

The Supreme Court for South Carolina
Hon: Daniel E. Shearous/Clerk
P.O. Box 11330
Columbia, S.C. 29211

Mr. Ernest Battle, #165247
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

May 17, 2017.

Dear Hon : Shearous:

Enclosed for filing, please find one (1) original Notice of Appeal and one (1) original Explanation as required pursuant to SCACR - Rule 243(c). Both documents are accompanied with attached affidavit of service to the Respondent's Attorney of Record, Alicia A. Olive. Upon receipt, please clock stamp and return a clocked copy to me for my records at the above listed address.

Thanking you in advance,

Sincerely,


Ernest Battle, #15247

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Deadra L. Jefferson, Chief Administrative Judge

Case No. 2015-CP-10-6643

The State,.....Respondent,

V.

Ernest Battle,.....Appellant.


NOTICE OF APPEAL

Ernest Battle, appeals the order [judgement] of the Honorable Deadra L. Jefferson dated and entered May 9, 2017. Appellant received written notice of entry of this order [judgement] on May 15, 2017.

May 15, 2017.

Other Counsel of Record:

Office of the Attorney General
Alicia A. Olive, Esquire
P.O. Box 11549
Columbia, S.C. 29211


Ernest Battle, #165247
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(Prose)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
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Deadra L. Jefferson, Circuit Court Judge

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The State,..... Respondent,

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Ernest Battle,..... Appellant.

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PROOF OF SERVICE

I certify that I have served the Notice of Appeals on the State of S.C. by depositing a true copy of it in the United States Mail, postage prepaid, on the 15th day of May, 2017, address to Respondent's Attorney of Record Olivia A. Olive, Esquire, Office of the Attorney General, S.C. Post Office Box 11549, Columbia, S.C. 29211.

May 15, 2017.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15th DAY OF MAY
20 17

Nicole R. Chapman
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES _____

s/ Ernest Battle
Ernest Battle, #165247
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(Prose)
Attorney for Appellant

CP
AS
AT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Ernest Battle,)
SCDC No. 165247,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-10-6643

CONDITIONAL ORDER OF DISMISSAL

FILED
2016 APR 27 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Ernest Battle (Applicant) on December 9, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections for separate offenses, pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 1979 term of the Charleston County Grand Jury for two (2) counts of possession of unlawful drugs - marijuana (1979-GS-10-1111, -1112), and one (1) count of unlawful possession of a weapon (1979-GS-10-704). Applicant was represented by Aaron Harvey.

On August 9, 1979, the Applicant pled guilty as indicted. Applicant was sentenced under the Youthful Offender Act 5(c) by the Honorable Klyde Robinson to confinement for a period of three (3) years for each offense. The sentences were to be served concurrently. The Applicant did not appeal his convictions or sentences.

First PCR Application: 2012-CP-10-3332

Thereafter, Applicant filed an application for post-conviction relief (PCR) filed May 22, 2012, in which he made the following allegations:

1. "1979 sentence and convictions were excessive and unlawful."
2. "1979 sentences were barred by double jeopardy."
3. "Unlawful enhancement."
4. "Abuse of Discretion."

The Respondent made its Return and Motion to Dismiss on September 24, 2012. The application was filed *pro se*. The Honorable R. Dennis Markley, Jr. issued a Final Order dated May 15, 2015, dismissing the application with prejudice.

Applicant subsequently filed a Notice of Appeal by Order on June 15, 2015. The South Carolina Supreme Court dismissed the appeal for Applicant's failure to satisfy the requirements of Rule 243(c). On September 3, 2015, the South Carolina Supreme Court denied Applicant's petition for rehearing. The Remittitur was issued on September 3, 2015. On September 24, 2015, the Honorable Chief Justice Jean H. Toal dismissed the Applicant's petition for a writ of certiorari.

Current PCR Application: 2015-CP-10-6643

In his second and current PCR Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The circuit court lacked subject matter jurisdiction

Before this Court are the Charleston County Clerk of Court records regarding the subject convictions, Applicant's previous and current PCR applications, and appellate records.



FINDINGS AND CONCLUSIONS OF LAW

Successiveness

This Court finds the current PCR application must be summarily dismissed because it is successive to the Applicant's prior PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised earlier in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Respondent submits that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992). Accordingly, this Court finds that this application is summarily dismissed for being successive.



Statute of Limitations

IV.

This Court finds this application must 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.

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). 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) (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.”

The Applicant pled guilty on August 9, 1979, causing any subsequent application for post-conviction relief to be due before August 10, 1980. However, the application for post-conviction relief was not filed until December 9, 2015, *over thirty-five (35) years* beyond the time allotted. Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, located in the bottom right corner of the page.

Doctrine of Laches

This Court finds that this application must be summarily dismissed because it is barred by the doctrine of laches. The Applicant was indicted *over thirty-five (35) years ago*. The transcript of the Applicant's guilty plea might not be available. Additionally, any witnesses may no longer be available to testify. The State would be severely prejudiced if forced to proceed at this time. Furthermore, the Applicant provides no reasons for the extensive delay in his application.

Laches is an equitable doctrine, which "arises upon the failure to assert a known right." Ex parte Stokes, 256 S.C. 260, 182 S.E.2d 306 (1971). Laches is: (1) neglect for an unreasonable and unexplained length of time under circumstances affording opportunity for diligence, to do what in law should have been done; (2) resulting prejudice to the opposing party. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. Id. Therefore, this Court finds the present application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being barred by the doctrine of laches.

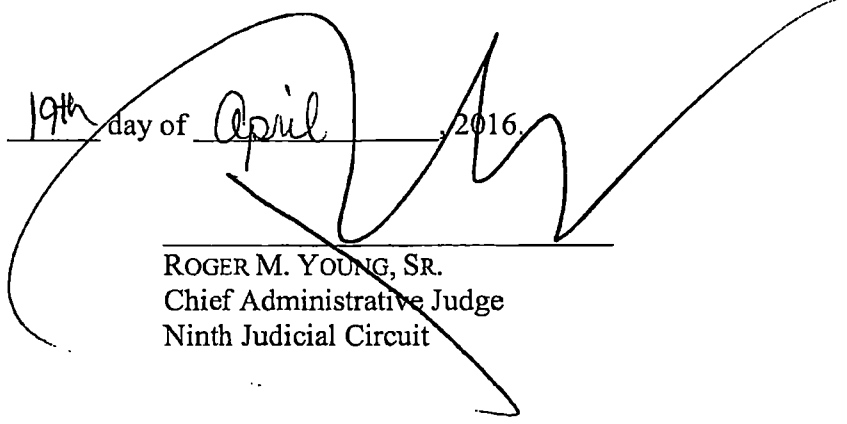
CONCLUSION

Pursuant to Section 17-27-70(b) of the South Carolina Code, this 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 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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

[Signature block on the following page]

Office of the Attorney General
J. Rutledge Johnson, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 19th day of April, 2016.



ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

CC
AG
AT
SOL
GS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Ernest Battle, #165247)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-10-6643

FINAL ORDER OF DISMISSAL

FILED
2017 MAY -9 PM 4:23
JULIE J. HARRINGTON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 9, 2015. Respondent made its return on April 12, 2016, requesting the application be summarily dismissed as successive, and based upon the statute of limitations and 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 April 19, 2016, and filed April 27, 2016, 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 March 30, 2017,¹ serving the above mentioned Conditional Order of Dismissal on Applicant.

In a document captioned "Objection to State's Conditional Order of Dismissal" and dated May 3, 2016, Applicant argues that his application is timely because he challenges the plea

¹ Prior to submitting a proposed final order of dismissal to this Court, it came to Respondent's attention that there was no record that Applicant had been properly served with the Conditional Order of Dismissal. Therefore, Respondent sent an affidavit of service to the South Carolina Department of Corrections to ensure Applicant was afforded the 20 days from the date of service to respond to the Conditional Order of Dismissal.

court's subject matter jurisdiction and that he is therefore entitled to counsel and an evidentiary hearing.

In a document captioned "Motion for Appointment of Counsel" and filed September 19, 2016, Applicant argues he is entitled to appointment of counsel to argue his claim of the trial court's lack of subject matter jurisdiction.²

In a document dated March 27, 2017, Applicant argued he received the Conditional Order of Dismissal on April 29, 2016, made a response to the order, and need not submit an additional response despite being served again with the order on March 30, 2017.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its 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 notes the Applicant was convicted and sentenced on August 9, 1979, and~~
Applicant did not appeal his plea or sentence. A one-year statute of limitations applies to all PCR applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Therefore, Applicant was required to file his application by July 2, 1997. This action was filed on December 9, 2015, well-beyond the statute of limitations. See id.; S.C. Code Ann. § 17-2745(a) (Supp. 2003). This Court also notes that Applicant was indicted over thirty-five years ago, never appealed, and did not file his first application for PCR until May 22, 2012. See Ex parte Stokes, 256 S.C. 260 182 S.E.2d 306 (1971) (defining laches as neglected for an unreasonable and unexplained length of time under circumstances affording opportunity of diligence, to do in law what should have been done and resulting in prejudice to the opposing party). This is the Applicant's second application for post-conviction relief. This Court notes


² Applicant also filed a "Motion for Declaratory Judgment" in the South Carolina Supreme Court on February 22, 2017. These documents, including the State's response, are also attached to this order.

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JAG

successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980).

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.

AND IT IS SO ORDERED this 8th day of May, 2017.



THE HONORABLE DEADRA L. JEFFERSON
Chief Administrative Judge
Ninth Judicial Circuit

Chas., South Carolina.

RECEIVED

MAY 22 2017

STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

Ernest Battle, #165247,
Appellant,
v.
State of South Carolina,
Respondent.

EXPLANATION AS REQUIRED
Pursuant to SCACR - Rule 243 c
C/A No. 2015-CP-10-6643

This matter came before the Court of Common Pleas by way of an application for post-conviction relief (PCR) filed by Applicant on December 9, 2015. The Satte (Respondent) made its return, requesting the application be summarily dismissed. The Honorable Deadra L. Jefferson, Circuit Court Judge, Dismissed the above action by way of Final Order/Judgement entered on May 9, 2017.

Appellant received copy of notice of judgement on May 15, 2017.

PROCEDURAL HISTORY

The Appellant is presently confined in the South Carolina Dept. of Corrs. for separate offenses, pursuant to orders of comitment of the Charleston County Clerk of Court. The Appellnat was indicted at the August 1979 term of the Charleston County Grand Jury for (2) counts of Simple Possession of Marijuana (1979-GS-10-1111, -1112), and one count of Unlawful possession of a weapon. (1979-GS-10-704). Appellant was represented by Aaron Harvey.

On August 9, Appellant pled guilty as indicted on all counts. He was sentenced under the Youthful Offender Act 5(c) by the Honorable Klyde Robinson to confinement for a period of three (3) years for each offense. The sentences were to be served concurrently. Appellant did not appeal.

The Appellant asserts and alleges in his current application that he is being held in custody unlawfully for the following reasons:

1. The Circuit Court Lacked Subject matter jurisdiction.

The Respondent asserts that the Appellant is procedural barred and not entitled to an evidentiary hearing for the following reasons:

1. That the application is successive pursuant to § 17-27-90.
2. That the application is barred by the statute of limitation pursuant to S.C. Code Ann. § 17-27-45(a).
3. That the application is barred by the doctrine of Laches.

FINDING OF FACTS AND CONCLUSION OF LAW

It is well settled that in our South Carolina that, the lack of subject matter jurisdiction is fundamental and may not be waived., even by consent of the parties, and should be taken notice of by the Court;Id.; It is also well settled that the lack of subject matter jurisdiction can be raised at any time, including for the first time on appeal in the South Carolina Supreme Court. **Carter v. State**, 329 S.C. 355, 495 S.E. 2d 773 (1998); **State v. Funderburk**, 259 S.C. 256, 191 S.E.2d 520 (1972). Furthermore, [t]he acts of a court with respect to a matter as to which it has no jurisdiction are void. **Funderburk**, 259 S.C. at 261, 191 S.E.2d at 520; see also **Anderson v. Anderson**, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989).

In **Brown v. State**, 343 S.C. 342, 540, S.E.2d 846, the Court held: Since subject matter jurisdiction is an issue which is fundamental and may be raised at any time, It declined to find that their review of the issue is precluded on procedural grounds. **Carter v. State supra; Anderson v. Anderson**. Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which it belongs.

CONCLUSION

Based on the following, the Appellant request that this Honorable Court reverse the lower court determination that Appellant is not entitled to an evidentiary hearing to determine whether the circuit court was vested with subject matter jurisdiction.

Respectfully submitted,

S/ 
Ernest Battle, #165247

AFFIDAVIT OF SERVICE

I, Ernest Battle, #165247, being duly sworn, disposes and swears against the penalty of perjury that i did on this 17 day of May 2017, deposited for filing, one (1) Explanation as required pursuant to SCACR - Rule 243(c) to the Clerk for the Supreme Court of South Carolina and a true copy to the Respondent's Attorney of Record at the below listed address. via U.S. Mail postage prepaid.

Respectfully submitted,
S/ *Ernest Battle*
Ernest Battle, #165247

Office of the Attorney General, S.C.
Alicia A. Olive, Esquire
P.O. Box 11549
Columbia, S.C. 29211

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 17th DAY OF MAY
2017
Nicole R. Chapman


NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 12-22-2026

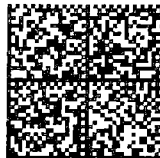
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MAY 22 2017
S.C. SUPREME COURT


MAGDOUGALL CORR. INST.
1516 OLD GILLIARD RD.
RIDGEVILLE, SC 29472

Mr. Ernest Battle, #165247
MacDougall Correctional Inst.
1516 Gilliard Rd.
Ridgeville, S.C. 29472
Birch # 2 Unit



UNITED STATES POSTAGE

PITNEY BOWES
02 1P \$ 000.21⁰
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MAILED FROM ZIP CODE 29476



UNITED STATES POSTAGE

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To: The Supreme Court, S.C.
Hon: Daniel E. Shearous
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

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