

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
TERRENCE BRADSHAW, #320361)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

CASE NO.: 2015-CP-45-279

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Terrence Bradshaw, #320361, Bar No. _____ Address: Kershaw Correctional Institution Kershaw, SC 29067 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

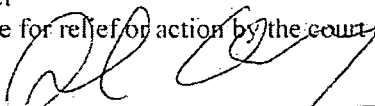
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

September 11, 2015
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 - Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Terrence Bradshaw, #320361,)	2015-CP-45-279
)	
Applicant,)	
)	
v.)	CONDITIONAL ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before this Court by way of an application for post-conviction relief filed April 17, 2015.¹ In its Return, Respondent requests that the action be summarily dismissed.

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 Williamsburg County. The Applicant was indicted for (1) Murder, (2) Assault and Battery with Intent to Kill, (3) Possession of a Weapon During a Violent Crime, (4) Armed Robbery, (5) Criminal Conspiracy, (7) Possession of a Firearm by a Person Under the Age of 21 (2005-GS-45-0181). Debra Jackson, Esquire, represented him. Applicant pled guilty to Armed Robbery. On February 5, 2007, he was sentenced by the Honorable Clifton Newman to twenty-two (22) years imprisonment. Applicant did not appeal his conviction and sentence.

Applicant filed a PCR application on January 11, 2008 (2008-CP-45-0008). In his application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. Failure to investigate.
 - b. Statement was involuntary and could not have been used at trial.
 - c. Failed to advise of law and application to facts of case.

¹ Respondent received the application for post-conviction relief on June 18, 2015.

2. Guilty plea was not knowing, voluntary, and intelligent.
 - a. Plea rendered involuntary due to ineffective assistance of counsel.
 - b. Not advised prior to plea of constitutional rights being waived.

An evidentiary hearing was convened on April 1, 2009, at which Applicant was present and represented by Charles T. Brooks, III, Esquire. In an order dated May 15, 2009 and filed June 2, 2009, the Honorable George C. James, Jr., denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court by Appellate Defender Elizabeth Franklin-Best. The Petition was denied on June 23, 2011. The Remittitur was sent on July 11, 2011.

Subsequently, Applicant filed his second application for post-conviction relief (2011-CP-45-0321) July 6, 2011. In this application, Applicant alleged the following grounds for relief:

1. Plea of guilty was involuntary and unintelligently made.
2. Ineffective assistance of counsel.

Respondent filed its Return and Motion to Dismiss on January 5, 2012. The Honorable R. Ferrell Cothran, Jr., issued a Conditional Order of Dismissal on January 18, 2012 and filed on January 25, 2012. A Final Order of Dismissal was signed July 3, 2012 and filed on July 13, 2012.

Applicant filed a timely notice of appeal. On November, 7, 2012, the matter was dismissed, as "Petitioner failed to provide written explanation as to why the lower court determination was improper." The remittitur was issued on November 27, 2012.

Applicant then filed a petition for writ a habeas corpus on December 20, 2012, in federal district court. Petitioner raised the following issues verbatim:

1. Denial of Effective Assistance of Counsel
 - a. Plea counsel failed to investigate case counsel failed to advise of law and application to facts of case.
2. Denial of Voluntary Guilty Plea

- a. Guilty plea rendered was involuntary due to ineffective assistance of counsel and was not advised prior to plea of guilty of constitutional rights being waived.

On June 5, 2013, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated February 4, 2014, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on June 20, 2014. On May 1, 2014, Applicant indicated that he wished that his notice of appeal be "terminated." The Fourth Circuit Court of Appeals issued an order granting Applicant's motion to dismiss his case pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure on May 1, 2014.

In his third Application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. "Guilty plea was involuntary and unintelligently made see North Carolina v. Alford 400 U.S. 25 Supreme Court (1970).
2. Ineffective Assistance of Counsel see Strickland v. Washington.
 - a. "See attached sheet/this attached sheet contain to table of content and 33 page brief."²

Respondent filed its Return and Motion to Dismiss on August 22, 2014. The Honorable W. Jeffrey Young issued a Conditional Order of Dismissal on August 28, 2014 and filed on September 8, 2014. A Final Order of Dismissal was signed by the Honorable R. Ferrell Cothran, Jr., the newly assigned Chief Administrative Judge, February 5, 2015 and filed on February 13, 2015. The Applicant filed a response to the Final Order of Dismissal by way of a motion to Alter and Amend pursuant to 59(e). The Respondent made its Return and Motion to Dismiss to the Applicant's pro se Rule 59(e) Motion April 15, 2015. The Order Denying the Applicant's Pro Se Rule 59(e) Motion was signed by the Honorable W. Jeffrey Young April 24, 2015 and filed May 8, 2015.

² Respondent notes that there was no attached sheet/brief accompanying Applicant's third PCR application.

Applicant filed a notice of appeal. By Order issued March 26, 2015, the South Carolina Supreme Court dismissed the matter for the Petitioner's failure to show that there was an arguable basis for asserting that the determination by the lower court was improper. An Order denying the Petitioner's Motion for Reconsideration and Remittitur were issued May 7, 2015.

II.

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

1. Ineffective Assistance of PCR Counsel

- a. "Failure (sic) to properly (sic) protect Petitioner's Rights to Seek Appellate Review of Denial of my first (sic) PCR Application."

In a document referenced in his most recent Application as the Applicant's "Initial Brief", the Applicant claims that this Application should be considered by the Court for the following reasons:

1. "Newly Discovered Evidence"

- a. "The Petitioner brings forth the details of the claim of newly Discovered Evidence, based on his diligent pursuit of equity in Justice and In his pursuit of such became aware of SCRPC Rules/60A-B"
- b. "The Petitioner in his diligence, is now aware as stated earlier of this Newly acquired knowledge and applicable principles of rules governing evidence and its applicability of his conviction and case."

2. Ineffective Assistance of PCR and Plea Counsel

- a. "Mr. Brooks have not come to visit or to consult details or to perpair (sic) Applicant for his PCR hearing"
 - b. "I contend that my PCR Counsel was ineffective for failure to file a Rule (59-e) Motion to alter or amend Judgement upon reading over the Judge's order and seeing that he did not rule on each issue presented"
 - c. "My attorney never informed me, that I could have appeal my conviction"
3. "[T]he [2008 PCR] order dismissed the remaining issues in a catch-all phrase. This was a violation of my rights pursuant to state law SC code Ann 17-27-80 which directs the PCR Judge to make findings of facts and conclusion of law on each issue presented."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that 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 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 judgement 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 pled guilty to the offense(s) he challenges in this Application on February 5, 2007. Therefore, the Applicant had to file his application by February 6, 2008. This Application was filed April 17, 2015. This Court notes that the Applicant filed his current PCR application over eight (8) years after he pled guilty and almost six (6) years after the denial of the Applicant's first PCR action.

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) (1985) 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."

Additionally, this Court finds that the application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for

post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised" in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. See also Bray v. State, 366 S.C. 137, 141, 620 S.E.2d 743, 745 (2005). ("Although petitioner did not raise an allegation that he was denied the right to review his first PCR application in his second PCR action, he could have raised this allegation. Therefore, petitioner's third PCR application should have been dismissed as impermissibly successive."). The Applicant bears the burden of showing that the allegations could not have been raised previously: Land, 274 S.C. 243, 262 S.E.2d 735 (1980). This Court notes that the Applicant has filed four (4) PCR applications and a State Habeas action. In regards to the entirety of allegations set forth in Applicant's Application and "Initial Brief," this Court finds the Applicant has not met his burden of showing sufficient reason

why the current allegations could not have raised in his previous applications or State Habeas action.

Additionally, this Court finds this application for post-conviction relief is barred by the doctrine of laches. The Applicant has filed this application over eight years after he was convicted. 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). The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is now unavailable. Potential witnesses might also now be unavailable. If the Applicant had sought

post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being barred by the doctrine of laches.

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, factual or legal, with the Williamsburg County Clerk of Court and shall serve opposing counsel at the following address:~~

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of _____, 2015.

W. JEFFREY YOUNG
Circuit Court Judge
Third Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
Terrence Bradshaw, #320361)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2015-CP-45-279

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 17, 2015. The Respondent made its return on September 11, 2015, requesting the application be summarily dismissed based upon statute of limitations, successiveness, the doctrine of *laches*.

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 signed September 20, 2015 and filed October 8, 2015, 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 November 13, 2015, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Petitioner Objects Back to the Conditional Order of Dismissal" by the Respondents Order in Reference of Case Docket No. : 2015-CP-45-279" received on September 25, 2015 the Applicant argues that he is suffering for a mental disorder. Applicant argues that his mental incapacity prohibited him from consulting with his prior PCR attorney. Applicant argues that he is learning disabled. Applicant argues that his original PCR

allegations were dismissed inappropriately. Applicant argues the PCR judge did not make specific findings of facts and conclusions of law.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty to the charges he challenges on February 5, 2007. As this action was filed on April 17, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's fourth application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on April 1, 2009. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). (“[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

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

AND IT IS SO ORDERED this _____ day of _____, 2015.

W. JEFFREY YOUNG
Circuit Court Judge
Third Judicial Circuit Court

_____, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Timm Jones (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF (Corry))

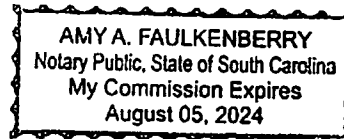
AFFIDAVIT OF PERSONAL SERVICE

On this 13th day of November 2015, I served the **Conditional Order of Dismissal**, on **Inmate Terrence Bradshaw, SCDC Inmate #320361**, by delivering personally and leaving a copy of the same at **Kershaw Correctional Institution**. Deponent is not a party to this action.

s/ [Signature]
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 13th day of November, 2015
[Signature] (L.S.)
Notary Public for South Carolina



My Commission Expires: 8-5-24

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Kershaw) **Correctional Institution**, (Kershaw) County, SC this 13th day of November, 2015.

s/ Terrence Bradshaw
Inmate
SCDC Inmate #: 320361



ALAN WILSON
ATTORNEY GENERAL

December 21, 2015

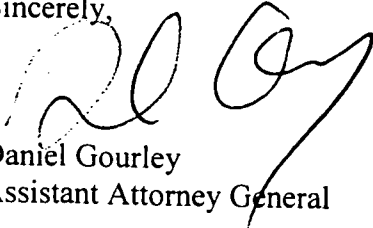
The Honorable W. Jeffrey Young
Judge, Third Judicial Circuit
215 North Harvin Street
Sumter, South Carolina 29150

Re: Terrence Bradshaw, #320361 v. State of South Carolina
2015-CP-45-279

Dear Judge Young:

Enclosed please find an original proposed Final Order of Dismissal in the above-captioned case. The Honorable George C. James, Jr., Chief Administrative Judge for the Third Circuit, has a conflict of interest in this matter: Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013, any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge James' stead. Therefore, if this Order meets your approval, please sign and return to me in the enclosed envelope. I will then forward to the Williamsburg County Clerk of Court to be filed and served.

Sincerely,



Daniel Gourley
Assistant Attorney General

DG/cc
Enclosures

cc: Terrence Bradshaw, #320361