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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
Court of Common Pleas
Hon. Michael G. Nettles Judge.

CASE No. 2013-CP-21-413

Richard W. Stokes
Applicant

v.

NOTICE OF APPEAL

State of South Carolina
Respondent

Richard W. Stokes, Appeals the denial of his application for Post Conviction Relief. This Appeal is taken from the Order of the Hon. Michael G. Nettles, dated June 28, 2017, received by the Applicant on July 6, 2017.

July 25 2017

Richard W. Stokes
Broad River Court Trust
4460 Broad River Rd
Columbia, S.C. 29210

The State of South Carolina
In The Supreme Court

CASE NO. 2013-CP-21-613

Richard W. Stokes
Applicant

v
State of South Carolina
Respondent

Certificate of Service

Richard W. Stokes, declares under penalty of perjury that he mailed a copy of his Notice of Appeal to the parties listed below. By placing them in the U.S. Mail.

Clerk of Court
180 N. Beby St. MSC-E
Florence, S.C. 29501

Richard W. Stokes
Broad River Court Dist
4460 Broad River Rd
Columbia, S.C. 29210

S.C. Attorney Gen. Office PCR Div.
Post Office Box 11549
Columbia, S.C. 29211-1549

July 25 2017

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

CC: FILE

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

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

Richard W. Stokes, #134422,

2013-CP-21-00613

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
APR 23 10:55
CLERK OF COURT
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed March 4, 2013. Respondent made its initial Return on or about May 17, 2013. Respondent amended the Return on April 21, 2017, requesting the application be summarily dismissed as untimely, successive, and barred by the equitable 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 and filed on May 1, 2017, provisionally denying and dismissing this action while giving the Applicant twenty 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 May 24, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document titled "Motion in Opposition to Conditional Order of Dismissal" on June 7, 2017, in which Applicant argues that the application was not successive because it raised a ground for relief that was "unavailable previously," as the U.S. Supreme Court decision cited by Applicant¹ was published after his previous PCR action was concluded.

¹ Lafler v. Cooper, 556 U.S. 156 (2012).

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. 12 J.C.S.
FLORENCE COUNTY, S.C.

Applicant argues that the application is not barred by the doctrine of laches because he did in fact “exercise reasonable diligence in filing his application” within one year of the decision in Lafler. Although no South Carolina court has passed on this exact issue, courts within the Fourth Circuit and elsewhere have repeatedly declined to apply Lafler and its companion case² retroactively, holding that they do not pronounce a new constitutional rule. See, e.g., In re Graham, 714 F.3d 1181, 1182 (10th Cir. 2013) (“To date, however, every circuit court to consider the question has held that Frye and Lafler do not establish a new rule of constitutional law.... We substantially agree with the reasoning of those decisions.”) (citations omitted); Ortiz v. United States, 2012 WL 5438938 (E.D.N.Y. Nov. 7, 2012) (collecting cases from Court of Appeals for the Fifth, Ninth, and Eleventh Circuits, as well as district court cases from the Fourth Circuit, which hold that Frye did not create a new constitutional right retroactive to cases on collateral review); Collins v. Cartledge, No. 2:14CV1200-BHH-WWD, 2014 WL 8396824, at *3 (D.S.C. Nov. 14, 2014), report and recommendation adopted, No. CIV.A. 2:14-1200-BHH, 2015 WL 1518144 (D.S.C. Mar. 30, 2015) (“Neither Lafler nor Frye created a new rule of constitutional law that is retroactive to cases on collateral review.”). Applicant has cited no authority to the contrary, and this Court declines to find Lafler applies retroactively.

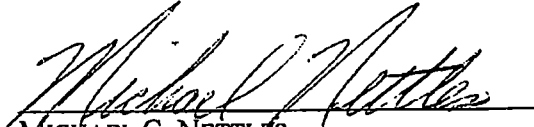
This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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² Missouri v. Frye, 566 U.S. 133 (2012).

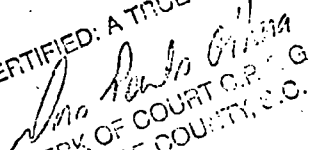
IT IS THEREFORE ORDERED that, for the reasons set forth above and in this Court's Conditional Order of Dismissal, the PCR application is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 28 day of June, 2017.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina.

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CLERK'S OFFICE
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. G.S.
FLORENCE COUNTY, S.C.

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF FLORENCE
 IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2100613

Richard W Stokes	2017 JUN 28 AM 11:55	South Carolina State Of	
DORIS PAULOS O'HARA <small>CCCP 2013</small> FLORENCE COUNTY, SC			

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

6/28/2017

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
[Signature]
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

This judgment was entered on **June 28, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **June 28, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Richard W Stokes #134422 Broad River Correctional Institution 4460 Broad River Road Columbia, SC 29210

Lindsey Ann McCallister PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)

Richard W. Stokes,) Case No.: 2013-CP-21-00613
S.C.D.C. No. 134422,)
)

Applicant,)

CONDITIONAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Richard W. Stokes (Applicant) on March 4, 2013. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the April 1987 term of the Florence County Grand Jury for conspiracy, armed robbery, four counts of kidnapping, possession of a sawed-off shotgun, and receiving stolen goods (1987-GS-21-00205). Rodney C. Jernigan Jr., Esquire, represented Applicant. Applicant proceeded to trial before the Honorable C. Anthony Harris and a jury. On April 29, 1987, the jury found Applicant guilty of conspiracy, armed robbery, one count of kidnapping, and possession of a sawed off shotgun. Judge Harris sentenced Applicant to imprisonment for concurrent terms of five years for conspiracy, 25 years for armed robbery, life for kidnapping, and 10 years for the sawed-off shotgun.

CERTIFIED: A TRUE COPY
Donna Paula Ottora
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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CLERK OF COURT
FLORENCE COUNTY, S.C.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Stephen P. Williams, Esquire. By opinion decided May 1, 1989, the Supreme Court of South Carolina affirmed Applicant's convictions. State v. Stokes, 299 S.C. 483, 386 S.E.2d 241 (1989). The Remittitur was issued on November 3, 1989.

1990-CP-21-00270

Applicant filed his first application for post-conviction relief on March 9, 1990 (1990-CP-21-00270). He alleged the following grounds for relief in his application (verbatim):

1. "Ineffective assistance of appointed counsel."
 - a. "Applicant was denied his Sixth Amendment right to effective assistance of counsel and counsel failed to perform any factual and legal pre-trial investigation or preparation in Applicant's behalf."
 - b. "Counsel failed to secure evidence that was available that would have proven that someone else had committed the crime, other than the Applicant."
 - c. "Counsel wrongfully and intentionally failed to inform Applicant of the important decision pertaining to the deletion of a charge (receiving stolen goods) from the Applicant's original indictment, which would have been a lesser included offense."
 - d. "Counsel failed to object or motion to the court for a mistrial when the judge was giving [an] illegal charge to the jury."
 - e. "Counsel's deliberate actions of not motioning the court for a fast and speedy trial had a highly prejudicial affect on Applicant's right to protection that is afforded Applicant in the 6th Amendment of the Constitution of the United States."
 - f. "Counsel failed to secure Applicant's rights to present favorable evidence, and denied Applicant's right to compulsory process."
 - g. "Counsel [failed] to object to remarks that the trial judge made right after the jury was sworn in; opinions and personal remarks that prejudiced Applicant's right to a fair trial, and were made in front of the triers of facts without NO OBJECTIONS at all by counsel."
 - h. "Counsel's failure to object to remarks made by the Solicitor during his closing argument when he did indicate to the jury information not supported by testimony of a State witness as to the question of a black bank bag."

- i. "Counsel wrongfully and intentionally failed to inform Applicant of the important decision as pertaining to joining of preliminary hearing of the two defendants."
 - j. "Counsel failed to show the court that the photo found in the residence of Banshee was not the defendant as the officer testified."
 - k. "Counsel failed to secure witnesses that [were crucial] to Applicant's defense, being [an] alibi defense, especially since the Solicitor was placed on notice of said defense."
2. "Unconstitutional conviction (due process violation)."
- a. "Applicant was denied his 4th Amendment right against an unlawful search and seizure because arresting officers did not obtain possession of a valid search warrant."
 - b. "Applicant was denied his 6th and 14th United States Constitutional rights when State failed to reveal the identity of the informer."
 - c. "Applicant was illegally convicted because trial court erred and denied Applicant due process of law when it refused his motion for a directed verdict because the State failed to adduce sufficient evidence for conviction."
 - d. "Applicant was illegally convicted because trial court erred and denied Applicant due process of law when the court refused to grant court appointed attorney his motion to be relieved as counsel because of his lack of experience as a criminal attorney."

Respondent made its return on April 16, 1990, and an evidentiary hearing into the matter was convened on October 15, 1991, before the Honorable Don S. Rushing. Applicant was present at the hearing and represented by Ivey P. Starks, Esquire. Delbert H. Singleton, Jr., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and Rodney Jernigan, Esquire, also testified. By written order dated December 2, 1991, and filed December 23, 1991, Judge Rushing denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by M. Anne Pearce, Esquire, on Applicant's behalf. On November 6, 1992, the Supreme Court of South Carolina denied the petition by unpublished order. The Remittitur was thereafter issued.

1994-CP-21-01209

Applicant filed his second application for post-conviction relief on October 3, 1994 (1994-CP-21-01209). He alleged the following grounds for relief in his application (quotations verbatim):

1. Insufficient evidence and/or actual innocence:

- a. "Trial transcript records exceeds throughout the same as to [positive] proof of establishing that the applicant was at the scene of the crime was clearly inconclusive as to the evidence presented at the trial."

(emphasis original, citations omitted). Respondent made its return and motion to dismiss on February 2, 1995, arguing the application was successive and failed to state a cognizable claim. An evidentiary hearing into the matter was convened on February 3, 1998, before the Honorable John L. Breeden. Applicant was present at the hearing and represented by H. Thad White, Jr., Esquire. Lawrence G. Wedekind, of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and Rodney Jernigan, Esquire, also testified. By written order dated May 11, 1998, and filed May 18, 1998, Judge Breeden denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Melissa J. Reed Kimbrough, Esquire, on Applicant's behalf. Respondent filed its Return on or about August 20, 1999. On August 3, 2000, the Supreme Court of South Carolina denied the petition by letter order. The Remittitur was issued on August 23, 2000.

4:02-1054-MJP-TER

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 9, 2002 (C.A. No. 4:02-1054-MJP-TER). In his Petition, Applicant set forth the following grounds for relief (verbatim):

1. "Ineffective assistance of counsel in violation of my 6th Amendment right to the U.S. Constitution."
 - a. "I would contend that counsel had NO experience as a criminal trial attorney in the General Sessions Court and failed to interview my alibi witnesses, and also failed to call several of my key witnesses to testify at trial; Counsel also failed to move the Court for a continuance because he was not prepared to try my case effectively; counsel also moved the Court to dismiss the charge of receiving stolen goods from my trial."
2. "My conviction was in violation of the 14th Amendment to the U.S. Constitution."
 - a. "In the instant case, there was no witness who could identify me; I was not picked out of the photo line-up; my fingerprints was not found on the guns; there was no DNA evidence to connect me to this crime; I was not place[d] at the crime scene; there is absolutely NO EVIDENCE for a trier of facts to come to the conclusion I had anything to do with this case."
3. "14th Amendment Due Process violation by not answering my 59(e) motion in three (3) years."
 - a. "On February 3, 1998, the petition had a second PCR hearing. The PCR Court did not address the issue of receiving stolen goods in its' Order of dismissal, date May 11, 1998. I filed a timely Rule 59 (c) Motion for the Court to alter or amend its' Order to reflect the allegation. The PCR Court has Never that has constituted a miscarriage of justice."

Applicant subsequently filed an amended petition which added the following grounds (verbatim):

4. "My 14th Amendment right to the U.S. Const. was violated by my rule 59(e) motion not being entertained by the state courts."
 - a. "On June 3rd, 1998, I filed a Rule 59(e) motion with the Court to alter or amend a judgment from my PCR hearing. In as much it is the year 2002 and the court still has not responded to this motion, which is a 4 year delay, which constitutes a due process, and equal protection under the law violation."
5. "I would contend my 14th Amendment right to the U.S. Const., was violated by the state court not answering my state petition for a writ of habeas corpus and over a year has passed."
 - a. "In this case at bar it is a fact of court record that I filed a state petition for a writ of habeas corpus on March 12, 2001. In as much over a year has past and the state has not even responded to my petition in part or in whole, likewise this constitutes a due process, and equal protection under the law violation under the 14th Amendment jurisprudence."

Respondent filed its Return and Motion for Summary Judgment on August 22, 2002. The Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued on March 10, 2003 a Report and Recommendation that Respondent's motion for summary judgment be granted. The Honorable Matthew J. Perry, Jr., United States District Judge, denied Applicant's Petition on April 27, 2003, and accepted the Report and Recommendation for summary judgment. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on November 10, 2003 for want of a certificate of appealability. Stokes v. Rushton, 80 Fed.Appx. 811 (4th Cir. 2003).

Petition of April 28, 2008

Applicant filed a Petition for Writ of Habeas Corpus in the Supreme Court of South Carolina on April 28, 2008. In that petition, Applicant alleged that his incarceration violated "the U.S. Constitution and State Statute based on the procedural irregularities throughout his judicial proceedings"—namely ineffective assistance of PCR counsel, ineffective assistance of appellate counsel, and ineffective assistance of trial counsel. The Supreme Court denied Applicant's petition by unpublished order filed May 29, 2008.

2008-CP-21-1980

Applicant filed an action by way of a document captioned "Writ of Habeas Corpus" on October 14, 2008 (2008-CP-21-01980). He alleged the following grounds for relief in his application (verbatim):

1. "The Court Erred an Denied Petitioner due process of law when it refused his motion for a directed verdict."
2. "Trial Counsel Was Ineffective for failing to challenge the dismissal of an indictment for receipt of stolen goods."
3. "Trial counsel was Ineffective for failing to object to the Solicitor's closing argument concerning the identity of bank bags found in the codefendants trailer."

4. "The Lower Court Erred In Dismissing petitioners Application and Denying Him Relief When the Special Circumstances of His case substantiate He entitled To a New Trial, And To Deny Him one would Be fundamentally Unfair."
5. "The Petitioner Current Incarceration violate the U.S. Constitution and State Statute based on The Procedural irregularities throughout his judicial proceedings."

Respondent made its return and motion to dismiss on October 27, 2010, arguing the petition should be dismissed for only alleging matters which could have been raised in a PCR application. By written order dated October 29, 2010, and filed November 1, 2010, the Honorable Thomas A. Russo denied and dismissed the petition with prejudice.

8:12-406-SB-JDA

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on February 15, 2012 (C.A. No. 8:12-406-SB-JDA). In his Petition, Applicant set forth the following grounds for relief:

1. The trial court erred in dismissing a lesser offense from the indictment, depriving the jury of the opportunity to convict him for a lesser offense;
2. Trial counsel was ineffective for failing to object to that dismissal from the indictment; and
3. Insufficient evidence against Applicant to submit his case to the jury.

The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued on March 2, 2012 a Report and Recommendation that the successive petition be dismissed without requiring Respondent to file a return. Stokes v. Stevenson, 8:12-406-SB-JDA, 2012 WL 1825230 (D.S.C. 2012). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on May 18, 2012, and accepted the Report and Recommendation for dismissal. Stokes v. Stevenson, 8:12-406-SB-JDA, 2012 WL 1825374 (D.S.C. 2012).

On August 19, 2013, Applicant filed a motion pursuant to 28 U.S.C. § 2244 in the U.S. Fourth Circuit Court of Appeals, seeking authorization for a successive habeas corpus application. The Court denied that motion by Order filed September 5, 2013.

II. CURRENT APPLICATION

In his third and current post-conviction relief application, Applicant's seventh collateral action, Applicant alleges he is being held unlawfully for the following reasons (verbatim):

1. "Applicant was denied the right to effective assistance of counsel – guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article 1. §§ 3 and the 14 of the South Carolina Constitution – during the plea bargaining process."
 - a. "Trial counsel's performance during the plea negotiations was unreasonable and prejudicial. 474 U.S., at 57, 106 S.Ct. 366. quoting Strickland, 466 U.S., at 688, 104 S.Ct. 2052. Counsel's acts or omissions included, but were not limited to, the following:"
 - i. "Counsel failed to provide competent and effective assistance during the plea negotiations proceedings."
 - ii. "Counsel performance was deficient when he advised Applicant to reject the plea offer of 15 years on the grounds he could not be convicted at trial."
 - iii. "Trial counsel ill-advise was prejudicial because the loss of the plea opportunity led to the Applicant conviction and the imposition of a more severe sentence of Life imprisonment."

Applicant requests relief as follows:

- "To vacate Applicant conviction and resentence accordingly to the plea offer of 15 years."

Also before this Court are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final orders of Applicant's previous PCR and federal habeas corpus actions, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds the 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. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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) 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.”

Applicant was convicted on April 29, 1987, and the remittitur from his direct appeal issued on November 3, 1989. The current application was not filed until March 4, 2013—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

Laches

The Court finds the application must also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing

collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “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. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “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 right does not constitute laches.” Id.

Applicant seeks post-conviction relief nearly 26 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years’ time” when the delay

was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, the Court shall dismiss the application as barred by the equitable doctrine of laches.

Successive

The Court finds the application must also be summarily dismissed because it is successive to Applicant's previous 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 earlier raised 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 states:

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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new 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 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall dismiss the application as successive to Applicant's previous PCR application.

{Conclusion and signature on following page}

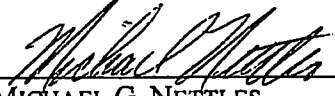
CONCLUSION

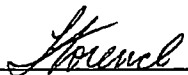
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Lindsey A. McCallister, Esquire
Johnny E. James, Jr., Esquire
PCR Division – 12th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

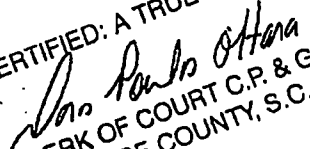
Applicant is cautioned that his response to this order must be actually received by the Florence County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 1 day of May, 2017.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

, South Carolina

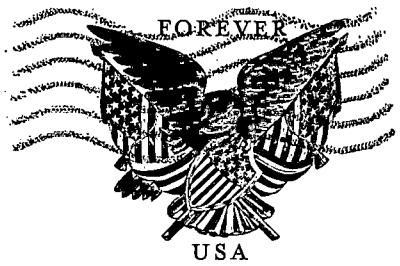
FILED
2017 MAY -1 PM 1:11
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Richard Stokes #134422
montize unit Room #241
4460 Broad River Rd.
Columbia SC 29210

COLUMBIA SC 2910

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Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia SC 29211

29211-133030

