

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
))
))
Bruce Houser, SCDC #243356,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2016-CP-38-00623

FINAL ORDER OF DISMISSAL

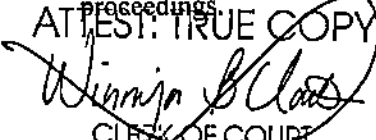
FILED FOR RECORD
WINNIFRA B. CLARK
2021 MAY 13 AM 11:33
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Bruce Houser on May 4, 2016. In response, Respondent, the State of South Carolina, moved to dismiss the application as untimely and successive pursuant to S.C. Code Ann §17-27-20, §17-27-45, §17-27-90, and under the doctrine of *laches*¹.

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 3, 2018, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 7, 2021, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant responded to this Court’s Conditional Order of Dismissal on May 16, 2018, by filing a document with the clerk of court entitled, “Reasons Showing Why the Conditional Order

¹ Pursuant to Rule 607(i), court reporters are not required to retain the records from proceedings for more than five years. Due to Applicant’s significant, almost eight year delay in filing the instant post-conviction relief application, Respondent is no longer able to order a transcript for the post-conviction relief proceedings.

ATTEST: TRUE COPY

Winnifra B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



of Dismissal Should Not Become Final". In this document, Applicant reiterates the allegations made in the instant post-conviction relief application – he was denied the right to appellate review of his PCR. Specifically, Applicant asserts Carl B. Grant, Esquire, PCR counsel for Applicant's first PCR, failed to appeal the denial of his PCR. Applicant also states Clarissa Joyner, Esquire, counsel for Applicant's second PCR, failed to pursue *Austin*² relief on his behalf. Applicant "believes that he is entitled to an evidentiary hearing to have the issues of whether his right to appellate review of his PCR issues were violated, or in the alternative, grant a belated appeal".

In this document, Applicant states his first PCR counsel failed to consult with him after his post-conviction relief hearing to determine whether Applicant wished to appeal the denial of post-conviction relief. Moreover, Applicant asserts counsel's failure to file a notice of appeal after his first PCR action was a violation of his Sixth Amendment rights. Applicant claims his rights were again violated, when his second PCR counsel failed to file an appeal, despite Applicant being granted a belated appeal to review the issues raised in his first PCR application. Applicant contends his second PCR counsel should have known Applicant wanted appellate review, as his only argument during his second PCR hearing was he was denied appellate review. Applicant notes, this is his third PCR application and he is requesting review of the issues raised in the first PCR application.

Furthermore, Applicant asserts this Court's finding that Applicant's post-conviction relief application is procedurally barred by the statute of limitations doctrine, should not apply to this matter. Applicant argues he was represented by counsel during his second PCR, and thus, counsel was "constitutionally obligated to file the notice of appeal on behalf of the Applicant". Applicant

² *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

further asserts the statute of limitations does not apply because he did not knowingly and voluntarily waive his right to appeal the denial of either of his PCR actions.

Applicant also contends this Court's finding his application is successive to his previous applications is "misplaced". Applicant argues the allegations in the instant post-conviction relief application were not and could not be raised in either of the Applicant's prior PCR actions. Applicant states counsel in his first PCR proceedings knew he was obligated to file a notice of appeal, but did not file following the denial of Applicant's request for relief. Applicant also claims he relied on counsel to file his notice of appeal.

Likewise, Applicant argues the doctrine of *laches* does not apply to this matter. Applicant claims he was represented by "incompetent counsel" and any delay on his part was unintentional. Applicant further asserts Respondent has not pointed to anything specific occurring during the delay that constitutes prejudice or disadvantages Respondent.

This Court has reviewed Applicant's response to this Court's Conditional Order of Dismissal in its 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.

This Court finds this application for post-conviction relief must be summarily dismissed under the equitable doctrine of *laches*.³ Applicant asserts the doctrine of *laches* "should not apply to this case because the delay in this matter was unintentional", this Court disagrees. To ensure

³ Initially, this Court found Applicant failed to show why his application should be considered timely pursuant to S.C. Code Ann. §17-27-45. While this Court agrees there is no justification for Applicant's delay of nearly eight years, the Court's previous finding in favor of the summary dismissal of this action based on the statute of limitations is not appropriate. Furthermore, in the Conditional Order of Dismissal, this Court found the application must be summarily dismissed because it was successive to Applicant's previous post-conviction relief application. This Court also finds, the previous finding in favor of the summary dismissal of this action, based on the procedural bar of successiveness of filings, is not appropriate. Therefore, this Court agrees with Applicant that this post-conviction relief application should not be dismissed based on the procedural bars of the statute of limitations or successiveness.

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*."

This Court finds this application is barred by the doctrine of *laches* and denies and dismisses this application for post-conviction relief with prejudice. Applicant seeks post-conviction relief almost eight years after an order granting belated review of his previous post-conviction relief claim. Absent some explanation or justification for the delay, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review 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). This Court also notes, the transcript for Applicant's first post-conviction relief hearing, is no longer available pursuant to Rule 607(i).

After a thorough review of the record and Applicant's response to the Conditional Order of Dismissal, this Court finds Applicant has still failed to establish any evidence or facts entitling him to an evidentiary hearing. Accordingly, pursuant to the doctrine of *laches*, this Court finds this action must be summarily dismissed.

This Court hereby advises Applicant 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.

IT IS THEREFORE ORDERED that, for the reasons set forth herein, this application is hereby **DENIED** and **DISMISSED** with prejudice.

AND IT IS SO ORDERED this 3rd day of May, 2021.



EDGAR W. DICKSON
Chief Administrative Judge – Common Pleas
First Judicial Circuit

Orangeburg, South Carolina



ALAN WILSON
ATTORNEY GENERAL

May 11, 2021

FILED FOR RECORD
WINNIFA B. CLARK
2021 MAY 13 PM 11:13
CLERK OF COURT
ORANGEBURG, SC
aw

The Honorable Winnifa Brown-Clark
Clerk of Court - Orangeburg County
Post Office Box 9000
Orangeburg, SC 29115-9000

Re: Bruce Houser, #243356 v. State of South Carolina
2016-CP-38-00623

Dear Ms. Brown-Clark:

Enclosed please find the original Final Order of Dismissal signed by the Honorable Edgar W. Dickson, in the above-captioned case, for filing in your office.

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

Sincerely,

Samantha J. Weidauer
Assistant Attorney General

SJW/kw

cc: Bruce Houser, #243356

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC