

11/21/18

FRANKIN M. ROBINSON,

CASE NUMBER: 2018-CP-13-0316

Petitioner/Plaintiff,

vs-

STATE OF SOUTH CAROLINA,  
COUNTY OF CHESTERFIELD,

Defendant,

" NOTICE OF APPEAL "

In complying timely to the Court's Order of November 9, 2018, plaintiff declares he does not accept the proposal Order of Dismissal and hereby states the following reasons why:

Under the Supremacy Clause of the Constitution, State collateral review courts have no greater power than federal habeas courts mandate that a prisoner continue to suffer punishment barred by the Constitution. If a State collateral proceeding is open to a claim controlled by federal law, the State Court has a duty to grant the relief that federal law requires. See Montgomery v. Louisiana , 577 US \_\_, 136 S Ct \_\_, 193 LED 2d 599 (2016)(citing Yates v. United States, 484 US at, 218, 108 S Ct 534, 98 LED 2d 596.

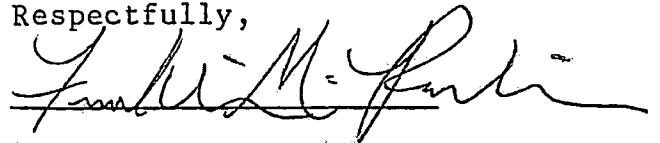
Where State collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

Per United States Supreme Court ruling held in Montgomery v. Louisiana, 577 US \_\_\_, 136 S Ct \_\_\_, 193 LED 2d 599 (2016). There is no "grandfather's clause" clause that permits States to enforce punishment the Cobstitution forbids.

The petitioner/plaintiff has placed this Court on Notice numerous times to the fact that two of his State of South Carolina convictions were obtained minus representation of defense counsel. As a result, petitioner's right guaranteed to him under the due process clause of the Fifth Amendment to the Constitution for the United States of America were violated. Per Gideon v. Wainwright, 372 US 335, 9 LED 2d 799, 88 S Ct 792 (1963).

Wherefore, according to the laws of the United States Supreme Court, petitioner, Franklin M. Robinson petition for a Writ of Error Coram Nobis is not time-barred.

Respectfully,



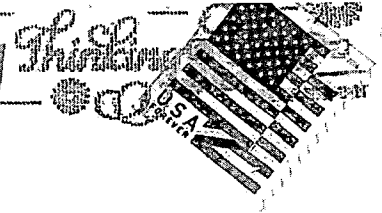
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., cc filed

IDENTIFICATION / INMATE 51  
NUMBER: 21986-171  
United States Penitentiary  
P.O. Box 33  
Terre Haute, IN 47005

INDIANAPOLIS IN 460

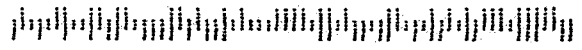
INMATE 51  
IDENTIFICATION  
CONFIRMED



↔21986-171↔  
Johnny E James  
PO BOX 11549  
Office of Att. General  
Columbia, SC 29211  
United States

" LEGAL MAIL "

29211-154949







Applicant was subsequently indicted at the September 2006 term of the Chesterfield County Grand Jury for assault and battery of a high and aggravated nature (2006-GS-13-01032). Franklin B. Joyner, Jr., Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. On March 7, 2007, Applicant appeared *pro se* and pled guilty as indicted. Accepting terms negotiated between Applicant and the State, the Honorable James E. Lockemy sentenced Applicant to imprisonment for a term of six-months, with credit for six months of time-served. Applicant did not appeal his plea or sentence.

## II. CURRENT APPLICATION

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

- I. Ineffective assistance of counsel, in that:
  - a. "No Attorney was there to prepare my defense."
  - b. "I am presently being punished today for these past convictions. That's why the Writ of Error was filed because I'm no longer in the custody of SC authorities."
  - c. Applicant elsewhere cites to Sessions v. Dimaya, 138 S.Ct. 1204 (2018); and Johnson v. U.S., 135 S.Ct. 2551 (2015).<sup>2</sup>

Before this Court are the Chesterfield County Clerk of Court records regarding the subject convictions and the records of this current PCR action.

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<sup>2</sup> Applicant cites to two United States Supreme Court cases in support of his demand for relief. In Johnson, the Supreme Court found the residual clause of the Armed Career Criminal Act of 1984, which provided for enhanced sentencing where a defendant had three or more convictions for a "violent felony," was unconstitutionally vague. The Court in Dimaya reached a similar conclusion in the context of the Immigration and Nationality Act. Neither case is at all applicable to the validity of Applicant's underlying convictions, but is only of concern to the validity of federal sentencing enhancement. To the extent that Applicant wishes to challenge the validity of his federal sentence, he may only do so in federal court.



### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### Statute of Limitations

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

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

S.C. Code Ann. § 17-27-45(A).

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

Applicant pled guilty on August 2, 2006, and March 7, 2007, and appealed from neither plea or sentence. The current application was not filed until May 21, 2018—well after the one-year statutory filing periods expired. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

#### Laches

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

collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief more than 11 and 12 years after his respective convictions. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the

passage of over ten years' time" when the delay was caused by appellant). Transcripts of the plea proceedings can no longer be produced. 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 the application as barred by the equitable doctrine of laches.

### CONCLUSION

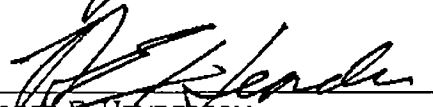
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order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

Office of the Attorney General  
Johnny E. James, Jr., Esquire  
PCR Division – 4<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

2018 AUG -9 PM 1:32  
Handa C. Hiles  
CLERK OF COURT  
CHESTERFIELD COUNTY, SC

Applicant is cautioned that his response to this order must be actually received by the Chesterfield 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 August, 2018.

  
ROGER E. HENDERSON  
Resident Judge  
Fourth Judicial Circuit

Chesterfield South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FOURTH JUDICIAL CIRCUIT  
COUNTY OF CHESTERFIELD )

Franklin M. Robinson, ) Case No.: 2018-CP-13-00316  
F.B.O.P. Number 21986-171, )  
 )

Applicant, )

**FINAL ORDER OF DISMISSAL**

v. )

State of South Carolina )

Respondent. )  
\_\_\_\_\_ )

2018 NOV 21 AM 10:39  
KYLE C. HUNT  
CLERK OF COURT  
COMMON PLEAS COURT, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed May 21, 2018. Respondent made its return on or about July 27, 2018, requesting the application be summarily dismissed as untimely and as barred by the equitable doctrine of laches.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed August 1, 2018, and filed August 9, 2018, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated August 29, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document titled "Petitioner/Applicant's Show Cause Response" on August 20, 2018, in which Applicant reframes his application as a petition for writ of error *coram nobis*, and thereafter argues a variety of subjects without ever addressing the question of the timeliness of the 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 a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

To the extent Applicant now seeks to reframe his filing as a petition for writ of *coram nobis*, the Uniform Post-Conviction Procedure Act states:

Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

S.C. Code Ann. § 17-27-20(B). Certain esoteric common law remedies are also abolished by the South Carolina Rules of Civil Procedure:

Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 60(b), SCRCP. A matter which is cognizable under the UPCPA may not be raised by petitions for common law writs. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998). A person is procedurally barred from petitioning the circuit for a common law writ where the matter alleged is one which can be *or could have been* raised in a PCR application. Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998); Gibson v. State, 329 S.C. 37, 42, 495 S.E.2d 426, 429 (1998).

Applicant's attempt to reframe his filing as a petition for writ of *coram nobis* is self-defeating. Such a motion is no longer a valid procedure in the State of South Carolina for challenging a conviction or sentence. Applicant's failure to comply with the procedural requirements of the UPCPA does not obviate the abolition of such writs.


Furthermore, the Court finds Applicant offers no reason why his application is not untimely, or should not be barred by the equitable doctrine of laches.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 14<sup>th</sup> day of November, 2018.

Charleston, South Carolina.

  
\_\_\_\_\_  
PAUL M. BURCH  
Chief Administrative Judge  
Fourth Judicial Circuit

2018 NOV 21 AM 10:39  
Paul M. Burch  
Chief of Court  
Charleston County, S.C.