

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)
)
)

Lonnie Geter, #288401

) Case No.: 2019-CP-42-01727
)
)

Applicant,

) **FINAL ORDER OF DISMISSAL**
)
)

v.

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to a post-conviction relief application filed by Lonnie Geter (hereafter "Applicant") on May 14, 2019. Respondent moved to summarily dismiss the application on August 16, 2019, because of untimeliness, successiveness, it is barred by the doctrine of laches, and he failed to set forth a *prima facie* case for newly-discovered evidence.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 20, 2019, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not become final. Applicant was personally served with this conditional order of dismissal on September 9, 2019, as evidenced by the attached affidavit of personal service.

On September 5, 2019, Applicant filed a "motion to alter or amend judgement, pursuant to 59(e)", which the court interprets as a response to the conditional order of dismissal. In the motion, Applicant claims he has recently discovered e-mail correspondence between Counsel and the solicitor concerning a plea deal. Applicant claims plea negotiations broke down and, consequently, Applicant had no choice but to go to a jury trial. Applicant claims he would have

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pled and likely received a shorter sentence but for Counsel's alleged ineffectiveness. This Court has reviewed this response in full and finds it is insufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

In Applicant's PCR application and subsequent filings, he has continued to fail to establish a *prima facie* case of newly discovered evidence. As previously stated, though Applicant alleges that a plea offer was made by the solicitor and not conveyed to him by his trial counsel, review of the e-mails alongside Applicant's application refute the claim. The November 25, 2002, e-mail from Counsel to the State reflects that Counsel initiated negotiations by proposing a potential deal. The November 26, 2002, response from the State is initially favorable. However, the December 2, 2002, e-mail indicates Applicant "didn't seem very interested in the original offer" and implies a new proposal was provided to the State, which the State rejected. Taken together, the e-mails (1) do not reflect any firm plea offer from the State and (2) that Applicant was appraised of Counsel's negotiation efforts and was disinterested. Furthermore, the August 1, 2018, letter by which the e-mails were provided to Applicant reflect that copies were provided to him as early as July 11, 2017, nearly two years before the application was filed. Accordingly, Applicant has failed to provide any reason why these allegations could not by the exercise of due diligence have been discovered before the filing of his previous PCR applications, and failed to show that he filed the application within one year of "discovering" the e-mails. Thus, this matter remains dismissed on the grounds of newly discovered evidence.

Additionally, Applicant failed to show why the doctrine of laches is inapplicable to his case. Nearly fifteen years have passed between when the remittitur from Applicant's direct appeal was issued and when he brought this PCR action. Applicant has offered no justification

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for the delay. Thus, the Court shall summarily dismiss the application as barred by the equitable doctrine of laches.

Additionally, this Court finds that the application is barred through the statute of limitations. Applicant was convicted on December 6, 2002, and the remittitur from his direct appeal issued on July 28, 2004. The most generous conceivable date upon which Applicant could prevail is July 11, 2017. The current application was not filed until May 14, 2019. The Applicant has failed to sufficiently explain the fifteen year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his responses, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed for untimeliness, successiveness, it is barred by the doctrine of laches, and he failed to set forth a *prima facie* case for newly-discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

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


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prejudice.

This court hereby advises the Applicant that he must file and serve a notice of appeal within thirty 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 1st day of February, ^{2021.}~~2020.~~


R. KEITH KELLY¹
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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¹ Judge Hayes is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he heard Applicant's initial PCR action, the proposed final order of dismissal are being sent to the Honorable R. Keith Kelly, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.



ALAN WILSON
ATTORNEY GENERAL

February 10, 2021

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304

Re: Lonnie Geter, #288401 v. State of South Carolina
2019-CP-42-01727

Dear Ms. Cox:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable R. Keith Kelly, in the above-captioned case, for filing in your office.

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

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec

Enclosure

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AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

December 2, 2020

The Honorable R. Keith Kelly
Chief Administrative Judge
125 East Floyd Baker Blvd.
Gaffney, South Carolina 29340

Re: Lonnie Geter, #288401 v. State of South Carolina
2019-CP-42-01727

Dear Judge Kelly:

Enclosed please find the proposed **Final Order of Dismissal** in the above-captioned cases.

If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Spartanburg County Clerk of Court to be filed and served. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosure

cc: Lonnie Geter, #288401

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ALAN WILSON
ATTORNEY GENERAL

December 2, 2020

The Honorable R. Keith Kelly
Chief Administrative Judge
125 East Floyd Baker Blvd.
Gaffney, South Carolina 29340

Re: Lonnie Geter, #288401 v. State of South Carolina
2019-CP-42-01727

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Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosure

cc: Lonnie Geter, #288401

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