

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
)	
Tyrone Bowman, #255037,)	
)	Case No.: 2016-CP-02-00297
Applicant,)	
)	
v.)	
)	CONDITIONAL ORDER OF DISMISSAL
State of South Carolina,)	
)	
Respondent.)	
)	
)	
)	

This matter comes before the Court by way of an application for post-conviction relief filed by Tyrone Bowman (Applicant) on February 12, 2016. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the August 2011 term of the Aiken County Grand Jury for possession with intent to distribute cocaine base (2011-GS-02-01238) and trafficking cocaine (2011-GS-02-01242). On January 18, 2012, Applicant pled as indicted to both charges. The State recommended a ten year sentence cap for each charge. Elizabeth Burkhalter Young, Esquire, prosecuted the case. Applicant was represented by Barry L. Thompson, II, Esquire. The Honorable Doyet A. Early, III sentenced Applicant to confinement for concurrent terms of ten years' for each offense. Applicant was to be given credit for time served. Applicant did not appeal his plea or sentences.

CURRENT APPLICATION

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

1. Fraud (actual and extrinsic).
 - a. "I have never been convicted of a trafficking 1st nor have I created, dispensed, distributed, manufactured or PWID any type of drug-real or counterfeit as described in 21 U.S.C.A § 841 to be to enhance. In accordance with Rule 609(b) of S.C.R.C.P which [nullifies] any conviction that is 10yrs old "unless" the proponent gives advanced written notice of intent, giving fair opportunity to contest- which no one did. Now according to 481.1 of U.S.S.G defining career offender states: the defendant has at least "2 prior felony conviction of either a crime of violence or a controlled substance offense or one of both. Now according to statute describing crimes if violence used for enhancements it states: crimes of violence which punishment "exceeds 1yr". Those are the only 2 ways to be enhanced and I've done neither proving these enhancements are [fraudulent]."

2. Abuse of Discretion (Grossly unsound).
 - a. Unreasonableness. The sentence imposed considering my criminal history. I have one conviction prior to this conviction, a poss. of cocaine, in 11 years or illegal. Not only is my dominant charge (trafficking 2nd) illegal by way of actual fraud, my subsequent charge (PWID 2nd) is also. My last PWID was 11 years ago in accordance with Rule 609(b) of S.C.R.C.P that is illegal and makes up the fundamentals of abuse of discretion.

3. Ineffective Assistance of Counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Offense 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 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 January 18, 2012. The current application was not filed until February 12, 2016, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, Applicant’s current application must be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

{Signature and conclusion on the following page.}

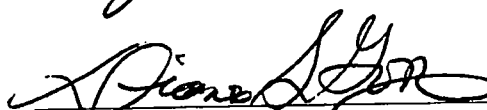
CONCLUSION

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

Office of the Attorney General
Attn: Julie A. Coleman, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 2nd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

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



DIANE S. GOODSTEIN
Chief Administrative Judge
First Judicial Circuit

St George, South Carolina