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MAY 07 2018

THE BOOZER LAW FIRM, LLC

S.C. SUPREME COURT

Lance S. Boozer, Esq.*
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May 3, 2018

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RE: Rainey Crosby v. State of South Carolina
2016-CP-43-1876

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Crosby in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Crosby in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
Rainey Crosby, Fed. #57747-056

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016-CP-43-1876

Rainey Crosby, #57747-056,Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable George M. McFaddin's Order dated March 9, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on May 3, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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May 3, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable George M. McFaddin, Jr., Circuit Court Judge

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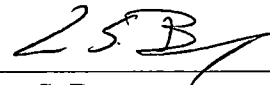
Rainey Crosby, #57747-056,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 3rd day of May, 2018.



Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

purposes of the hearing was included in his application for post-conviction relief, as addressed below.

PROCEDURAL HISTORY

Applicant is presently confined in the Federal Bureau of Prisons² and concurrently serving his state sentence pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the January 2015 term of the Sumter County Grand Jury for two counts of attempted murder, possession of a weapon during the commission of a violent crime, unlawful carrying of a weapon, possession of a weapon by a convicted felon, and discharging a firearm into vehicle (2015-GS-43-0034). Applicant was also indicted for armed robbery (2015-GS-43-0054). Timothy Lee Griffith, Esquire, represented Applicant. Scott Matthews, Esquire, prosecuted the case. On August 12, 2015, Applicant pled guilty to assault and battery of a high and aggravated nature (ABHAN), the lesser-included offense of attempted murder. Applicant also pled guilty to armed robbery (2015-GS-43-0054). All other charges were dismissed. On September 29, 2015, the Honorable J. Ferrell Cothran Jr., sentenced Applicant to sixteen years' imprisonment for the ABHAN offense, and to eighteen years' imprisonment for the armed robbery. The sentences were to run concurrent with the federal sentence Applicant received on September 15, 2015. Applicant was to receive credit for time served since September 17, 2014. Applicant did not appeal his plea or sentences.

² Applicant is currently serving a term of imprisonment for 60 months with a supervised release for a term of 3 years for his conviction for the federal offense of Felon in Possession of a firearm and ammunition, a violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924 (e).

CURRENT APPLICATION

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

1. Ineffective assistance of counsel for failing to properly advise me of the consequences of the plea agreement.
 - a) "The attorney specifically told me that I was going to receive a sentence of 15 years to run concurrent with my 15 year federal sentence. However, I received 18 years.

Respondent made its Return on July 31, 2017, asking the Court to summarily dismiss the application as untimely pursuant to S.C. Code Ann. § 17-27-45. Also before the Court are the records from the Sumter County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the hearing, Respondent moved to dismiss the application as untimely pursuant to S.C. Code Ann. § 17-27-45. Applicant's application was filed on October 4, 2016, which was five days past the statute of limitations. Applicant was sentenced on September 29, 2015, and did not appeal his guilty plea or sentence, so the application should have been filed by September 30, 2016 to be considered timely. In response to Respondent's motion, Applicant asserted he mailed his application to be filed on the day before the statute of limitations expired, which was proven by the "verification" containing his sworn (but not notarized) testimony on page six of his application.³ He further cited to a recent South Carolina Supreme Court case, Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017), which he believed entitled him to assert the defense of equitable tolling based on circumstances outside his control. Applicant argued that Mose adopts

³ The verification reads, "I do hereby certify pursuant to 28 U.S.C. §1746 and the laws of perjury that the forgoing was mailed by entering the same into the prison mail system for delivery via United States Postal Service, First-Class postage prepaid, on this the 28th of September, 2016." Below this statement is Applicant's signature. Above the statement is a blank paragraph for the signature and stamp of a notary. Over the paragraph, "NOTARY NOT AVAILBLE" is typed.

certain principals of the prison mailbox rule that he believes applies to his case, and that because he mailed his application before the statute of limitations ran, the United States Postal Service's delivery time was a circumstance outside his control that should allow for equitable tolling of the statute of limitations. This Court rejects Applicant's argument and finds as follows:

Statute of Limitations

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 ("the Act"). 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 offense 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). Applicant was sentenced on September 29, 2015. Accordingly, Applicant was required to file this application on or before September 30, 2016. Applicant did not file the application until October 4, 2016, after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of



law.” Therefore, this Court dismisses this application for failure to file within the time mandated by the Act.

Although Applicant asserts he is entitled to equitable tolling of the statute of limitations under Mose based on the mail system which constituted circumstances out of his control, this Court disagrees. Mailing of a PCR application does not constitute filing for statute of limitations purposes. Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). Rather, the application is deemed “filed” when it is delivered to and received by the Clerk of Court. Id. Although Mose recently discussed the “prison mailbox rule,” which the United States Supreme Court adopted to allow prison inmates to deem their legal documents filed at the time they deliver them to prison authorities for mailing⁴, Mose expressly declined “to adopt a rule that automatically deems a PCR application ‘filed’ on the date an applicant claims it was delivered to prison authorities.” Mose, at 510, 803 S.E.2d at 723. “Instead, if a PCR applicant relies on the defense of equitable tolling in response to a motion to dismiss, the applicant must substantiate that the correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations and that any delay in the Clerk of Court’s receipt of the application was due to processing.” Id. “If the PCR judge determines that the applicant has presented a valid defense, then the statute of limitations shall be tolled until the application is delivered to and received by the Clerk of Court.” Id. This Court finds Applicant has not presented a valid defense in response to the motion to dismiss as required by Mose.

“When considering the State’s motion for summary dismissal of an application, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.” Mose, at 505–06, 803 S.E.2d at 720 (citing Leamon, at 434, 611 S.E.2d at 495). Here, Applicant’s sworn “verification”

⁴ See Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988).

in his application for post-conviction relief provides that he mailed his application on September 28, 2016, from Pine Knot, Kentucky. The statute of limitations expired on Friday, September 30, 2016. This Court takes judicial notice that it is common knowledge that a document placed in the United States Postal Service mail system will usually take more than one day to reach its destination, especially when being delivered to an out-of-state destination. It is unreasonable for Applicant to assume and expect his application would be delivered to the Sumter County Clerk of Court one day after it was placed in the mail. Applicant has not proven that the "delay in the Clerk of Court's receipt of the application was due to processing." Mose, at 510, 803 S.E.2d at 723. Accordingly, this Court finds Applicant has failed to present a valid equitable tolling defense to the statute of limitations as set forth in Mose. Therefore, this Court grants Respondent's motion to dismiss the application as untimely pursuant to S.C. Code Ann. § 17-27-45 (1976).

[conclusion and signature page to follow]

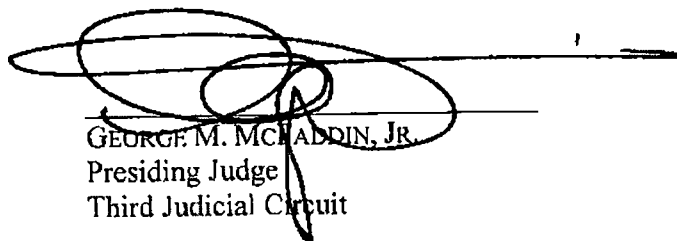
A handwritten signature in black ink, appearing to be a stylized 'B' or similar character.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has failed to show that he should be entitled to an evidentiary hearing on the merits of his untimely PCR application. Accordingly, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 9th day of March, 2018.


GEORGE M. MCEADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

JUDICIAL CIRCUIT

Rainey Crosby

CASE NO.: 2016-CP-43-1876

Plaintiff(s),
-vs-

APPOINTMENT OF COUNSEL OR GAL
(Select one.)

State of South Carolina

ORDER

Defendant(s).

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change

- Adoption
- Custody and/or Visitation
- Other:

- Juvenile
- Abuse and Neglect

It appears that Rainey Crosby who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: Lance Boogser
1400 Laurel St. Suite 4A
Columbia, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that Boogser, hereby is appointed as (Select one.)
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 22 DAY OF Aug, 20 17 .

RECORDED
JUL 19 2017 11:26 AM
JAMES SCOTT REBEL
CLERK OF COURT
SOUTH CAROLINA

THE BOOZER LAW FIRM, LLC

1419 Pendleton Street
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211