

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
Thomas E. Webb  
S.C.D.C. No. 2018-21521,  
Applicant

In THE COURT OF Common Pleas  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2018 CP-26-20118  
Honorable Chief Judge Mr. William H. Sikes, Jr.

v.  
State of South Carolina  
Respondent

NOTICE OF Appeal 203 SCAC.  
**RECEIVED**

JAN 02 2019

S.C. SUPREME COURT

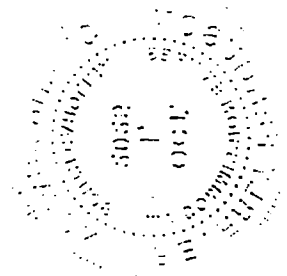
Thomas Webb appeals the ~~order of dismissal~~ conditional  
for post conviction relief dated November 9, 2018  
Applicant received ~~the~~ final order of dismissal  
in December 2018. prior to this order applicant had  
pursued motion of enlargement for an extension of  
time. Due to the lock downs at this institution  
and not being able at various times to attend law  
library it's quite difficult to go and Shepardize  
and research the facts; the correctional officers in  
this dorm you let them know I need to attend  
law library at this specific time from  
9:00 AM to 11:00 AM. The correctional officers in

the Charleston B unit side ignores makes light  
of, and when I bring this to the attention of  
Security staff my complaint is and has fallen  
upon "deaf ears" please be as so kind to

forward a copy to Assistant Attorney General  
John B. Jones Jr. Thank you for taking the  
~~liberty~~ liberty to send me back a return check  
stamp copy. Respectfully submitted

Sworn to before me  
This 14th Day of Dec. 2018  
Thomas E. Webb  
My Commission Expires  
Notary William Robinson May 20, 2021  
Date: Thomas Webb





**RECEIVED**  
DEC 13 2018  
GENERAL COUNSEL

RECEIVED

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Thomas E. Webb, )  
S.C.D.C. No. 291521, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS JAN 02 2019  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

S.C. SUPREME COURT

Case No.: 2018-CP-26-00118

CONDITIONAL ORDER OF DISMISSAL

2018 MAY -7 PM 2:43  
HORRY COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Thomas E. Webb (Applicant) on January 10, 2018. Respondent made its Return, requesting the application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2006 term of the Horry County Grand Jury for two counts of kidnapping (2006-GS-26-00182, -00186), one count of burglary, first degree (2006-GS-26-00183), and two counts of armed robbery (2006-GS-26-00184, -00185). Stuart M. Axelrod, Esq. and Joshua Bailey, Esq. represented Applicant. Bradley C. Richardson, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial on March 3, 2008, before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted on March 4, 2008. Judge Cottingham sentenced Applicant to imprisonment for concurrent terms of 30 years for each kidnapping, 30 years for the burglary, and 15 years for one of the armed robberies.

Judge Cottingham further sentenced Applicant to one consecutive term of 15 years for the other armed robbery, for a cumulative sentence of 45 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by LaNelle C.

Durant, Esq., who raised the following issues:

1. Did the trial court err in allowing the solicitor to refer to the defendant as a "wild animal" in his opening statement and in his closing argument which denied appellant the right to a fair trial because it inflamed the passion and prejudice of the jury and injected an arbitrary factor into the jury's deliberations?
2. Did the trial court err in allowing the solicitor to include in his closing statement facts about appellant's hair which were not in evidence and which were prejudicial to appellant?
3. Did the trial court err in not allowing defense counsel to fully cross examine State's witnesses Joy Hines and Officer Mann concerning the third co-defendant Randy Gaunt which interfered with Appellant presenting a complete defense?

The parties proceeded to oral arguments on March 2, 2010. By opinion decided July 7, 2010, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Webb, 389 S.C. 174, 697 S.E.2d 662 (Ct. App. 2010). Applicant petitioned for rehearing, which was denied by order dated August 26, 2010. Applicant thereafter petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by letter order dated November 3, 2011. The Remittitur was issued on November 7, 2011.

#### **First PCR Application: 2011-CP-26-10651**

Applicant filed his first application for post-conviction relief on December 20, 2011 (2011-CP-26-10651). He alleged the following grounds for relief in his application:

1. "ineffective counsel"
  - a. "Counsel did not bring forth co-defendants"
  - b. "Counsel was aware defendant couldnt read"
  - c. "Counsel fail to notify defendant of rights during trial"
2. "Prosecutor violated defendants rights"

Respondent made its return on February 21, 2012, and an evidentiary hearing into the matter was convened on March 17, 2014, before the Honorable George C. James, Jr. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esq. Joshua L. Thomas, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and Stuart M. Axelrod, Esq., also testified. By written order dated April 9, 2014, and filed April 15, 2014, Judge James denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by David Alexander, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant filed a timely *pro se* response. The Supreme Court of South Carolina denied Applicant's petition by unpublished opinion and granted counsel's request to withdraw representation. Webb v. State, S.C. Sup. Ct. Order filed March 4, 2015. The Remittitur was issued on March 20, 2015.

**Federal Habeas Petition: 8:15-01310-JMC-JDA**

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 19, 2015 (C.A. No. 8:15-01310-JMC-JDA). In his Petition, Applicant set forth the following grounds for relief:

1. "defendants has a right to assistance of counsel for his defense"
  - a. "I was denial due process Amendment 6<sup>th</sup>"
2. "Prosecutor violated defendants rights"
  - a. "I was denial due process of law"

Respondent filed its Return and Motion for Summary Judgment on June 22, 2015. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued on January 28, 2016, a Report and Recommendation that Respondent's motion for summary judgment be granted. Webb v. Warden, Lee Corr. Inst., 8:15-01310-JMC-JDA, 2016 WL 1084763 (D.S.C. 2016). The Honorable J. Michelle Childs, United States District Judge, denied Applicant's Petition on

March 18, 2016 and accepted the Report and Recommendation for summary judgment. Webb v. Warden, Lee Corr. Inst., 8:15-01310-JMC-JDA, 2016 WL 1077069 (D.S.C. 2016). Applicant did not appeal the order of the district court.

## II. CURRENT APPLICATION

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

1. "incompetent at the time of the crime; at trial, and at the first post conviction hearing in violation of due process,"
  - a. "need to have a second competency evaluation to seek why I'm hearing voices or did trial counsel say that I'm going to stab her"
2. "ineffective assistance of counsel"

Before this Court are the Horry County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final orders of Applicant's previous PCR and federal habeas actions, and the records of this current PCR action

## 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). However, "in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute should be tolled."

Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009).

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 was convicted on March 4, 2008, and the remittitur from his direct appeal issued on November 7, 2011. The current application was not filed until January 10, 2018—well after the one-year statutory filing period expired. Though Applicant raises allegations relating to his mental health, because of his prior filings he is foreclosed from any conceivable argument that the statute of limitations should be tolled pursuant to Ferguson. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

#### **Successive**

The Court finds the application must be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other

proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall dismiss the application as successive to Applicant's previous PCR application.

#### **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 nearly 10 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); 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). This delay is especially pronounced in the present context, where Applicant calls upon the Court to order a *second* competence evaluation to determine whether he was in a competent state of mind a decade ago. 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 Horry 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 – 15<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry 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 27 day of April, 2018.



WILLIAM H. SEALS, JR.  
Chief Judge for Common Pleas  
Fifteenth Judicial Circuit

        , South Carolina





ALAN WILSON  
ATTORNEY GENERAL

May 3, 2018

The Honorable Rence N. Elvis  
Clerk of Court, Horry County  
Post Office Box 677  
Conway, SC 29528-0677

Re: Thomas E. Webb, #291521 v. State of South Carolina  
2018-CP-26-0118

2018 MAY -7 PM 2:43  
Horry County  
Clerk of Court  
Post Office Box 677  
Conway, SC 29528-0677

Dear Ms. Elvis:

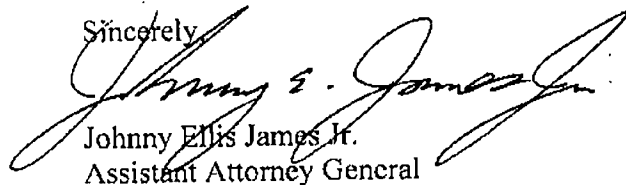
Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

  
Johnny Ellis James Jr.  
Assistant Attorney General

JFJ/mm

Enclosure

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 Thomas E. Webb, )  
 S.C.D.C. No. 291521, )  
 Applicant, )  
 v. )  
 State of South Carolina )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

**RECEIVED**  
 JAN 02 2019  
 S.C. SUPREME COURT

Case No.: 2018-CP-26-00118

**FINAL ORDER OF DISMISSAL**

2018 NOV 26 PM 2:25  
 HORRY COUNTY  
 CLERK OF COURT  
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed January 10, 2018. Respondent made its return on or about April 23, 2018, requesting the application be summarily dismissed as untimely, successive, and 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 April 27, 2018, and filed May 7, 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 an Affidavit of Service dated August 9, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Prior to service of the Conditional Order, this Court was notified by way of an e-mail dated May 4, 2018, from Respondent that Applicant requested additional time to respond to the Conditional Order due to system-wide lockdowns in the South Carolina Department of Corrections following a riot at Lee Correctional Institute on April 15, 2018. Though substantial


additional time has since passed, Applicant still has failed to respond to either Respondent's motion to dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

**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 day of November, 2018.

Mai, South Carolina.

  
WILLIAM H. SEALS, JR.  
Chief Judge for Common Pleas  
Fifteenth Judicial Circuit

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Cpl. Fisher  
(Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Darper )

AFFIDAVIT OF PERSONAL SERVICE

On this 9 day of August 2018, I served the Conditional Order of Dismissal, on Inmate Thomas Webb SCDC Inmate #291521, by delivering personally and leaving a copy of the same at Ridgeland Correctional Institution. Deponent is not a party to this action.

s/ Cpl. [Signature]  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9 day of August, 2018  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 10-1-25

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Ridgeland Correctional Institution), Darper County, SC this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

s/ Thomas Webb  
Inmate  
SCDC Inmate #: 291521

2018-CP-26-0118

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Thomas E. Webb, #291521 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.

2018-CP-26-0118

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney:  
Thomas E. Webb, #291521, Bar No.  
Address:  
Ridgeland CI PO Box 2039 Ridgeland, SC 29936  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
Johnny E. James Jr, Bar No. 101260  
Address:  
Post Office Box 11549 Columbia SC 29211-1549  
phone: (803) 734-3737 fax: (803) 734-4113  
e-mail: jjames@scag.gov other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

2018 NOV 26 PM 2:23  
CLERK OF COURT  
HORRY COUNTY, SC  
November 9, 2018  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT:
- EXEMPT:
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:  Other:

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE:

Date:

**CLERK'S VERIFICATION**

Date Filed:

Collected by: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_



ALAN WILSON  
ATTORNEY GENERAL

November 21, 2018

The Honorable Renee N. Elvis  
Clerk of Court, Horry County  
Post Office Box 677  
Conway, SC 29528-0677

HORRY COUNTY  
2018 NOV 26 PM 2:26  
RECORDS CLERK OF COURT  
HORRY COUNTY, SC

Re: Thomas E. Webb, #291521 v. State of South Carolina  
2018-CP-26-0118

Dear Ms. Elvis:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny E. James Jr.  
Assistant Attorney General

JEJ/mm

Enclosure