

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Wilford Drummond #16804-171, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT  
2014-CP-42-0049

**CONDITIONAL ORDER OF DISMISSAL**

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M. H. ...

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Wilford Drummond (Applicant) on December 19, 2013. Respondent made its Return and Motion to Dismiss requesting that the Court summarily dismiss the application.

**I. PROCEDURAL HISTORY**

Applicant was indicted at the August 23, 1999 Term of the Spartanburg County Grand Jury for Distribution of Crack Cocaine (1999-GS-42-4562). On April 12, 2001, Applicant appeared *pro se* before the Honorable John Few and pled guilty upon the State's recommendation to Distribution of Powder Cocaine. He was sentenced to confinement for two years suspended to two years probation and a \$500 fine. On March 20, 2003, a warrant was issued to Applicant for violating his probation for failing to pay and positive urine screens. On April 22, 2003, a citation was issued for failing to remain arrest free. On April 23, 2003, the Honorable Edward Miller revoked the probation for one year and terminated the balance. Applicant served his sentence from April, 28, 2003, until the expiration of his sentence on December 31, 2003. Applicant is currently incarcerated in the Federal Bureau of Prisons on charges not challenged in this state PCR action.

RKK

## PCR APPLICATION

In Applicant's first application for post-conviction relief, he alleges he is being held unlawfully for the following reasons:

1. "I was charge when I was 16, faced sentence at 18."
2. Ineffective Assistance of Counsel
3. "My conviction was erroneously classified as an adult conviction."
4. "Plea was not knowingly, voluntarily, and intelligently made."
5. "Lawyer never said that pleading guilty to the charge was opening the door for enhancement."
6. "I was charged 5-21-1999, sentenced 4-12-2001."

Before this Court are the Spartanburg County Clerk of Court records, Applicant's PCR Application, and Respondent's Return and Motion to Dismiss.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Statute of Limitations

The Court finds that this Application for post-conviction relief must be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 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). Applicant pled guilty to the offense he challenges in this Application on April 12, 2001. Applicant was therefore required to file this action on or before April 12, 2002. This Application was filed on December 19, 2013, which was well after the statutory filing period had expired.

Additionally, South Carolina courts have held that incarceration in another state does not toll the statute of limitations. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005).

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Id. 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." Therefore, Applicant failed to file within the time mandated by the Post-Conviction Procedure Act and Applicant's post-conviction relief application must be summarily dismissed.

#### **Failure to State a Claim for Relief**

This Court also finds that this Application for Post-Conviction Relief must also be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

This Court finds that even if the facts alleged by Applicant are true, Applicant's allegations that his conviction was erroneously classified as an adult conviction and that his

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COLUMBIA, S.C.

attorney never told him that his sentence could later be used for enhancement do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

#### A. Adult Conviction

This Court finds that Applicant is incorrect regarding the classification of his conviction. Applicant claims he should not have been tried as an adult because he was sixteen when he committed the offense. In South Carolina, the family court has exclusive jurisdiction over children accused of crimes. S.C. Code Ann. § 63-3-510(A)(1)(d).<sup>1</sup> However, according to South Carolina law, a person who is sixteen years of age or older charged with a felony which provides for a maximum term of imprisonment of fifteen years or more is not a "child" or "juvenile." S.C. Code Ann. § 63-19-20.<sup>2</sup> When Applicant committed the offense he challenges, he was sixteen years old and distribution of crack cocaine under § 44-53-375(B)(1) was punishable by imprisonment up to fifteen years. The offense he pled guilty to, distribution of powder cocaine under § 44-53-370(b)(1), also carried up to fifteen years imprisonment. Accordingly, this Court finds that Applicant was properly within the jurisdiction of the General Sessions Court and this allegation must be dismissed for failing to state a claim for relief.

#### B. Enhancement

Next, this Court finds that Applicant's claim that his lawyer never informed him that pleading guilty to the charge "was opening the door for enhancement" is not a ground for relief in PCR and must be dismissed.<sup>3</sup> "The imposition of a sentence may have a number of collateral

<sup>1</sup> At the time of Applicant's offense, this section was codified as S.C. Code § 20-7-400.

<sup>2</sup> At the time of Applicant's offense, this section was codified as S.C. Code § 20-7-6605.

<sup>3</sup> This ground fails because Applicant pled *pro se* and thus never had a lawyer to misinform him; however, the Court will address this ground as it must be dismissed even if Applicant was represented by counsel.

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consequences, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences.” Williams v. State, 378 S.C. 511, 514-15, 662 S.E.2d 615, 617 (Ct. App. 2008). See also Brown v. State, 306 S.C. 381, 382–83, 412 S.E.2d 399, 400 (1991). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. Id.

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. See State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1365–66 (4th Cir.1973). The fact that a state conviction may be used to enhance a federal conviction is a collateral consequence of a guilty plea. See Appleby v. Warden, N. Reg'l Jail & Corr. Facility, 595 F.3d 532, 540 (4th Cir. 2010) (plea's subsequent use under a recidivist statute is collateral because it's use "is contingent upon action taken by an individual or individuals other than the sentencing court"); see also McCathy v. United States, 320 F.3d 1230, 1234 (11th Cir. 2003) (sentencing consequences if defendant is later convicted in federal court are clearly collateral); Wright v. United States, 624 F.2d 557, 561 (5th Cir. 1980) ("Like a defendant's ineligibility for parole, a plea's possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction[.]").

In this case, the fact that Applicant's 2001 guilty plea to distribution of cocaine was used years later to enhance a federal sentence is not a direct consequence but a collateral consequence. This fact had no bearing on the range of Applicant's punishment for distribution of cocaine. This Court finds that this allegation concerns a collateral consequence and Applicant did not have to

be informed of the possibility future enhancement in federal court. Accordingly, this allegation must be dismissed.

**C. Ineffective Assistance of Counsel**

Lastly, this Court finds that Applicant's claim of ineffective assistance of counsel in general and in regards to his plea and later enhancement must be dismissed. Applicant appeared *pro se* to plead guilty and was not represented by counsel. Thus, there was no counsel to give him incorrect advice and this ground must be dismissed.

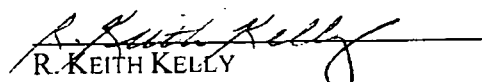
**CONCLUSION**

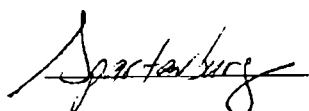
Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Justin J. Hunter, Esquire  
PCR Division – 7th Circuit  
P.O. Box 11549  
Columbia, SC 29211

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA  
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AND IT IS SO ORDERED this 3d day of March, 2015.

  
R. KEITH KELLY  
Chief Judge for Administrative Purposes  
Seventh Judicial Circuit

, South Carolina

# Spartanburg County

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180 Magnolia Street  
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**M. Hope Blackley**  
Clerk of Court

*March 4, 2015*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

*Wilford Drummond*  
Applicant # *16804-171*

CASE # *2014CP12-19*

<sup>VS</sup>  
*Spice*  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Conditional Vol. Dismissal*  
In this action dated *3-3 2015* on *3-4-15*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*Suzanne White*  
*Robley Hancock*  
*Wilford Drummond*

*3-4-15*  
(Date)

*Corice Sney*  
(Signature)