

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Curly Odell Keenon, # 204551,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-2735

CONDITIONAL ORDER OF DISMISSAL

FILED
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 SPARTANBURG COUNTY
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This matter comes before this Court by way of an application for post-conviction relief filed June 23, 2011. Respondent made its Return and Motion to Dismiss on or about August 16, 2012.

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 Spartanburg County. The Applicant was indicted at the August 2001 term of the Court of General Sessions for Spartanburg County for burglary, first degree (01-GS-42-2334), petit larceny (01-GS-42-2335), and possession of a stolen vehicle (01-GS-42-2336). He was represented by Michael Bartosh, Esquire. On October 9, 2001, the Applicant proceeded to trial and was found guilty as indicted. The Honorable J. Derham Cole sentenced him to confinement for life for burglary, first degree, five (5) years for possession of a stolen vehicle, and thirty (30) days for petit larceny, all sentences to run concurrent.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction on November 27, 2002. State v. Keenan, Op. No 2002-UP-749 (filed November 27, 2002). The Petition for Rehearing was denied on January 24, 2003. The Applicant subsequently filed a Petition for Writ of Certiorari. On December 8, 2003, the South Carolina Supreme

Court affirmed the conviction. The Remittitur was issued on January 5, 2004.

2004-CP-42-0359

The Applicant subsequently filed an application for post-conviction relief (PCR) on September 24, 2004. In that application, the Applicant raised nearly 200 claims. Essentially the Applicant appeared to allege that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel;
2. Denial of Due Process;
3. Lack of Subject Matter Jurisdiction; and
4. Prosecutorial Misconduct.

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Respondent filed its Return on or about January 21, 2005. An evidentiary hearing was convened at the Spartanburg County Courthouse on December 7, 2005. Applicant was present and represented by W. Barry Bland, Esquire. Molly R. Crum of the South Carolina Attorney General's Office represented the Respondent. The Honorable Wyatt T. Saunders, Jr., denied the application by written Order filed May 3, 2006.

The Applicant filed a timely Notice of Appeal. Following the submission of a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), the South Carolina Supreme Court dismissed the appeal on August 9, 2007. The Remittitur was issued on August 27, 2007.

Applicant's Current PCR Application

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

1. Actual Innocence; in that,
 - a. "The alleged acts committed by the applicant cannot fulfill the requirements which constitute a charge and conviction for First Degree Burglary; the legislative intent over-reaches the actual facts in this particular case."

2. Violation of the 8th Amendment's Edict Against Cruel and Unusual Punishment (excessive sentence to life without parole where there was no death resulting from the crime charged); in that,
 - a. "A sentence for life without parole is generally reserved for the most heinous crimes one may be convicted for. This case certainly falls short and is an example of abuse of prosecutorial discretion."

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's Prior PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

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II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

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 (2003). 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 offenses he challenges in this Application on October 9, 2001. His direct appeal was dismissed and the Remittitur was issued January 5, 2004. The Applicant was therefore required to file the application before January 5, 2005. This Application was filed on June 23, 2011, which was more than six years after the statutory filing period had expired.

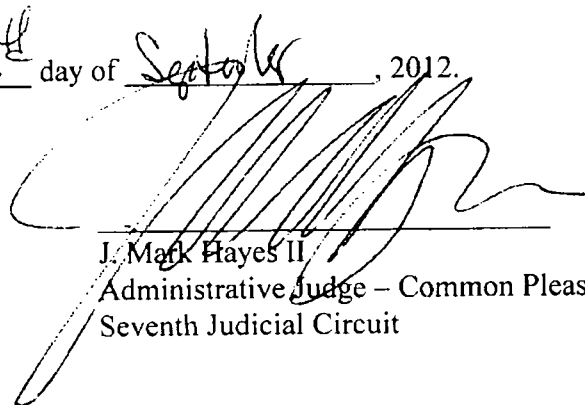
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

Summary

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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 13th day of September, 2012.



J. Mark Hayes II
Administrative Judge – Common Pleas
Seventh Judicial Circuit

Sally, South Carolina

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