

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

Larry A. Fridie, Jr., F.B.O.P. # 17919-171)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

Case No. 2014-CP-18-1700

FINAL ORDER OF DISMISSAL

2018 SEP -7 PM 2:28
FILED-RECORDED
COMMON PLEAS COURT
DORCHESTER COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Larry Fridie (Applicant) on September 11, 2014. Respondent made its return, requesting the application be summarily dismissed.

After reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal, signed March 16, 2017, and filed March 23, 2017, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said order in which to show why the dismissal should not become final. Applicant was served with a copy of the Conditional Order of Dismissal as evidenced by the certificate of service in the Form 4 Order attached and incorporated herein by reference.

Applicant filed a response captioned "Motion in response to why the court should not dismiss this application with prejudice and why it should not be dismissed in its entirety, pursuant to S.C. Code Ann. § 17-27-70(b)" on April 4, 2017. In his filing, Applicant argues the circuit court lacked subject matter jurisdiction because Applicant's "age and requirement of a waiver hearing for purposes of prosecution are matters of subject matter jurisdiction should be

held to apply to this case.” Applicant also alleges he has provided enough documentation attached with his response to overcome the doctrine of laches.

It is clear that the Court of General Sessions had jurisdiction over Applicant’s case. Pursuant to S.C. Code Ann. §20-7-6605, a “person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more **may** be remanded to the family court for disposition of the charge **at the discretion of the solicitor.**” (emphasis added). This is a discretionary determination. Applicant mistakenly believes that any time a child is taken into custody, the Family Court and only the Family Court may exercise exclusive jurisdiction. Aside from the fact that this claim has untimely filed, this allegation shall be dismissed with prejudice as the court of General Sessions properly had jurisdiction over Applicant. Regarding Applicant’s allegation his application should not be barred by the doctrine of laches due to his attachment of documentation, this Court finds the documentation is inadequate to provide the State with enough information to overcome the procedural bar imposed under the doctrine of laches. Furthermore, Applicant has provided no justification for his untimely filing of this application.

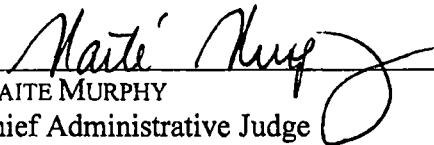
This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds Applicant’s allegations to be meritless. Accordingly, this Court finds sufficient reason has not been shown why the Conditional Order of Dismissal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

This Court also reasserts its holding in the Conditional Order of Dismissal that this Application is untimely and barred by the doctrine of laches.

[Signature and conclusion on following page]

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 24 day of Aug, 2018.



MAITE MURPHY
Chief Administrative Judge
First Judicial Circuit

St. Mary, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF DORCHESTER)
) 2014-CP-18-1700
 Larry Antron Fridie Jr.,)
 F.B.O.P. No. 17919-171)
) **CONDITIONAL ORDER OF DISMISSAL**
 v.)
)
 State of South Carolina)
)
 Defendant.)

2017 MAR 23 PM 3:40
 RECORDED
 CLERK OF COURT
 DORCHESTER COUNTY

This matter comes before the court by way of an application for post-conviction relief filed by Larry Antron Fridie Jr. (Applicant) on September 11, 2014 (“the Application”). Respondent made its Return, requesting the Application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the Federal Bureau of Prisons on unrelated convictions. On October 6, 2000, the Dorchester County Sheriff’s Department arrested Applicant, then sixteen years of age, pursuant to warrants for the crimes of Assault with Intent to Kill (G587468), Grand Larceny between \$1,000 and \$5,000 (G587469) and Burglary in the Second Degree (G587470)¹. Applicant was thereafter indicted by the Dorchester County Grand Jury on January 22, 2001 for the same (2001-GS-18-0034, -0036, -0035). Gene W. Dukes, Esq. represented Applicant on the charges. On June 27, 2001, Applicant entered a plea of guilty to the crimes as indicted. The Honorable Luke N. Brown Jr. sentenced Applicant to confinement pursuant to the Youthful Offender Act for the Assault with Intent to Kill, to a term of five (5) years suspended on two (2) years probation and restitution of \$3,489.90 for the Grand Larceny, and to a term of ten (10) years suspended on two (2) years probation for the Burglary. Applicant did not appeal.

¹ A Class “D” Felony under S.C. Code Ann. § 16-1-90(D) (Supp. 2001).

II. CURRENT APPLICATION

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

1. "The Court exceeded its jurisdiction"
 - a. "Petitioner was sixteen years old at the time of the offense, and was not given a Family Court hearing to determine whether the circuit court could obtain jurisdiction over his case. There for [sic] the circuit court did not have jurisdiction over the case to convict and sentence petitioner."
 - b. "Petitioner contends that the court exceeded it's [sic] jurisdiction when it tried and convicted Petitioner for Burglary 2nd degree of a (DWELLING) A VIOLATION OF SC CODE 16-11-312(A) which is an offense that was not indicted, broaden [sic] or altered by the grand jury."
 - c. "Petitioner contends that the indictment failed to charge the offense of Assault with intent to kill."
2. "The conviction was obtained in violation of the Constitution of the United States and the State of South Carolina"
 - a. "Petitioner contends his guilty plea was not voluntarily and intelligently made. Petitioner was a sixteen years [sic] old at the time of the offense a "Child" had he been advised of the elements of assault with intent to kill a violation of SC Code 16-3-620 instead of being advised of a violation of 17-25-30 he would have not pleaded guilty to the offense."

Applicant "respectfully prays this court:"

- "Issue a writ of habeas corpus to have Petitioner brought before it;"
- "Find that the Petitioner is indigent and allow him to proceed in forma pauperis, so that he is relieved of the obligation of paying filing fees or other cost in this case;"
- "[C]onduct a hearing at which proof may be offered concerning the allegations of this case;"
- "Appoint Counsel to assist Petitioner in any and all Evidentiary hearing[s];"
- "Issue an order Expunging the conviction in the above case[;]"
- "Grand such other relief as may be appropriate."

Respondent incorporates the Dorchester County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds that the Application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

The Applicant pled guilty on June 27, 2001 and did not appeal. The current application was not filed until September 11, 2014— well after the one-year statutory filing period expired. Applicant argues that “[a] party may raise lack of subject matter jurisdiction at any time,” but a person’s age and requirement of a waiver hearing for purposes of prosecution in general sessions are matters of personal jurisdiction. State v. McBride, No. 5381, 2016 WL 626015, 2 (S.C. Ct. App. 2016). Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

Laches

The Court also finds the Application must be barred under the 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). This requirement “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)). In due consideration of the above requirement, Laches is an equitable doctrine 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 thirteen (13) 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 at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g., Bray* at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record

reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the Application shall be summarily dismissed as barred by the doctrine of laches.


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

Office of the Attorney General
Johnny E. James, Jr., Esquire
Post-Conviction Relief Division
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Dorchester 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 16th day of March, ²⁰¹⁷~~2016~~.


EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina