

Dec 1, 1957

Johnny C. Wells

GUILTY

Richard Sims 15 C

Charles Davidson

NOL PROSSED OCT 21 1973

Spurgeon's Down Wharf 10/27/73

INDICTMENT FOR MURDER

VERDICT

by an of the Court find the defendants James Junior Spurgeon and Bunker Hill guilty of her with recommendations by Adel Epstein

Foreman

[Signature]
Solicitor

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreman of Grand Jury

(53)

OCT 29 1973

HOW COME THE DEFENDANT'S Richard Sims who is open Court pleads guilty to this with indictment With no previous record to money and consents to sentence this day of Oct 1 1955

ATTEST Margaret M. Lane

Clerk of Court

James C. Sims
Richard Sims
Certified Copy

Clerk of Court C. P. & G. S.
Ex-Officio Clerk County Court
Greenville County, S. C.

Dated OCT 29 1973

James Junior Spurgeon Let the wife of the defendant S. Stone be confined in the State Penitentiary at hard labor, for a period of 1 year, 1 month, pay a fine of 100 Dollars or serve a like period, at hard labor, upon the Public Works of Greenville County, or pay a fine of 100 Dollars. See the Arrest of James Junior Spurgeon

[Signature]
Presiding Judge

OCT 21 1973

To be given credit for time in jail since July 3, 1970

[Handwritten notes]