

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Williamsburg County

R. Ferrell Cothran, Jr., Circuit Court Judge

2014-CP-45-125

Appellate Case No. 2015-000609

RENWICK MOSE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
Bar No. 102214

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

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PETITIONER'S ISSUE PRESENTED

- I. Did the lower court err in dismissing petitioner's application for post-conviction relief on the basis it was filed three days outside the statute of limitations?**

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Petitioner was true bill indicted at the July 2011 term of the Williamsburg County Grand Jury for Burglary—first degree and Assault and Battery—first degree (2011-GS-45-0105). He was represented by Cezar McKnight, Esquire. On March 7, 2013, Petitioner pled guilty to the lesser included offense of Burglary-second degree and as indicted for Assault and Battery—first degree. The Honorable Clifton Newman sentenced Petitioner without negotiations or recommendations to a twelve year term of imprisonment for Burglary—second degree and ten year term of imprisonment for Assault and Battery—first degree. Petitioner did not appeal his guilty plea or sentence.

Petitioner subsequently filed an application for post-conviction relief (PCR) on March 10, 2014 (C.A. No. 2014-CP-45-125). Respondent filed its Return and Motion to Dismiss on September 26, 2014. The Honorable W. Jeffrey Young issued a Conditional Order of Dismissal dated October 1, 2014 and filed October 17, 2014, which allowed Petitioner 20 days to submit any factual or legal reasons why the application should not be dismissed. The Conditional Order of Dismissal was served on Petitioner on November 20, 2014.

Petitioner submitted a "Motion in Response to Conditional Order of Dismissal," received on December 10, 2014, in which he argued that his application was deemed filed by the courts under the "mail box rule" when it was placed in the mail on February 18, 2014. The Honorable R. Ferrell Cothran, Jr. issued a Final Order of Dismissal which denied and dismissed the application with prejudice signed on February 5, 2015, and filed February 13, 2015.

Petitioner filed a timely Notice of Appeal of the denial of his post-conviction relief application on March 23, 2015. Petitioner's Appendix and Petition for Writ of Certiorari were filed on April 6, 2016. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The PCR Court did not err in dismissing Petitioner's application because it was filed outside the statute of limitations.

Petitioner argues that the PCR Court erred in dismissing Petitioner's PCR application because it was mailed before the statute of limitations had passed but was not filed in the court until after the deadline.

The statute of limitations for filing an application for PCR is one year. Section 17-27-45(A) of the South Carolina Code provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of 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).

Mailing does not constitute filing. Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). "When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." Gary, 347 S.C. at 629, 557 S.E.2d at 663 (citing Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955)).

Our courts have held that "statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996).

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

The South Carolina Court of Appeals addressed this issue in Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008). In this post-conviction relief action, the applicant notarized and mailed his application before the statute of limitations passed, but he incorrectly mailed it to the Office of Appellate Defense who then forwarded the application to the clerk's office for filing. The application was filed the following week on a date which was past the statute of limitations. The PCR court dismissed his application for failure to conform to the statute of limitations, and the applicant appealed.

The court in Pelzer affirmed the PCR court's dismissal of the application, holding that the applicant's error did not result from any lack of legal skill, but was the result of simple neglect. Pelzer at 522, 662 S.E.2d at 621. It explained that "the narrow window by which Pelzer's application missed the statute of limitations cannot be construed as so exceptional a circumstance as to warrant equitable tolling" of the statute of limitations. Id.

The current case is similar enough to Pelzer to constitute the same holding. Petitioner claims his application was placed in the SCDC mail room on February 18, 2014, which was before the March 7, 2014 deadline. Petitioner has offered no proof that the application was placed in the mailroom on that date or when it was postmarked or stamped. The only date that is certain is the date it was filed with the Clerk of Court, March 10, 2014.

As in Pelzer, Petitioner has not alleged any wrongdoing by the State or by the Clerk's office. Petitioner argues only that the spirit of post-conviction relief should allow him extra time to file his complaint. Petitioner has shown no extraordinary circumstances warranting equitable tolling of the statute of limitations, and has failed to show any basis on which a deviation from

the statute should be allowed. Therefore, the PCR Court's dismissal of Petitioner's application should be affirmed.

CONCLUSION

For the foregoing reasons, the State submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
Bar No. 102214

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

July 13, 2016

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SC SUPREME COURT

STATE OF SOUTH CAROLINA
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Certiorari to Williamsburg County

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

RENEWICK MOSE, #271319

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

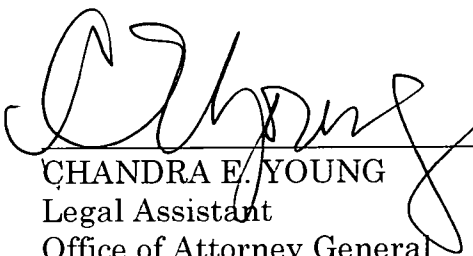
PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 13th day of July 2016.



CHANDRA E. YOUNG
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



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SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

July 13, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Renwick Mose, #271319 v. State of South Carolina
2015-000609**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:cey
Enclosures

cc: Wanda H. Carter, Esquire
Trisha Allen, Victim Services (letter only)