

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Anthony Brown, #253806,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-21-2341

CONDITIONAL ORDER OF DISMISSAL

2021 MAR 25 PM 1:27
DOUGLAS COUNTY, SC
FLORENCE

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Anthony Brown (Applicant) on August 20, 2019. The State made its return and moved to summarily dismiss the action for being untimely; failure to state a claim; and barred by laches. For the reasons discussed below, this Court grants the State’s motion to summarily dismiss the PCR action.

I. PROCEDURAL HISTORY¹

Applicant’s PCR application asserts he pleaded guilty on March 2, 1979 to armed robbery, robbery, larceny, assault and battery with intent to kill, and carrying a concealed weapon (1979-GS-21-0232). Applicant’s sentence is unknown. Applicant’s PCR application asserts he did not appeal.

II. CURRENT APPLICATION

In his first and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds asserts he is being held in custody unlawfully, alleging:

1. “Suffering collateral consequences from this conviction. It was used for sentencing purpose. Jackson v. State, 331 S.C. 486, 489 S.E.2d 945.

¹ Due to the age of Applicant’s challenged conviction and the lack of appellate or prior PCR actions challenging the conviction, the Court relies on Applicant’s PCR application for the procedural history of this Order.

- a. "Had my lawyer told me this conviction would be used against me in the future for enhancement purposes, I would have gone to trial."

Before the Court and incorporated herein are the Florence County Clerk's records, Applicant's SCDC records, Applicant's appellate records, the final orders of Applicant's previous PCR actions, and the records of this PCR action.

III. DISCUSSION

The State moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code (2014) on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requested the Court not appoint counsel in this matter, and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for so doing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court*, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). This Court has reviewed the pleading and the record in this case and finds there is no genuine issue of material fact. Therefore, summary dismissal is appropriate. Set forth below are the Courts findings as to each issue:

- a) Statute of limitations

The Court finds this application, except for allegations of newly discovered evidence, and subject matter jurisdiction, shall be summarily dismissed for failure to comply with the filing

procedures of the Uniform Post-Conviction Procedure Act² (the Act). Specifically, the Act requires:

An application for relief filed pursuant to this chapter *must* be filed within *one year after the entry of a judgment . . . or within one year after the sending of the remittitur*

S.C. Code Ann. § 17-27-45(A) (emphasis added).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). Further, section 17-27-70(c) authorizes this 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.”

Here, Applicant pleaded guilty on March 2, 1979, and he did not pursue a direct appeal. The application was, therefore, due on or before March 3, 1980. This application was filed on August 20, 2019, *almost forty years after* the requisite filing period expired. Accordingly, the allegations shall be summarily dismissed as being untimely.

b) Failure to State a Claim

Applicant’s action shall be summarily dismissed for failure to state a cognizable claim for relief. *See* Rule 12(b)(6), SCRPC (stating a defending party may move for summary judgement based on the plaintiff’s failure to “state facts sufficient to constitute a cause of action”). “The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is *not* rendered involuntary in a constitutional sense if the defendant is not informed of the

² S.C. Code Ann. § 17-27-10 to -160.

collateral consequences.” *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991) (emphasis in original). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. *Id.*; see also *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973) (“[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea . . .”). “[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence . . .*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original).

The fact that a conviction for a violent offense may be used to enhance a subsequent conviction is a collateral consequence of a guilty plea. *Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997). Applicant’s allegation is only that his violent offense was used to enhance the sentence arising out of his subsequent conviction. As such, this allegation and every part of the application based thereupon shall be dismissed pursuant to Rule 12(b)(6), SCRPC.

c) Laches

The application should 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 forty 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). As a result, Applicant’s delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of laches.

IV. CONCLUSION

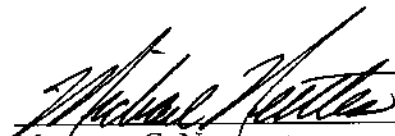
Pursuant to subsection 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any

reasons he may have, factual or legal, with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Michael D. Davidson, Esquire
PCR Division – March 2, 1979 Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Florence County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, 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 23 day of March, 2021.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth, Judicial Circuit Court

Florence, South Carolina.

2021 MAR 25 PM 1:27
DORIS P. O'HARA
CLERK & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2102341

Anthony Jerome Brown
DORIS POULOS O'HARA
South Carolina State Of

PLAINTIFF(S) DEFENDANT(S)
Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

3/25/2021

Date

For Clerk of Court Office Use Only

This judgment was entered on March 25, 2021, and a copy mailed first class or placed in the appropriate attorney's box on March 25, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

Anthony Jerome Brown # 253806
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Michael D. Davidson
Rembert C. Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
