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Peruis White, 247460  
386 Redemption way  
McCormick, S.C. 29899

Date 4-14 2017

Case No# 2014-cp-170426

Dear Honorable Clerk of South  
Carolina Supreme Court

Enclosed Please Find for filing  
of Notice of appeal, and AFFIDAVIT of  
Service ~~upon~~ upon all parties

~~Request~~ Requesting a Clocked - Dated  
Stamped Copy.

**RECEIVED**

APR 19 2017

S.C. SUPREME COURT

c: C: P. W:

cc:

Respectfully Submitted  
s/ Peruis White

Peruis White #247468

386 Redemption Way  
McCormick, S.C. 29899

Date 4-14-2017

Case No # 2014-CP-17-0426

Dear Assistant Attorney General  
Valerie Garcia Bisuanolia

Enclosed Please find a copy of  
My Notice of Appeal, and Affidavit  
of Service that has been file within  
the South Carolina Supreme Court

C:C:P.W

CC: A:A:G:V:G:

Respectfully submitted  
S1 Peruis White

4  
The state of South Carolina  
In The Supreme Court

Appeal From Dillon County  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No # 2014-CP-17-0426

Percis White, #247460 Applicant

vs

state of South Carolina Respondent

AFFIDAVIT of Service

The under ~~signed~~ <sup>signed</sup> pro-se ~~the~~ Petitioner  
Percis White, #247460 do hereby certify  
that (s) he has served below listed parties  
with a copy of the pleading (s) indicated  
below by mailing a copy of same to them  
in the United States ~~mail~~ with sufficient  
postage affixed and return address  
clearly marked on the date indicated ~~at~~ below  
Date 4-14 2017

① South Carolina ~~supreme~~ <sup>supreme</sup> Court  
P.O. Box 11330  
Col, SC=12921

② Valerie Barbara Giovanli  
Attorney General office  
Post office box 11549 Col. S.C. 29211

3  
The State of South Carolina  
In the Supreme Court

Appeal from Dillon ~~Court~~ <sup>County</sup> **RECEIVED**  
Court of Common Pleas APR 19 2017

Roger E. Henderson, Circuit Court Judge  
S.C. SUPREME COURT

Case No # 2014-~~0~~<sup>40</sup>-17-0426

Pervis White, #247460 Applicant

VS

State of South Carolina Respondent

Notice of Appeal

✶ The Appellant, Pervis White, 247460, takes this appeal from the case captioned above. The order in this case was entered on Mar 2nd, 2017 was Received on March 31st 2017.

APR 11 14 2017

S/ Pervis White  
Pervis White, #247460  
386 Redemption way  
McCormick, S.C.  
29899

STATE OF SOUTH CAROLINA  
COUNTY OF DILLON

) IN THE COURT OF COMMON PLEAS  
) FOR THE FOURTH JUDICIAL CIRCUIT

Pervis White, #247460,

) Case No. 2014-CP-17-0426  
)

Applicant,

v.

State of South Carolina,

Respondent.

ACERTIFIED  
TRUE COPY  
*Dawn B. Hays*  
CLERK OF COURT  
DILLON COUNTY

**CONDITIONAL ORDER  
OF DISMISSAL**

2015 NOV 18 AM 10:04  
CLERK OF COURT  
DILLON COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 25, 2014. Respondent filed a return requesting summary dismissal contemporaneous with a draft of this order. This Court also has before it the records as stated in and provided with the return. The Court finds as follows:

**PROCEDURAL HISTORY**

Underlying Conviction

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Dillon County Clerk of Court. In August 1995, the Dillon County Grand Jury indicted Applicant for armed robbery, murder, criminal conspiracy (95-GS-17-729, -730, -730). Applicant was represented by Glenn B. Manning, Esquire and John C. Jepertinger, Esquire. A jury was selected but, shortly thereafter, a plea agreement was reached. Applicant pled guilty to all charges pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) for sentences of life for murder, concurrent thirty (30) years for armed robbery, and consecutive four (4) years for conspiracy, plus eligibility for parole after serving twenty (20) years. The Honorable Marc H. Westbrook accepted the plea, found that it was supported by a substantial factual basis, and found petitioner guilty of the three (3) charges on February 12, 1998. He imposed the sentences in accordance with the plea agreement, but refused to grant petitioner credit for time served. A direct appeal was not filed.

*PMB*

First PCR Application (1999-CP-17-019)

Applicant filed his first post-conviction relief action on January 21, 1999. In that application, Applicant raised the following grounds for relief (paraphrased):

1. Denial of due process;
2. Ineffective assistance of counsel in that counsel coerced the Applicant to enter a plea.
3. Involuntary guilty plea.

An evidentiary hearing was convened before the Honorable Daniel F. Pieper on February 2, 2000, during which Applicant was represented by Wade Crow, Esquire. On April 6, 2000, Judge Pieper issued an order denying all allegations.<sup>1</sup>

Applicant filed a notice of appeal by and through his trial counsel on April 25, 2000. Katherine Carruth Link, Esquire of the South Carolina office of Appellate Defense perfected the appeal by filing a petition for writ of certiorari to the South Carolina Supreme Court. The State filed a return to the petition for writ of certiorari. The South Carolina Supreme Court denied the petition for writ of certiorari, and the conviction and sentence were affirmed via a letter dated October 25, 2001. Applicant filed a Petition for Rehearing without representation, and this was denied via a letter dated November 28, 2001.

Second PCR Application (2002-CP-17-028)

Applicant filed a second PCR application on January 23, 2002, in which he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Lack of subject matter jurisdiction
3. Jail time credit
4. Ineffective assistance of PCR counsel

The State filed a return and motion to dismiss on May 2, 2002, requesting the application be summarily dismissed based on the expiring of the statute of limitations and the presumption against successive PCR

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<sup>1</sup> The parties agreed that the issue regarding credit for pretrial detention was not before the court as it had been resolved by agreement. The final order included an acknowledgement that the Department of Corrections had consented to provide White credit for his pretrial detention, as mentioned in the State's proposed order, along with a footnote stating, "The clerk is directed to file the State's proposed order, so that its consent to White's request for credit will be part of the record."

applications. Further, the State argued that the allegation of lack of subject matter jurisdiction was wholly without merit; that the clerk should have updated the file to reflect Judge Pieper's determination regarding jail time credit because that issue is no longer cognizable under the PCR Act; and that Applicant's argument that he received ineffective PCR counsel regarding his prior application so the current application should not be viewed as successive had no merit. Philip Atkinson, Esquire represented the Applicant. An evidentiary hearing was convened on May 21, 2002 before the Honorable J. Michael Baxley, after which he granted the State's motion to dismiss and directed the Attorney General's office to prepare an order. Such an order was prepared and signed by Judge Baxley on December 27, 2002. Mr. White sought various informal relief after the issuance of this order, but to no avail. A direct appeal was not filed.

Third PCR Application (2008-CP-17-0400)

On December 4, 2008, Applicant filed a third petition for post-conviction relief, in which he alleged the following grounds for relief:

1. After-discovered evidence
2. Conflict of interest
3. Brady violation/Rule 5

The State filed a return and motion to dismiss on February 27, 2009, requesting the application be dismissed because it was successive and outside of the expiration of the statute of limitations to file. The circuit court issued a conditional order of dismissal on March 3, 2009. Applicant a motion to appeal respondent's motion to dismiss and motion to enlarge time on March 12, 2009, as well as objections to the conditional order on March 30, 2009. A final order of dismissal was signed over the objections of the Applicant on July 17, 2009 by the Honorable Paul M. Burch, and personally served upon the Applicant.

Applicant filed a notice of appeal on August 14, 2009. On September 14, 2009, Applicant filed a document entitled "Rule 243(c) SCACR Motion to Show Cause for Writ of Certiorari." The matter was dismissed by the Supreme Court of South Carolina pursuant to Rule 243(c) SCACR for Applicant's failure

PMB

to show that there is an arguable basis for asserting that the determination by the lower court was improper on September 30, 2009, and the remittitur was sent to the circuit court on October 19, 2009.

#### Current Matter

Applicant filed his fourth and current PCR application on September 25, 2014 in which he sought relief from ineffective assistance of counsel because his attorneys failed to investigate and ask for a psychiatric evaluation, despite his history of mental health issues and low intelligence and education levels. Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

S.C. Code Ann. § 17-27-70(c) 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.” See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss:

#### Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to a “sufficient reason” why new

part 5

grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. The grounds he alleges were known at the time of prior applications and at the time of trial. Therefore, this application must be dismissed as impermissibly successive.

#### Failure to Timely File

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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, 470, 469 S.E.2d 606, 607 (1996).

The circuit court sentenced Applicant on February 12, 1998. No appeal was filed. Applicant was therefore required to file his application before February 13, 1999. This application was filed September 25, 2014, which was well beyond the time that 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) 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 must be summarily dismissed for the reasons discussed above.

### Laches

In addition to the prior grounds, the Court finds this action is barred under the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. See McElrath v. State, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (citing Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979)). Thus, the doctrine of laches bars any an action where the applicant has failed to exercise his rights for an unreasonable period. Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (quoting Hallums v. Hallums, 296 S.C. 195, 371 S.E. 525 (1988)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("Laches connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner." (citing Chambers of South Carolina, Inc. v. County Council for Lee County, 315 S.C. 418, 434 S.E.2d 279 (1993))).

Applicant filed this current application over sixteen (16) years after he pled guilty. The Applicant's delay has greatly prejudiced both parties' ability to litigate this action. Records and exhibits from the trial may no longer be available. See, e.g. Rule 607(i), SCACR (court reporter only required to retain records for five years). The State should not be called upon to defend the constitutionality of convictions after such a long delay. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice."). Therefore, the Court finds this action should be dismissed based on the doctrine of laches.

### CONCLUSION

The Court finds that the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

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

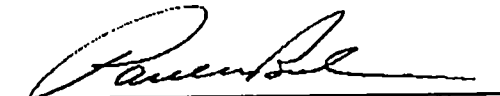
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dismissed in its entirety. Applicant is granted thirty (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons she may have with the Dillon County Clerk of Court (P.O. Box 1220, Dillon, SC 29536-1220) and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Jessica E. Kinard, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dillon County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF November, 2015.



THE HONORABLE PAUL M. BURCH  
Chief Judge for Administrative Purposes  
Fourth Judicial Circuit

Chesterfield, South Carolina

FILED  
STATE OF SOUTH CAROLINA GWEN T. MYATT IN THE COURT OF COMMON PLEAS  
COUNTY OF DILLON FOR THE FOURTH JUDICIAL CIRCUIT

2017 MAR 16 PM 2:37

Pervis White, #247460,

Case No.: 2014-CP-17-0426

Applicant, CLERK OF COURT  
DILLON COUNTY

**FINAL ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed September 25, 2014. Respondent made its return on or about November 2, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications and is barred by the doctrine of laches.

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 signed November 9, 2015 and filed November 18, 2015, provisionally denying and dismissing this action, while giving the Applicant thirty (30) 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 December 4, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Applicant Responds Objection to Conditional Order of Dismissal" on December 11, 2015, in which Applicant argues the motion to dismiss should be denied until an evidentiary hearing is held on the issue of whether Applicant's mental illness prevented him from raising the issues of "ineffective assistance of counsel, and due process of

law because my counsel failed to investigate, and ask for a psychiatric evaluation despite his history of mental health issues, and applicant claim incompetency to stand trial because he did not understand the Alford plea” and said mental illness prevented Applicant from raising these issues in his first PCR. Applicant also argues that Judge Burch should have recused himself based on a conflict of interest because Judge Burch signed the order dismissing Applicant’s 2008 PCR.

This Court has reviewed Applicant’s response to the Court’s Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds that Applicant’s claim that Judge Burch must rescue himself is dismissed, as Judge Burch did not preside over the guilty plea for which relief is being sought in this matter and therefore the ruling in Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991) does not apply.

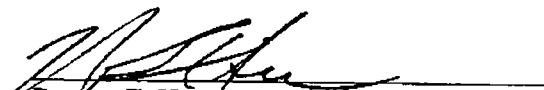
**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court’s Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

*[Page left black intentionally]*



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 2nd day of March, 2017.

  
\_\_\_\_\_  
ROGER E. HENDERSON  
Chief Judge for Administrative Purposes  
Fourth Judicial Circuit

Chesterfield, South Carolina

Peruis White, #247460, F-2-Room 278  
MC Cormick Correctional Institution  
386 Redemption Way  
MC Cormick, S.C., 29899

South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C., 29211

THE DEPARTMENT OF CORRECTIONS DOES NOT  
INSPECT OR CENSOR THIS ITEM; THEREFORE,  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.

MCCORMICK CORRECTIONAL INST  
S.C. DEPT. OF CORRECTIONS

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