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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

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JAMES SPURGEON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001010

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SUPPLEMENTAL APPENDIX

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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

**AMENDED RETURN AND  
 MOTION TO DISMISS**

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 GREENVILLE COUNTY  
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The Respondent, making its Amended Return<sup>1</sup> to the application for post-conviction relief (PCR) filed October 30, 2014, would respectfully show this Court:

I.

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 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.

II.

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

<sup>1</sup> Respondent submitted a Return and Motion to Dismiss dated January 23, 2015.

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 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 Applicant has filed this application twenty-seven years after he pled guilty. The

Respondent submits the doctrine of laches bars the Applicant from raising these allegations in a PCR 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).

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).

The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is now unavailable. In addition, it is doubtful either that plea counsel has 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. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief..

#### V.

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.

## VI.

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

## VII.

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


Respectfully submitted,

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By:

  
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April 20, 2015