

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 was convicted of the offense(s) he challenges in this Application on April 14, 2008. The Applicant was therefore required to file his application before April 15, 2009. This Application was filed on January 10, 2014, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgement 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) (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 judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

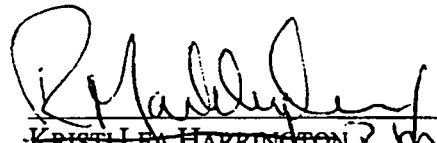
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should

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

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 21st day of May, 2015.


~~KRISTI LEA HARRINGTON~~ R. Markley Dennis, Jr.
Presiding Judge¹
Ninth Judicial Circuit

Charleston, South Carolina

¹ The Honorable R. Markley Dennis, Jr. presided over Applicant's guilty plea.

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Terrance Griffin, #327735,)
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Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2014-CP-10-0161

FINAL ORDER OF DISMISSAL

FILED
2016 MAR 29 AM 9:30
JULIE J. ABNEY-LEONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 10, 2014. The Respondent made its return on or about May 18, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations.

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 dated May 21, 2015 and filed June 11, 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 June 25, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Applicant's Opposition to the Respondent's Motion to Dismiss," dated June 7, 2015, Applicant argues ineffective assistance of trial counsel and ineffective assistance of PCR counsel. Applicant also states that the 59(e) motion that is dated May 28, 2015 has not been addressed. Because this matter has not reached its final judgment, a motion to alter or amend judgment pursuant to Rule 59(e), SCRCPP, is premature. See Rule 54(a), SCRCPP. As a

result, this Court interprets Applicant's motion pursuant to Rule 59(e) as a response to the Conditional Order of Dismissal.

In a document titled "Motion in Opposition to Conditional Order of Dismissal," dated July 5, 2015, Applicant reiterates the same points as his previous objection, asserts that a conflict of interest exists and requests a new judge to preside over this action.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their 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 finds that Applicant's claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, "that the holding in *Martinez*¹ is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRCP, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

This Court also denies Applicant's motion for default. For an applicant to be granted default judgment in post-conviction relief he must show prejudice from the State's delay in

¹ Martinez v. Ryan, ___ U.S. ___, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute "cause" to excuse procedural default in federal habeas corpus actions under the federal "cause and prejudice" standard)

failing to timely answer his Application. See Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring, 262 S.C. at 598, 206 S.E.2d at 886. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). This Court finds that Applicant has failed to demonstrate the requisite prejudice or merit to his application. Therefore, the motion for default judgment is denied.

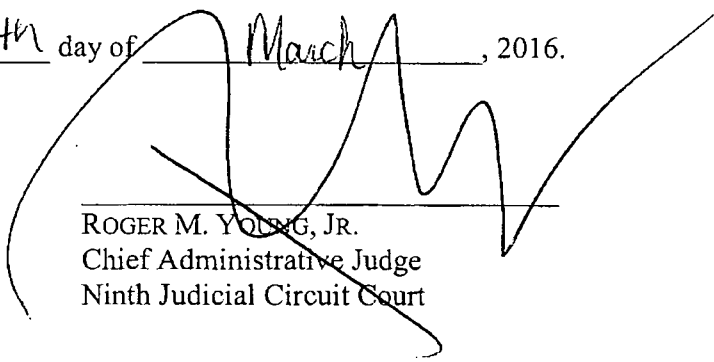
Additionally, this Court denies Applicant's Motion for Appointment of Counsel, as an evidentiary hearing is not warranted in this matter.

IT IS THEREFORE ORDERED that the Motion for Appointment of Counsel is **DENIED** and 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**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 16th day of March, 2016.

Charleston South Carolina.



ROGER M. YOUNG, JR.
Chief Administrative Judge
Ninth Judicial Circuit Court



ALAN WILSON
ATTORNEY GENERAL

March 22, 2016

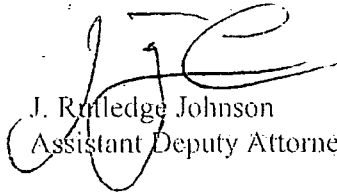
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St. Ste 106
Charleston, SC 29401-2210

Re: Terrance Griffin, #327735 v. State of South Carolina
2014-CP-10-0161

Dear Ms. Armstrong:

Enclosed please find the signed original **Final Order of Dismissal** in the above captioned case for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737.

Sincerely,


J. Rutledge Johnson
Assistant Deputy Attorney General

JRJ/jb

cc: Terrance Griffin, #327735