

APPENDICES

(c) 2000-GS-32-4280 (§56-5-750)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 28 March 2001

(b) 25 year sentence, to run concurrent with Federal sentence (Case No: 3:00-626)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Zater is confined in a Federal prison and does not have access to State of South Carolina legal materials; and

(b) recent proposed changes in Federal law will dramatically alter Zater's Federal sentence, rendering this appeal necessary. Prior to these

FILED
FEDERAL COURT
SOUTH CAROLINA
2015 JUN -1 PM 12:46

FILED

proposed changes in Federal Law, this appeal would have been moot.

- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) amend State sentence so it is 'co-terminate' with concurrent Federal sentence
 - (b) suspend the remainder of the State sentence; and
 - (c) double jeopardy [Federal & State firearm charge for the same firearm].

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) see attached Memorandum of Law
 - (b) see attached Memorandum of Law
 - (c) see attached Memorandum of Law

- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No

- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

FILED
2015 JUN -1 PM 12:46
CLERK OF DISTRICT COURT
SOUTH CAROLINA

FILED

2015 CP 3202363

- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
no

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____

2015 CP - 1 PM 12:44
 JEFFREY D. CAMPBELL
 CLERK OF COURT
 2015

FILED

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) this motion would have been moot prior to the upcoming changes in Federal law;
- (b) Zater does not have access to State of SC legal materials since he is confined in a Federal prison in Miami Florida
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. L. Long, Public Defender
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea & sentencing hearings
 - ii. _____
 - iii. _____

2015 MAR 11 - 1 PM 12:36
 DEPT. OF CORRECTIONS
 FILING CLERK
 FILED

19. State clearly the relief you seek in filing this application:

- (a) modify the State prison sentence so it is 'co-terminate' with Zater's concurrent Federal sentence (Case No. 3:00-626-001);
- (b) suspend the remainder of Zater's State sentence as satisfactorily completed;
- (c) remove the 5-year consecutive State sentence for the firearm since it is double jeopardy; and (d) any and all further relief deemed just and proper.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of Lexington)

VERIFICATION

I, Ryan Lee Zater, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]
 (Applicant)

SWORN to and subscribed before me this 23
 day of Jan, 2015

[Signature] (L.S.)
 Notary Public

My Commission Expires: 9/3/15



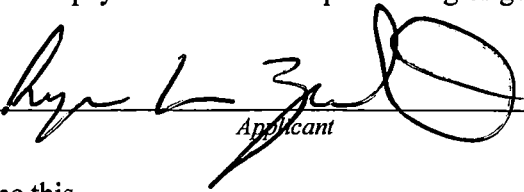
MARIA M. MALDONADO
 MY COMMISSION # EE 090138
 EXPIRES: September 3, 2015
 Bonded Thru Budget Notary Services

2015 CP3202363

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Ryan Lee Zater, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:


- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


 Applicant

SWORN or affirmed to and subscribed before me this 25 day of June, 2015


 Notary Public

My Commission Expires: 9/3/15

 MARIA M. MALDONADO
 MY COMMISSION # EE 090138
 EXPIRES: September 3, 2015
 Bonded Thru Budget Notary Services

2015 CP 3202363

RYAN LEE ZATER,

[State prison #: 222406]

[Federal prison #: 96908-071] 12:57

Petitioner BRIGGS

CLERK OF COURT

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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

MEMORANDUM OF LAW
IN SUPPORT OF
APPLICATION FOR POST-CONVICTION
RELIEF

COMES NOW, Ryan Lee Zater, petitioner pro se, and respectfully submits this Memorandum of Law in Support of Application for Post-Conviction Relief.

STATEMENT OF THE FACTS & CASE

On 24 July 2000 Mr. Zater was arrested in Lexington County, South Carolina, for Federal bank robbery charges and the instant State of South Carolina charges, which stemmed from the same event.

Pursuant to a plea deal, Mr. Zater was sentenced to a 37 year Federal sentence for the bank robbery charges and a concurrent 25 year sentence for the instant State charges, on 28 March 2001, before the late Honorable Judge Marc Westbrook.

Immediately thereafter, Mr. Zater was transferred to the Federal Bureau of Prisons (FBOP) to serve both sentences, where he has resided for approximately 15 years now.

On 28 March 2012 Mr. Zater sent a letter to Judge Marc Westbrook. On 27 June 2012 Judge William P. Keesley responded to the letter, informing Mr. Zater that Judge Westbrook was deceased, and that Zater would have to file a motion to raise any issues with his State of South Carolina sentence.

On 26 July 2012 Mr. Zater filed a Motion for Sentence Modification, which was stamped Filed on 1 August 2012.

On 12 August 2013 Mr. Zater contacted Ms. Hope Frick at the Clerk of Court's office about the pending motion. She had Mr. Zater re-send another copy of the motion and accompanying documents to be processed.

On 8 April 2014 Mr. Zater filed a Request for Status on the pending Motion, which he did not receive a response. He made a subsequent phone call to Ms. Frick in August of 2014 about the pending motion, and she informed Mr. Zater that she would look into it.

In May of 2015 Mr. Zater attempted to make numerous phone calls to Ms. Frick, but could never get through. When he had an outside relative call, she informed them that their office does not take phone calls from inmates. Ms. Frick also informed Zater's relatives that the motion would not be ruled upon unless the "proper" forms are filed, but she said she was not at liberty to inform Zater's relatives what those proper forms were.

In May of 2015 Mr. Zater contacted a paralegal out of South Carolina named Robert Sweeney to find out what forms needed to be filed so the motion would be ruled on. He sent Mr. Zater a blank Form 5 Post-Conviction Relief Application to fill out.

Mr. Zater now files this Application for Post-Conviction Relief and accompanying Memorandum to comply with the Court's rules.

STATEMENT OF TIMELINESS

Mr. Zater recently found out in May of 2015 that there is a one-year Statute of Limitations to file Form 5 Post-Conviction Applications for Relief. Since Mr. Zater's conviction became final on 28 March 2001, Mr. Zater moves this Court to Equitably Toll the time limitation for the following reasons:

- (1) For the entire period of Zater's incarceration he has been in Federal prisons. Zater has no access to State of South Carolina legal materials, documents, caselaw, rules, etc. Also, since he is indigent and cannot hire an attorney, this combines to deny Zater meaningful access to the courts.
- (2) As is readily apparent below, once this appeal became warranted from the proposed changes in Federal law, Zater has diligently pursued his claims/issues with this Court to the best of his abilities.
- (3) Zater is illiterate when it comes to legal matters, and he moves this Court to liberally construe these pleadings in accordance with U.S. Supreme Court law.

Therefore, for the above reasons, Zater moves this Court to Equitably toll the Statute of Limitations for filing a post-conviction motion.

"The one-year statute of limitations is subject to equitable tolling." *Harris v. Hutchinson*, 209 F.3d 325, 328 (4th Cir.2000). Equitable tolling applies "where — due to circumstances external to the party's own conduct — it would be unconscionable to enforce the limitation period against the party and gross injustice would result." *Id.* at 330; see also *Holland v. Florida*, 560 U.S. 631 (2010).

To equitably toll a limitations period, a prisoner must have pursued his rights diligently and an "extraordinary circumstance" prevented timely filing. Id. at 649.

"CO-TERMINACE AND/OR SUSPENDED SENTENCE

At the time of Mr. Zater's arrest he was only 21 years old. He was a first-time offender with no criminal record. In light of these facts, during plea negotiations & at sentencing, the late Judge Marc Westbrook made two declarations.

First, Judge Westbrook stated that as first-time offenders Mr. Zater was eligible for a 'suspended sentence'. He planned on sentencing Mr. Zater to the 25 years the Statutes called for, then suspending the sentence to ten years. Once Judge Westbrook was made aware that the Federal sentence was going to be 37 years, this became a moot point and was never enacted.

Second, Judge Westbrook stated that whatever the Federal Court sentenced Zater to, he would sentence Zater to a lesser sentence and run it concurrent. He stated that it was his intention that Zater never have to leave the Federal prison system to go into the State prison system. This edict is now in jeopardy with the upcoming proposed changes to Federal law.

The U.S. Congress has submitted numerous bills that, if passed, will dramatically reduce Zater's Federal sentence. The new sentence will be shorter than the concurrent State of SC sentence, and this will result in Zater being released from Federal prison only to go to the State prison system — directly in contravention of Judge Westbrook's edict. See Johnson v. Deboo, 2012 U.S. Dist. LEXIS 185889 (N.D.Va.) (holding "it is the intention of this court to comply w/intent of state court judge)

A simple solution to correct this problem would be to amend Zater's State sentence so that it is 'co-terminate' with his already concurrent Federal sentence. Or, in the alternative, this Court could 'suspend' the remainder of Zater's State sentence (since he has already served over the ten years Judge Westbrook originally planned on suspending the sentence to), and to hold Zater's State of South Carolina sentence satisfactorily completed.

DOUBLE JEOPARDY CLAIM

The Double Jeopardy Clause provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb..." U.S. Const. Amend. V [applicable to the States through Amend. XIV].

The Federal District Court convicted Zater pursuant to 18 U.S.C. §924(c)(1)(A), which holds "any person who, during and in relation to any crime of violence ... uses or carries a firearm ... shall be sentenced to a term of imprisonment of not less than 5 years...."

The State of South Carolina convicted Zater pursuant to S.C. Code §16-23-490 for "possession of Firearm or Knife During the Commission of a Violent Crime."

These two [Federal & State] firearm convictions were based on the exact same conduct, as all charges arose from the same criminal episode. Zater received two sentences [one State and one Federal] for the exact same firearm used at the exact same time, which put Zater twice in jeopardy for the same conduct in violation of the Double Jeopardy Clause of the U.S. Constitution.

CONCLUSION

Wherefore, for the foregoing reasons, Zater respectfully moves this Honorable Court to

- (a) amend the State of South Carolina sentence so that it is 'co-terminate' with the already concurrent Federal sentence (Case No. 3:00-626-001)[meaning: whichever sentence is completed first, the other sentence will also be deemed satisfactorily completed];
- (b) 'suspend' the State of South Carolina sentence to a term of imprisonment of ten years, and hold Zater's sentence satisfactorily completed [to bring the State sentence in conformity with the late Judge Westbrook's edict];
- (c) hold the State firearm conviction in violation of the double jeopardy clause since the Federal conviction for the same firearm was convicted first; thereby, dismissing the State sentence for this firearm; and
- (d) any and all further relief deemed just and proper.

Respectfully submitted,

Ryan Lee Zater

Ryan Lee Zater #96908-071
F.C.I. Miami Low
P.O. Box 779800
Miami, Fl 33177

25 June 2015

SWORN or affirmed to and subscribed before me this 25 day of June, 2015. *[Signature]*

(Notary Public)

My Commission Expires: 9/3/15

STELLA CARRIGO
SHERIFF OF FLORIDA
MIAMI, FL 33137

2015 JUN -1 PM 12:47

FILED



MARIA M. MALDONADO
MY COMMISSION # EE 090138
EXPIRES: September 3, 2015
Bonded Thru Budget Notary Services

RYAN LEE ZATER,
[State prison #: 222406]
[Federal prison #: 96908-071]
Petitioner,
vs.
STATE OF SOUTH CAROLINA,
Respondent.

) IN THE COURT OF COMMON PLEAS
) STATE OF SOUTH CAROLINA
) COUNTY OF LEXINGTON

2015 CP3202363

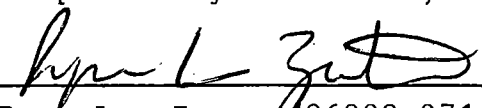
MOTION FOR APPOINTMENT OF COUNSEL

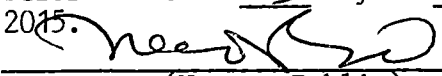
COMES NOW, Ryan Lee Zater, petitioner pro se, and respectfully moves this Court to appoint counsel in the above-captioned case, for the following reasons:

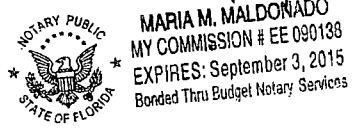
- (1) Zater is an indigent pro se prisoner;
- (2) Zater is housed in a Federal prison;
- (3) Zater does not have access to State of S.C. legal materials;
- (4) Zater is illiterate of the law.

Therefore, Zater has no possible way to perfect this appeal, correctly prepare the proper paperwork associated therewith, or find out & meet this Court's rules & requirements.

For the foregoing reasons, Zater respectfully moves this Court to appoint counsel to represent him in these post-conviction proceedings.

Respectfully submitted,

Ryan Lee Zater #96908-071
F.C.I. Miami Low
P.O. Box 779800
Miami, Fl 33177
25 day of June, 2015

SWORN or affirmed to and subscribed before me this 25 day of 2015,
2015. 
(Notary Public)
My commission expires: 9/3/15





G438345
366
383
384
385
386

State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

William P. Keesley
Judge

Post Office Box 10
127 Courthouse Square
Edgefield, SC 29824-0010
Phone: (803) 637-4095
Fax: (803) 637-2035
wkeesleyj@sccourts.org

June 27, 2012

Mr. Ryan Lee Zater, #96908-071
Federal Correctional Institution
P.O. Box 52020
Bennettsville, SC 29512

Re: Case Numbers 2000-GS-32-4280, 4281, 4282, 4284, and 4285

FILED
2012 JUN 28 PM 2:05
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

Dear Mr. Zater:

Your letter to The Honorable Marc Westbrook was received by me yesterday. It appears that it was mailed to the Clerk of Court in Richland County, then forwarded by that office to the Clerk of Court in Lexington County, and then to me. Judge Westbrook was a resident judge of the 11th Judicial Circuit and his office was in Lexington, not Columbia. Your letter is dated March 28, 2012, but it was not received by my office until yesterday.

Judge Westbrook was killed in a motor vehicle collision in September 2005. If you have any issues that might be addressed to a South Carolina Circuit Judge at this stage, they would have to be raised in a proper motion. I am not suggesting whether or not a judge could take any action at this time.

Thank you.

Sincerely,

COPY

William P. Keesley

WPK/c

cc: w/enclosure: Lexington Clerk of Court's file

COPY

RYAN LEE ZATER,

FILED

IN THE COURT OF GENERAL
SESSIONS, ELEVENTH JUDICIAL
CIRCUIT

Petitioner,

2012 AUG -1 PM 4:28

JM

vs.

STATE OF SOUTH CAROLINA

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Case Nos. 2000-GS-32-4280, 4281,
4282, 4284, and 4285

Respondent.

MOTION FOR SENTENCE MODIFICATION

COMES NOW, Ryan Lee Zater, petitioner pro se, and respectfully moves this Court for modification of his sentence. In support thereof, petitioner submits the following:

1. On 24 July 2000 Zater was arrested for Federal bank robbery charges and the instant State of South Carolina charges.
2. On 28 March 2001 he was sentenced to a 37 year Federal sentence, and a concurrent 25 year State of South Carolina sentence. Zater's State sentencing hearing was conducted before the Honorable Judge Marc Westbrook.
3. Immediately thereafter, Zater was transferred to the Federal Bureau of Prisons, where he has resided for over twelve years now.
4. In the Federal system Zater does NOT have any access to State of South Carolina legal materials, and he respectfully requests this Court to construe this pro se pleading liberally, in compliance with State and local rules, converting it to the proper vehicle for relief.

"REQUESTED RELIEF"

At the time of sentencing the late Judge Westbrook expressed his desire to sentence Zater to a sentence below whatever the Federal sentence was, so petitioner would never have to leave the Federal system for the State one. His intention was based on Zater's youth and lack of criminal record. See Plea & Sentencing Transcripts.

Zater now moves this Court to modify his State sentence by making it "co-terminate" with his already concurrent Federal sentence. He requests such for the following reasons:

1. Before the United States Congress are multiple Bills that will potentially effect Zater's sentence to a significant degree:

- (i) Reinstatement of Federal Parole;
- (ii) Federal "Good-Time" Bill;
- (iii) Defining "Subsequent" in relation to firearm charges.
(amongst others)

2. If any of these Bills pass and reduce Zater's Federal sentence below the 25 years he received in the State, he will only be released from one system into another — contrary to Judge Westbrook's edict (desire).

"POST-CONVICTION CONDUCT"

This major sentence was an extreme wake-up call for Zater. In the twelve years since his incarceration he has NOT received a single negative incident report. In addition, he has made numerous strides toward rehabilitation, including the following:

(1) Education

- (a) College Correspondence Courses - Associates in Paralegal
- (b) State of Florida Certified - Microsoft (Word, Excel, etc)

- (c) ServSafe Food Manager Certification - ANSI
- (d) Advanced Expert Touch Typist - 65 words per minute
- (e) Business Planning/Concepts/Finance
- (f) ISO 9001:2008 Internal Auditor Certification

(2) Psychological

- (a) 40-hour Drug Education Program
- (b) One year Narcotics Anonymous Program
- (c) One year C.O.D.E. in-house residential Program
- (d) Anger Management/Cage Your Rage Programs
- (e) Suicide Companion Training

(3) Work


- (a) Four years of outstanding Work Evaluations with Unicor, Federal Prison Industries - working 40-hour weeks
- (b) Two years as an Education Tutor - helping other inmates to receive their GED (over 30 inmates have successfully received their GEDs from my assistance)
- (c) Two years working in Food Service in the Officer's Dining Hall, cooking and serving the institution staff their meals
- (d) Four years working landscaping

Zater has also consistently paid his quarterly restitution payments without missing a single payment.

CONCLUSION

For the foregoing reasons Zater is requesting his State of South Carolina sentence to be Modified, by making it "co-terminate" with his already concurrent Federal sentence (Federal case # CR-00-626).

Respectfully submitted,



Ryan Lee Zater #96908-071
Federal Correctional Institution
P.O. Box 52020
Bennettsville, SC 29512

26th day of July, 2012

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Ms. Connor / Case Manager	DATE: 5 August 2013
FROM: Ryan Lee Zater	REGISTER NO.: 96908-071
WORK ASSIGNMENT: Education Tutor	UNIT: 2BU - B4

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Please schedule me a legal call to the Clerk of Court at your earliest convenience. The phone number is: (803) 785-8212. 8549 Ms. Penny General Sessions

The above-need call is in reference to a pending State court motion (see attached) that has been pending for over a year now. I have sent multiple letters over the past three months with no response, I have tried to call on my account for the past two weeks, but I only receive a recorded voice in answer, which is the switchboard.

Thank you for your assistance in this matter.

(Do not write below this line)

DISPOSITION:

Completed on 8/12/13

8:15 - 8:24 AM AM

Date 8/12/13

Record Copy - Five; Copy - Inmate (This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94

Ryan Lee Zater #96908-071
Federal Correctional Complex-Low
P.O. Box 5000
Yazoo City, MS 39194

Ms. Hope Frick
Clerk of Court's Office
205 E. Main St.
Lexington, SC 29072

8 April 2014

RE: Ryan Lee Zater v. South Carolina,
Case Nos. 2000-GS-32-4280, 4281,
4282, 4284, and 4285
Motion for Sentence Modification/Clarification

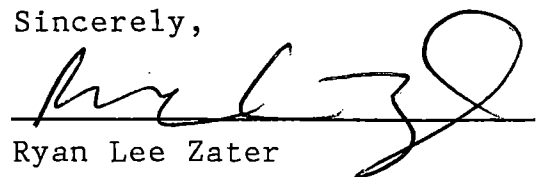
Dear Ms. Frick,

Back in August 2013 I contacted you via telephone about the above-referenced pending motion, which had been pending without response for over a year. You had me send you another copy of the motion and accompanying documents. Another eight months has now elapsed (for a total of 20 months), and nothing has transpired on said motion.

Could you please check on the status of the motion for me and give me an update at your earliest convenience? I can be reached at the above-listed address.

I thank you for your time and assistance in this matter and look forward to your response.

Sincerely,


Ryan Lee Zater

TRULINCS 96908071 - ZATER, RYAN LEE - Unit: MIA-G-A

FROM: 96908071
TO: Zater, Jr., George
SUBJECT: legal dilemma
DATE: 04/01/2015 11:32:18 AM

Hey Georgie. When you get a moment, I could use some help on an legal issue I'm having.

Background:

In addition to my federal sentence, I have a 25 year State of South Carolina sentence. Back on 26 July 2012, I filed a motion with the State Clerk of Court in regards to that sentence, and that motion is still pending -- almost 3 years now.

Motion Info:

- * Sentencing Judge: Judge Marc Westbrook (deceased)
- * Current Judge: Judge William P. Keesley
- * Case Numbers: 2000-GS-32-4280, 4281, 4282, 4284, and 4285
- * Motion: "Motion for Sentence Modification"
- * Filed: 1 August 2012
- * State of South Carolina prison #: 222406
- * Federal prison #: 96908-071

I need to get this resolved, because I still have 9 years left on that State sentence. The proposed laws before Congress will reduce my Federal sentence to 2 years left; which means I will be released from the Federal prison system to the State prison system if this State motion is not resolved.

State Clerk of Court's info:
Ms. Hope Frick
(803) 785-8549
Court of General Sessions,
Lexington, South Carolina

The State Clerk of Court will not accept phone calls from inmates. When dad called her, she told him that they will not process my paperwork unless I file the proper paperwork. Then she said she couldn't tell anyone what the proper paperwork was, so I have no way of knowing what needs to be filed. Catch-22. The only way I can find out what the proper paperwork is would be to get an attorney or paralegal to look into it.

There's a paralegal out of South Carolina who could help. Here's his info:
Robert Sweeney
resweeney49@yahoo.com
(864) 293-1681
907 S. Garrison Rd.
Simpsonville, SC 29680

or you could use that attorney out of Jacksonville that you contacted for us years ago. His info:
William Kent
Office: (904) 398-8000
Cell: (904) 662-4419
Home: (904) 733-4418

If there's any way to get this resolved would be greatly appreciated. Please let me know your thoughts on this, or any info you glean in regards thereto. Thanks bro. ryan lee

TRULINCS 96908071 - ZATER, RYAN LEE - Unit: MIA-G-A

FROM: Sweeney, Robert
TO: 96908071
SUBJECT: RE: State Case Law searches
DATE: 04/19/2015 10:51:05 PM

You are talking about a needle in a haystack on most of the things that you want, but if you can pay, I can do the research. It will be \$500 for the first 10 hours and \$60/hour after 10 hours.

RYAN LEE ZATER on 4/16/2015 9:34:35 AM wrote

Ah, but I wanted to still send you some \$\$ for some legal research for State materials I don't have access to. For instance, I need:

- (1) South Carolina case law dealing with:
 - (a) equitable tolling of the Statute of Limitations period for
 - (i) lack of access to the courts, and
 - (ii) not having State legal materials
 - (b) something about "judge's intent" at sentencing
{as my original judge is dead, and he didn't want me to go to State prison, but now i might have to if my federal sentence is reduced}

{Federal equivalent: The one-year statute of limitations is subject to equitable tolling. See Harris v. Hutchinson, 209 F.3d 325, 328 (4th Cir. 2000). Equitable tolling applies "where - due to circumstances external to the party's own conduct - it would be unconscionable to enforce the limitation period against the party and gross injustice would result." Id. at 330; see also Holland v. Florida, 560 US 631 (2010). To equitably toll a limitations period, a prisoner must have pursued his rights diligently and an "extraordinary circumstance" prevented timely filing. Id. at 649.}

** you can copy and paste the Caselaw text directly into an email, and I'll print it off here **

-----Sweeney, Robert on 4/15/2015 6:21 PM wrote:

>

Not yet. I sent you the form so you could do it.

RYAN LEE ZATER on 4/14/2015 3:35:45 PM wrote

i'm thinking that the one-year limitation period can be tolled since I do not have access to State of South Carolina legal materials. At least that is the argument we'll have to make. I'll look forward to the form-motion in the mail. Thanks. Did you get the email from my brother yet regarding your fees?

-----Sweeney, Robert on 4/14/2015 11:51 AM wrote:

>

I am sending you a copy of the form that is used for post-conviction motion in SC.

(A) 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.

RYAN LEE ZATER on 4/14/2015 7:21:04 AM wrote
okay.

two things i should point out. And two questions...

first, i already have all my State legal work (except my transcripts). I've already contacted the stenographer about seven years ago for the transcripts, but I never got around to ordering them since I had so much time left on my federal sentence. Since my State case was a plea & sentencing in one hearing, the transcripts will only be about 20 pages. When I contacted the stenographer, she informed me the transcript would cost about \$200. Now that I have the opportunity to have my federal sentence reduced, I'll go ahead and get the transcripts.

second, I'm also a paralegal. I just don't have access to State legal materials since I'm housed in the Federal prison system. And all my friends and family are illiterate when it comes to all things legal, so i can't get them to do anything for me. But if you

TRULINCS 96908071 - ZATER, RYAN LEE - Unit: MIA-G-A

get me the proper forms, I could complete them myself.

first question: is there a Statute of Limitations for filing a post-conviction motion in the State of South Carolina? In the Feds we only have one year from the date the conviction becomes final (AEDPA), and I was wondering if there was something similar in the State?

second question: Will they still have the transcripts after 15 years? I have been in prison for 15 years now.

also, my brother is supposed to be sending you an email. His name is George Zater, and he lives in Huntington Beach, CA. He will be the one who will cover your fees. Thanks

-----Sweeney, Robert on 4/13/2015 6:21 PM wrote

>

I can do what you asked and I stated that in my email to you. This is what I said:

You must file a Form 51 for post-conviction relief in South Carolina, and a memorandum of support for issues you raised. Do you have your State records, such as transcripts, (sentencing and guilty plea if applicable), indictment, judgment, and appeal briefs and decisions? Cost is \$1500 to \$2500 depending on the number of pages of transcript, and, whether you went to trial or pled guilty.

RYAN LEE ZATER on 4/12/2015 7:23:31 PM wrote

I disagree. I do not think I need a lawyer. I only need someone who will call the Clerk of Court, ask what papers I need to file to fix the pending motion, then help me file them. And get paid for that.

Being that you cannot do such, could you recommend someone who can? Because I need someone from S.C. to help me in this. Being that I am in a Federal prison in Florida.

Thanks

-----Sweeney, Robert on 4/9/2015 10:21 PM wrote

>

You may need a lawyer, because this is out of my league. Sorry!!

RYAN LEE ZATER on 4/8/2015 11:36:13 AM wrote

I do not wish to attack the sentence or conviction of my State sentence at this time. The only thing I want is to have my already filed motion to be converted into a Form 51 motion (or any other appropriate motion) and be ruled upon. Let me explain the situation..

When I was sentenced by Judge Westbrook, he stated that it was his intention to make sure we never saw a day in South Carolina State prison, and whatever sentence we got in the Federal system, he would make the State sentence less and run it concurrent. The U.S. Congress recently introduced legislation that, if passed, will reduce my Federal prison system by 15 years; thereby leaving me with only 2 years remaining on my Federal sentence. As I still have about 7 years left on my State of South Carolina sentence, this will amount to me being released from the Federal prison system to the State prison system. So, in my already filed motion, I asked that the Judge Modify my State sentence to make it "co-terminate" with the federal sentence. This way if my Federal sentence finishes before my State sentence, I will be released directly to freedom, in accordance with the deceased Judge Westbrook's edict.

I do not want to try to find any issues to attack the sentence or conviction at this time.. If the currently pending motion is ruled adversely to me, then we can go the route that you propose. I do have the State indictment and judgements, but not the transcripts. And we never filed any appeals in the State before the one that is currently pending.

So, to sum, what can we do to have the currently pending motion fixed and ruled upon? Then we can discuss other options.

Thanks! :)

-----Sweeney, Robert on 4/7/2015 7:51 PM wrote

>

TRULINCS 96908071 - ZATER, RYAN LEE - Unit: MIA-G-A

You must file a Form 51 for post-conviction relief in South Carolina, and a memorandum of support for issues you raised. Do you have your State records, such as transcripts, (sentencing and guilty plea if applicable), indictment, judgment, and appeal briefs and decisions? Cost is \$1500 to \$2500 depending on the number of pages of transcript, and, whether you went to trial or pled guilty. I need the records because I must look for issues to raise to attack the sentence or conviction.

RYAN LEE ZATER on 4/7/2015 11:07:26 AM wrote:

Greetings,

My name is Ryan Lee Zater. I received your info from the Greek (as we call him). He told me you were based out of South Carolina and were versed in State law. Let me give you some background info about what I need, and then you can tell me whether or not you can assist me.

In addition to my 37-year Federal sentence for bank robbery, I have a concurrent State of South Carolina sentence of 25 years. I, obviously, do not have access to State law materials; only Federal ones. I filed a generic "Motion for Sentence Modification" back on 1 August 2012, hoping they would use the liberal construction for pro se briefs (Haines v. Kerner) like in Federal courts... Here is the case info:

- * Sentencing Judge: Marc Westbrook (deceased)
- * Current Judge: William P. Keesley
- * Sentencing Court: Columbia, S.C. {Lexington; although, it was out of a Richmond(?) courtroom}
- * Date of Arrest: 24 July 2000
- * Sentencing Date: 21 March 2001 (I think)
- * Case Numbers: 2000-GS-32-4280, 4281, 4282, 4284, and 4285
- * Motion: "Motion for Sentence Modification"
- * Filed: 1 August 2012
- * State of South Carolina prison# 222406
- * Federal prison# 96908-071

As you can see, the motion is still pending after 3 years. I called the clerk, Ms. Hope Frick, back in August 2013, and she had me resend her the motion, saying she would personally walk it over to Judge Keesley's office. When I called back last week, another year and a half later, she wouldn't accept my calls. I had my parents call, and my parents said their office does not accept calls from inmates. Ms.. Frick also told my parents that they will not process my paperwork unless I file "the proper paperwork." My parents inquired what that paperwork was, and she told them that she couldn't tell them. Seems like a Catch-22.

What I need:

- (1) Could you find out what the "proper" paperwork is?;
- (2) Help me file it; and
- (3) make sure it gets processed and ruled on?
- (4) give me a ball-park cost of providing these services.

Here's the Clerk's info:

Ms. Hope Frick
(803) 785-8549
Court of General Sessions
Lexington, South Carolina

I thank you for any assistance you can provide in this matter and look forward to your response. If you need any additional info, please don't hesitate to ask.. I can also provide you with hard copies of all the paperwork associated therewith.

Ryan Lee Zater #96908-071
Federal Correctional Institution
P.O. Box 779800
Miami, Florida 33177

Beth Carrigg, Clerk of Court
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

28 April 2015

RE: Case Nos. 2000-GS-32-4280, 4281,
4282, 4284, and 4285

Dear Clerk,

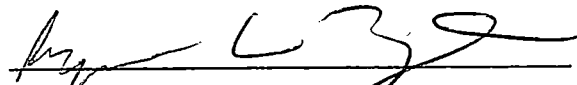
At your earliest convenience, please provide me with:

- (1) the contact info for the Court Reporter in my case (Ms. Jackson), so that I may order transcripts;
- (2) the name and contact info of the Public Defender who represented me during my plea and sentencing; and
- (3) the name and contact info of the Solicitor who prosecuted my case.

I have provided a copy of one of my indictments for your convenience. As you can see by the signatures, it is impossible for me to make out who they were. I also have provided a self-addressed-stamped envelope for your convenience.

I thank you in advance for your time and assistance in this matter, and I look forward to your response.

Sincerely,


Ryan Lee Zater #96908-071
SC #222406

COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT

LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET
LEXINGTON, S.C. 29072

GENERAL SESSIONS
FAMILY COURT
COMMON PLEAS

TELEPHONE: 803-785-8212

FAX: 803-785-8314

BETH A. CARRIGG
CLERK OF COURT

Ryan L. Zater #96908-071
G438383 - 385
G438365 & 366

We have received your inquiry:

Your charge is: Pending Dismissed Bench Warranted A Conviction

Your charge(s) on file here have been faxed to SCDC; they clear up detainers.

Your motions must be filed through your attorney

A copy of all enclosed has been forwarded to:
Your Attorney The Solicitor's Office The Public Defender's Office
Please contact that office or your attorney to inquire about your case.

For matters concerning PCR's, please contact the Attorney General's Office at :
(803) 734-3737.

XXX In order to obtain a transcript, write to SC Court Administration at 1015 Sumter Street, Suite 200, Columbia, SC 29201. You will need to have the case number, judge's name, and the date of the trial. If you have any questions you will need to call: (803) 734-1800.

This office cannot help you in this matter.

SCDC calculates credit for time served.

This office does not provide legal advice or legal forms.

There is no record of warrant # _____ for _____
on file in this office. You will need to contact the arresting agency.

You need to contact the charging agency to get pending warrants served on you.

Please speak to your attorney.

XXX Other - Your Attorney was L. Long. The Solicitor was D. Riddle who has retired now. The number for the Public Defender's Office is 785-8873.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	
Ryan Lee Zater,)	Case No.: 2015-CP-32-02363
F.B.O.P. No. 96908-071,)	
)	
Applicant,)	
)	RETURN AND MOTION TO DISMISS
v.)	
)	
State of South Carolina)	
)	
Respondent.)	
)	

In response to the application for post-conviction relief filed by Ryan Lee Zater (Applicant) on July 1, 2015, Respondent would show this Court:

I.

Applicant is in the custody of the Federal Bureau of Prisons. Applicant was indicted at the September 2000 term of the Lexington County Grand Jury for failure to stop for blue light (2000-GS-32-4280), criminal conspiracy (2000-GS-32-4281), possession of a weapon during the commission of a violent crime (2000-GS-32-4282), and two counts of assault and battery with intent to kill (2000-GS-32-4284/4285). Langdon Dwight Long, Esquire, represented Applicant. On March 28, 2001, Applicant pled guilty as indicted. The Honorable Marc H. Westbrook sentenced Applicant to imprisonment for concurrent terms of 3 years for failure to stop, 5 years for criminal conspiracy, and 20 years for each of the two counts of assault and battery with intent to kill. Judge Westbrook also sentenced Applicant to imprisonment for one consecutive term of five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal.

II.

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

1. Legislative activity, in that;
 - a. "The U.S. Congress has submitted numerous bills¹ that, if passed, will dramatically reduce Zater's Federal sentence. The new sentence will be shorter than the concurrent State of SC sentence, and this will result in Zater being released from Federal prison only to go to the State prison system – directly in contravention of Judge Westbrook's edict."
2. Constitutional violation, in that;
 - a. "Zater received two sentences (one State and one Federal) for the exact same firearm used at the exact same time, which put Zater twice in jeopardy for the same conduct in violation of the Double Jeopardy Clause of the U.S. Constitution."

Applicant requests relief as follows:

- "[M]odify the State prison sentence so it is 'co-terminate' with Zater's concurrent Federal sentence (Case No. 3:00-626-001); suspend the remainder of Zater's State sentence as satisfactorily completed; remove the 5-year consecutive State sentence for the firearm since it is double jeopardy; and any and all further relief deemed just and proper."

Attached to and incorporated herein are the Lexington County Clerk of Court records and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

The Application should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

¹ Respondent cannot discern precisely which bills Applicant is referring to.

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's first allegation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and, therefore, are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). As stated in Cooper, by challenging the duration of the sentence, the Applicant is in fact trying to enforce the sentence and is, therefore, not making a collateral attack on the conviction.

In his application for post-conviction relief, Applicant alleges the United States Congress is considering legislation that may impact his federal sentences and which could necessitate a revisiting of the alleged intentions of the deceased trial judge. Applicant's allegation is based upon his own belief that an unidentified bill may someday become law, and is thus not ripe. Further, Applicant offers no attack upon the conviction itself, but instead seeks its enforcement.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

IV.

The application 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. 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 pled guilty on March 28, 2001, and did not appeal. The current application was not filed until July 1, 2015—more than 13 years after the one-year statutory filing period expired. Applicant requests the Court equitably toll the statute of limitations on grounds that (1) he has been incarcerated in federal prison since his guilty plea, (2) he timely filed upon learning federal law may change, and (3) he is “illiterate when it comes to legal matters.”

Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations and is reserved for extraordinary circumstances. Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008). As to Applicant's first and third grounds, "ignorance of the statute of limitations is not an excuse for late filing, even when [Applicant] claims he did not learn of the statute because he was incarcerated in another state." Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). As to Applicant's second ground, proposed federal legislation is simply not a ground for collateral attack on state criminal convictions. Therefore, the application should be summarily dismissed as barred by the statute of limitations.

V.

The application should 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 more than 14 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). Moreover, because of Applicant's failure to timely challenge his conviction, the tape recordings of Applicant's trial have likely been destroyed. See Rule 607, SCACR (“[A] court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five years . . . and the court reporter may reuse or destroy the tapes after the expiration of that period.”); 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, this application should be summarily dismissed as barred by the equitable doctrine of laches.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application as untimely, successive, and not cognizable under the PCR Act.

Respectfully submitted,

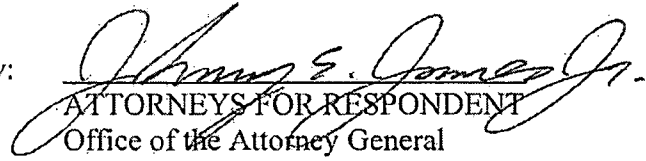
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Staff Attorney

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

30 Jan, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

RYAN LEE ZATER,
F.B.O.P. No. 96908-071,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS


2015-CP-32-02363

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ryan Lee Zater, #96908-071
FCI MIAMI
Federal Correctional Institution
P.O. Box 779800
Miami, FL 33177

DATED this 30th day of January, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
))
RYAN LEE ZATER,)
State Prison # 222406,)
Federal Prison # 96908-071,)
))
Petitioner,)
))
v.)
))
STATE OF SOUTH CAROLINA,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-32-02363

TRAVERSE TO STATE'S RETURN

COMES NOW, Ryan Lee Zater, petitioner pro se, and respectfully submits this reply to the State's Return & Motion to Dismiss. In support thereof, petitioner would show this Court:

I

(a). The State's main rebuttal seems to be based on the Uniform Post-Conviction Procedure Act's provision that an "application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction." S.C. Code Ann. §17-27-45(A). See State's Return at pages 4-5. The State bases its request for dismissal due to Zater's motion being filed "more than 13 years after the one-year filing period expired," Id., and that Zater's grounds for tolling this limitations period are insufficient.

The State is correct that this action commenced outside the one-year statute of limitations, but it is incorrect (for multiple reasons) on why this limitations period should be tolled.

Most significantly, the United States Supreme Court has held that "prisoners have a constitutional right of access to the

courts," Bounds v. Smith, 430 US 817, 821 (1977), and that this access must be adequate, effective, and meaningful. Id. at 822. Moreover, because access to the courts is a fundamental right, see Lewis v. Casey, 518 US 343, 346 (1996), "prison authorities [are required] to ... provid[e] prisoners with adequate law libraries or adequate assistance from persons trained in the law." Sills v. Bureau of Prisons, 761 F.2d 792, 796 (D.C. Cir. 1985)(emphasis in original). "Proof that prisoners do not have access to legal materials from the jurisdiction of their conviction, may support a finding of lack of meaningful access to the courts." Sills, at 796. See also Story v. Morgan, 786 F. Supp. 523, 526 (W.D.Pa. 1992)(holding a lack of access to the courts because prisoner was serving his State of Pennsylvania sentence in a federal prison and did not have access to his jurisdiction's law books). This is especially egregious when the prisoner "lacked access to the text of" the State statutes, Broughton v. United States, 2015 WL 224927, at *2 (M.D.N.C. Jan. 15, 2015), because he will be held accountable for "technical requirements" like filing deadlines for which "he could not have known" due to "deficiencies in the prison's legal assistance facilities." Lewis, at 351.

On page 3 of Zater's "Memorandum of Law" that was attached to his initial post-conviction motion, he stated that for the entirety of his incarceration he has been housed in federal facilities with "no access to State of South Carolina legal materials, documents, caselaw, rules," statutes, etc, and that this denied "Zater meaningful access to the courts." Id. Also, on the same page of said Memorandum, Zater stated that he had no

way of knowing about the one-year statute of limitations period due to his inability to access State of South Carolina statutes or other legal materials. Zater learned in May of 2015 from a paralegal based out of South Carolina that such a limitations period existed when said paralegal emailed Zater a copy of the Statute's text, thus granting Zater access to it for the first time. Copies of these emails were attached to the initial post-conviction motion as an exhibit to prove same, and Zater filed his post-conviction motion within one year of **obtaining a copy of the statute's text** -- not, as the State misconstrues, "upon learning of possible changes in the federal law." Return at 4.

(b) The State was incorrect in when this action originally commenced. It claims on page 4 of its Return that the "current application was not filed until July 1, 2015." Id. The facts will actually show that Zater filed his "Motion for Sentence Modification" on August 1, 2012, and this is when the action commenced. See exhibit attached to initial post-conviction motion. Years elapsed with Zater contacting the Clerk of Court on multiple occasions via letter and phone before he was instructed that this brief was incorrect as filed and needed correction. With the pro bono help of the aforementioned South Carolina paralegal, Zater finally obtained the proper forms which were not available in his prison law library, and then filed them on July 1, 2015.

(c) Finally, Zater's claim that he is "illiterate when it comes to legal matters," Return at page 4, was solely mentioned in the hopes that this Court would appoint counsel. This statement had no bearing on the request to toll the limitations period, as the State tried to imply.

II

The State's next contention is that this "application should also be dismissed as barred by the equitable doctrine of laches." State's Return at 5-6. The State bases its request for dismissal due to Zater's post-conviction motion being filed more than 14 years after his conviction, witness memories and physical evidence will have naturally faded and degraded, and that the tape recordings of Zater's trial have likely been destroyed. Id. at 6.

Black's Law Dictionary, 10th Ed. (2014), defines "laches" as an "1. Unreasonable delay in pursuing a right or claim -- almost always an equitable one." Id. at 1006.

The State's contention in this regard "is inapplicable ... to habeas petitions," because courts "only rarely applied the doctrine [of laches] in extreme cases." Lee v. Sec'y, Dep't of Corr., 2013 U.S. Dist. LEXIS 183761 (N.D. Fla. 2013). In fact, "laches rarely applies even where the delay in filing a petition has been extreme." Smith v. Jones, 256 F.3d 1135, 1146 fn8 (11th Cir. 2001). See Bedford v. Attorney General of Alabama, 934 F.2d 295, 300-301 (11th Cir. 1991) (laches doctrine not applicable to almost eighteen-year delay in filing habeas petition where State failed to prove particularized prejudice from the delay); and Davis v. Dugger, 829 F.2d 1513, 1519 (11th Cir. 1987) ("Accordingly, none of our prior decisions upholding [laches] dismissals [in the habeas context] have involved delays of less than fifteen years between sentencing and the filing of the federal habeas petition").

But even assuming arguendo that this rare, extreme doctrine applies in this case, laches still "requires the proof of two

elements: (1) lack of diligence by the party against whom the defense is asserted; and (2) prejudice to the party asserting the defense." Marcellus v. Virginia State Bd. of Elections, 2015 WL 5285819, at *6 (E.D. Va. Sept. 9, 2015). The first element of laches requires proof that "the plaintiff delayed inexcusably or unreasonably in filing suit." White v. Daniel, 909 F.2d 99, 102 (4th Cir. 1990). "An inexcusable delay can only occur after the plaintiff discovers or should have discovered the facts giving rise to his cause of action." Perry v. Judd, 840 F.Supp.2d 945, 953 (E.D.Va. 2012). The second element, prejudice to the respondent, "is demonstrated by a disadvantage on the part of the defendant in asserting or establishing a claimed right or some other harm caused by detrimental reliance on the plaintiff's conduct." White, at 102. Prejudice to the respondent must be a result of the plaintiff's delay. Tobacco Workers Int'l Union v. Lorillard Corp., 448 F.2d 949, 958 (4th Cir. 1971).

Neither of these two elements can be met by the State. Zater has maintained his due diligence in this action, as elaborated in the initial brief and accompanying exhibits thereto. In addition, the State cannot show prejudice, as the issues raised within the petition have no reliance on "witness memories" and/or "physical evidence", as the State claims in its Return. The issues raised were straightforward legal arguments that can be decided irrespective of the amount of time elapsed.

III

The State also avers that Zater's post-conviction "Application should be dismissed for failure to state a claim cognizable under Post-Conviction Procedure Act, S.C. Code Ann.

§17-27-10 to -160." State's Return at 2-3. The State bases this contention on the claim that "Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence," not "the duration of the sentence or quality of the inmate's confinement." Id. at 3.

The State's contention that "Applicant offers no attack upon the conviction itself," Return at 3, is clearly inaccurate by the State's own admission one page previously. Zater's second ground for relief was that he "received two sentences (one State and one Federal) for the exact same firearm used at the exact same time, which put Zater twice in jeopardy for the same conduct in violation of the Double Jeopardy Clause of the U.S. Constitution." Post-conviction motion at 3; Return at 2.

32 years of Zater's Federal sentence was based on the firearms used in the offense; whereas 5 years of Zater's State sentence was based on the exact same firearm used in the offense in the same criminal episode.

As the government rightly points out: Pursuant to the Post-conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160, an applicant may commence a post-conviction relief action on the grounds that "the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State." S.C. Code Ann. §17-27-20(A). Inter alia. And two separate sentences for the same offense clearly falls within this purview.

Interestingly enough, the State failed to address this issue entirely in its Return; instead focusing solely on procedural defenses instead. "While the Government's failure to address the

merits of Petitioner's arguments does not entitle Petitioner to automatic relief, its failure in this way can be deemed a waiver to any substantive defenses to these arguments." Casper v. United States, 2016 U.S. Dist. LEXIS 86098 fn5 (W.D.N.C. July 1, 2016). See also Williams v. Birkett, 697 F.Supp.2d 716, 722 & n.4 (E.D.Mich. 2010).

IV

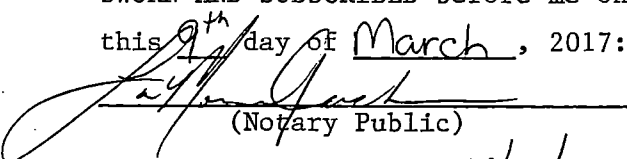
Therefore, this Court should

- (a) hold this petition timely for the reasons stated in section I of this brief;
- (b) hold the doctrine of laches inapplicable for the reasons stated in section II of this brief; and
- (c) hold that Zater's post-conviction application did state a cognizable claim for relief for the reasons stated in section III of this brief.

V

WHEREFORE, petitioner moves for the relief stated in his initial post-conviction brief.

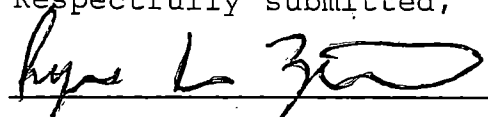
SWORN AND SUBSCRIBED before me on
this 9th day of March, 2017:


(Notary Public)

My commission expires: 12/10/20

23 February 2017

Respectfully submitted,

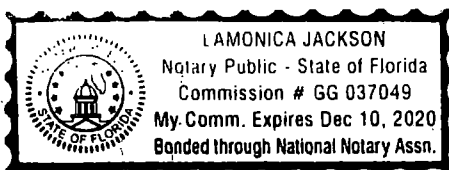

Ryan Lee Zater #96908-071

Federal Correctional Institution

P.O. Box 779800

Miami, Florida 33177

Pro se



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
RYAN LEE ZATER,)
State Prison #222406,)
Federal Prison #96908-071,)
Petitioner,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

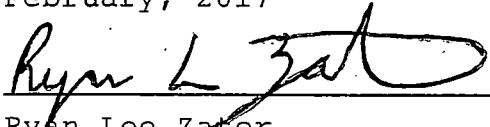
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No. 2015-CP-32-02363

AFFIDAVIT OF SERVICE BY MAIL

1. My name is Ryan Lee Zater, and I am the Petitioner in the above-captioned action.
2. Regular communication by mail exists throughout the United States and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Traverse to State's Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

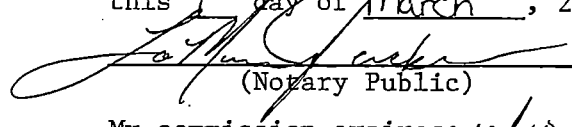
Johnny E. James Jr., Staff Attorney
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

DATED this 23rd day of February, 2017

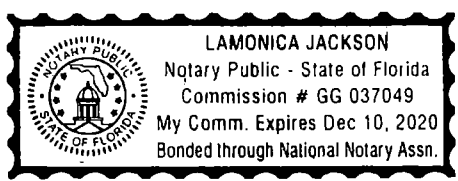


Ryan Lee Zater
Petitioner pro se

SWORN AND SUBSCRIBED before me on
this 9th day of March, 2017:



(Notary Public)
My commission expires: 12/10/20



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

Ryan Lee Zater,
F.B.O.P. No. 96908-071,

Applicant,

v.

State of South Carolina

Respondent.

FILED)
2017 FEB -3) A 11: 21
Case No.: 2015-CP-32-02363

CONDITIONAL ORDER OF DISMISSAL

COUNTY OF LEXINGTON
LISA M. COMER, CLERK OF COURT
LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET
LEXINGTON, SC 29072-3494

ORIGINAL

This matter comes before the Court by way of an application for post-conviction relief filed by Ryan Lee Zater (Applicant) on July 1, 2015. Respondent made its Return, requesting the Application be summarily dismissed.

I. PROCEDURAL HISTORY.

WPC #1

Applicant is in the custody of the Federal Bureau of Prisons. Applicant was indicted at the September 2000 term of the Lexington County Grand Jury for failure to stop for blue light (2000-GS-32-4280), criminal conspiracy (2000-GS-32-4281), possession of a weapon during the commission of a violent crime (2000-GS-32-4282), and two counts of assault and battery with intent to kill (2000-GS-32-4284/4285). Langdon Dwight Long, Esquire, represented Applicant. On March 28, 2001, Applicant pled guilty as indicted. The Honorable Marc H. Westbrook sentenced Applicant to imprisonment for concurrent terms of 3 years for failure to stop, 5 years for criminal conspiracy, and 20 years for each of the two counts of assault and battery with intent to kill. Judge Westbrook also sentenced Applicant to imprisonment for one consecutive term of five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal.

II. CURRENT APPLICATION

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

1. Legislative activity, in that;
 - a. "The U.S. Congress has submitted numerous bills¹ that, if passed, will dramatically reduce Zater's Federal sentence. The new sentence will be shorter than the concurrent State of SC sentence, and this will result in Zater being released from Federal prison only to go to the State prison system – directly in contravention of Judge Westbrook's edict."
2. Constitutional violation, in that;
 - a. "Zater received two sentences (one State and one Federal) for the exact same firearm used at the exact same time, which put Zater twice in jeopardy for the same conduct in violation of the Double Jeopardy Clause of the U.S. Constitution."

Applicant requests relief as follows:

- WPM
#2
- "[M]odify the State prison sentence so it is 'co-terminate' with Zater's concurrent Federal sentence (Case No. 3:00-626-001); suspend the remainder of Zater's State sentence as satisfactorily completed; remove the 5-year consecutive State sentence for the firearm since it is double jeopardy; and any and all further relief deemed just and proper."

Also before the Court are the Lexington County Clerk of Court records regarding the subject convictions and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to State a Claim

The Court finds the Application must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

¹ Respondent cannot discern precisely which bills Applicant is referring to.

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's first allegation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and, therefore, are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). As stated in Cooper, by challenging the duration of the sentence, the Applicant is in fact trying to enforce the sentence and is, therefore, not making a collateral attack on the conviction.

In his application for post-conviction relief, Applicant alleges the United States Congress is considering legislation that may impact his federal sentences and which could necessitate a revisiting of the alleged intentions of the deceased trial judge. Applicant's allegation is based upon his own belief that an unidentified bill may someday become law, and is thus not ripe. Further, Applicant offers no attack upon the conviction itself but instead seeks its enforcement.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

Statute of Limitations

WPC The Court also finds the application must be summarily dismissed for failure to comply *WPC* 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).

WPC #4 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.”

WPC Here, Applicant pled guilty on March 28, 2001, and did not appeal. The current application was not filed until July 1, 2015—more than 13 years after the one-year statutory filing period expired. Applicant requests the Court equitably toll the statute of limitations on grounds that (1) he has been incarcerated in federal prison since his guilty plea, (2) he timely *WPC*

WAL
filed upon learning federal law may change, and (3) he is “illiterate when it comes to legal matters.” WAL

Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations, and is reserved for extraordinary circumstances. Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008). As to Applicant’s first and third grounds, “ignorance of the statute of limitations is not an excuse for late filing, even when [Applicant] claims he did not learn of the statute because he was incarcerated in another state.” Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). As to Applicant’s second ground, proposed federal legislation is simply not a ground for collateral attack on state criminal convictions. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

Laches

WAL
HS
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
WAL

~~WPC~~ 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.

~~WPC~~ Applicant seeks post-conviction relief more than 14 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). Moreover, because of Applicant's failure to timely challenge his conviction, the tape recordings of Applicant's trial have likely been destroyed. See Rule 607, SCACR ("[A] court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five years . . . and the court reporter may reuse or destroy the tapes after the expiration of that period."); 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 summarily dismiss this application as barred by the equitable doctrine of laches. ~~WPC~~

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

Office of the Attorney General
Attn: Jessica E. Kinard, Esquire
Johnny E. James, Jr., Esquire
PCR Division – Eleventh Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Lexington 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 1st day of FEB, 2017.

William P. Keesley
WILLIAM P. KEESLEY
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina

ORIGINAL

COUNTY OF LEXINGTON
USA M. COMER, CLERK OF COURT
LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET
LEXINGTON, SC 29072-3494

FILED
2017 FEB - 3 A 11: 21

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3202363**

Ryan Lee Zater #222406		State of South Carolina	
------------------------	--	-------------------------	--

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.

		3/9/2017
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the 3rd day of February, 2017, and a copy mailed first class or placed in the appropriate attorney's box on the 10th day of February, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Lee Zater, #222406
FBOP# 96908-071
Federal Correctional Institution
PO Box 779800
Miami, FL 33177

Johanna Catalina Valenzuela
PO Box 142 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lisa A. Comer / kr

Court Reporter

Lisa M. Comer - 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), SCRPC.

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.



ALAN WILSON
ATTORNEY GENERAL

February 7, 2018

Ryan Lee Zater, 96908-071
FCI Miami
15801 S.W. 137th Avenue
Miami, FL 33177

Re: Ryan Lee Zater v. State of South Carolina
2015-CP-32-2363

Dear Mr. Zater:

Please be advised that your case has been placed on the roster for Thursday, February 8, 2018. The proceeding will determine if counsel needs to be appointed and a hearing scheduled or if the matter can be summarily dismissed. The State of South Carolina has arranged a telephone conference to allow you to attend the proceedings.

DZ

*9:30
am*

Sincerely,

J. Anthony Mabry
Senior Assistant Attorney General

JAM:trb

cc: The Honorable J. Derham Cole
Lexington County Clerk of Court

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

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2015-CP-32-02363

Ryan Lee ZATER, F.B.O.P. No. 96908-071

The STATE of South Carolina,
Respondent,

Applicant,

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.
- 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


IT IS ORDERED AND ADJUDGED: See formal order to follow; Statement of Judgment by the Court:

This matter came before this court on motion of the State regarding an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-20*.

At a hearing scheduled in this matter the State moved to dismiss the application with prejudice on the ground(s) that; (1) the application fails to state a cognizable claim pursuant to S. C. Code Ann. Section 17-27-20(A); (2) it was not filed within the applicable statute of limitations established by S. C. Code Ann. Section 17-27-45(A); and (3) it is barred by the equitable doctrine of laches. The applicant was present via telephone and not represented by counsel and for appointment of counsel in the event the State's motion was not granted.

Good cause having been shown, the State's **motion to dismiss the application** for post-conviction relief should be and is therefore **granted** and the application is **dismissed with prejudice**.

Dated at Lexington, South Carolina, this 22nd day of February, 2018.



PRESIDING JUDGE, J. Derham Cole


This judgment was entered on the 26 day of Feb, 2018, and a copy mailed first class this 26 day of Feb, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Lee Zater
FCI Miami
Federal Correctional Institution
P.O. Box 779800
Miami, FL 33177

Anthony Mabry, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549

ATTORNEY(S) FOR THE APPLICANT

ATTORNEY(S) FOR THE RESPONDENT



CLERK OF COURT

FILED
2018 FEB 23 PM 4:09
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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

Ryan Lee ZATER,)	
FBOP No. 96908-071)	
Applicant,)	Case No.
vs.)	2015-CP-32-02363
STATE of South Carolina,)	
Respondent.)	
_____)	

NOTICE OF APPEAL

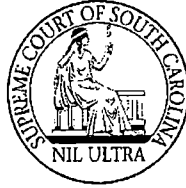
NOTICE IS HEREBY GIVEN that Ryan Lee Zater, Applicant pro se, hereby appeals this Court's Order dated 22 February 2018, He takes this appeal to the South Carolina Court of Appeals.

Respectfully submitted,

Ryan Lee Zater #96908-071
FCI Miami Low
P.O. Box 779800
Miami, Florida 33177
Pro se

1st day of March 2018

cc: Anthony Mabry, Esq.
file



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

April 13, 2018

Mr. Ryan Lee Zater
Federal Correctional Institution
P.O. Box 779800
Miami FL 33177

Re: Ryan L. Zater v. State
Appellate Case No. 2018-000611
Lower Court Case No. 2015CP3202363

Dear Mr. Zater:

This responds to your letter which was mailed to this Court on April 3, 2018. While I can find no record that this Court or the South Carolina Court of Appeals has received a notice of appeal from you prior to the receipt of your letter, this Court has now obtained a copy of your notice of appeal from the Lexington County Public Case Index along with a copy of the Conditional Order of Dismissal dated February 1, 2018, and the Dismissal Order dated February 22, 2018.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

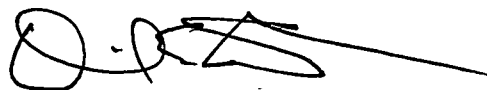
The attention of the parties is directed to the order relating to the inclusion of

personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

For this matter to proceed, you will need to provide this Court with the following within twenty (20) days of the date of this letter:

- (1) A proof of service showing that a copy of the notice of appeal has been served on the opposing counsel. The proof of service should be substantially in the form shown in the enclosure to this letter.¹
- (2) The order of the circuit court dated February 22, 2018, among other things, dismissed this post-conviction relief application as being untimely under the statute of limitations. Therefore, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Very truly yours,



CLERK

Enclosure (Sample Proof of Service of a Notice of Appeal)

cc: Johanna Catalina Valenzuela, Esquire

¹ Your notice of appeal, which is dated March 1, 2018, shows a "cc" to Anthony Mabry. If a copy of the notice of appeal was in fact mailed to opposing counsel on that date, you may simply complete the proof of service to reflect this.