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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

Trevor Fishburne, #340902,)
Applicant,)

2012-CP-15-0604

v.)

CONDITIONAL ORDER OF
DISMISSAL

State of South Carolina,)
Respondent.)

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PATRICIA S. GRANT
COLLETON COUNTY
COMMON PLEAS

In response to the post-conviction relief application filed August 2, 2012, and the Respondent's Return, this Court finds:

I.

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PMB

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2009 term of the Charleston County Grand Jury for two counts of armed robbery (2009-GS-15-294, -295), assault and battery with intent to kill (ABWIK) (2009-GS-15-293), and possession of a weapon during the commission of a violent crime (2009-GS-15-292). E.W. Bennett Jr., Esquire, represented the Applicant. On May 20, 2010, the Applicant pled guilty as indicted. The Honorable Perry M. Buckner sentenced him to confinement for twenty years concurrent for ABWIK, twenty-five years concurrent for armed robbery, and five years for possession of a weapon. The Applicant did not appeal his convictions or sentences.

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

1. Ineffective Assistance of Counsel

2. "Insufficient Plea"

- a. "Lack of communication so I can make informed decision due to shaky evidence I was coerced into pleading."

The Court has before it the records of the Colleton County Clerk of Court regarding the subject conviction and the South Carolina Department of Corrections records.

II.

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 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.

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PMB

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 May 20, 2010. This Application was filed on August 2, 2012, which was over one year after the statutory filing period had expired.

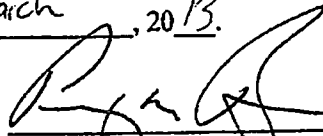
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary 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 judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief should

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

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

AND IT IS SO ORDERED this 25 day of March, 2013.



THE HONORABLE PERRY M. BUCKNER
Chief Administrative Judge
14th Judicial Circuit Court

Walterboro

_____, South Carolina