

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Leroy Lockett, #259429,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2017-CP-38-0880

CONDITIONAL ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed by Leroy Lockett ("Applicant") on July 5, 2017. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment issued by the Orangeburg County Clerk of Court. In November 2000, the Orangeburg County Grand Jury indicted Applicant for assault and battery with intent to kill ("ABWIK") (2000-GS-38-1772), possession of a stolen vehicle valued at less than five thousand dollars (2000-GS-38-1773), failure to stop for a blue light (2000-GS-38-1774), second-degree burglary (2000-GS-38-1775), armed robbery (2000-GS-38-1776) and grand larceny of a vehicle (2000-GS-38-1777). Applicant's application only addresses his convictions of ABWIK, failure to stop for a blue light, and burglary (2000-GS-38-1772; -1774; -1775).

The burglary took place on the evening of July 14, 2000, when Applicant entered the home of Victim by breaking a window without her consent and with the intent to commit a crime therein. The assault with intent to kill charge arose from an incident occurring on July 31, 2000, when Applicant shot another Victim in the face with a shotgun. The failure to stop for a blue light

occurred on that same day in Orangeburg County, where he failed to stop for a law enforcement vehicle after being signaled to do so by use of a blue light and siren.

Applicant pled guilty to his charges without negotiations or recommendation and was sentenced on May 18, 2001. Applicant was sentenced to imprisonment for thirty (30) years for armed robbery, to be served consecutively to his sentence of twenty (20) years for ABWIK. Applicant was also sentenced to three (3) years for failure to stop for a blue light, to be served concurrently. Applicant was given credit for two hundred and ninety two (292) days of time served.

This case was prosecuted by Christopher J. Murphy of the Orangeburg County Solicitor's Office. Applicant was represented by Margaret Hinds, Esquire. Applicant did not appeal from his guilty pleas or sentences. Applicant has one previous Post-Conviction Relief Application filed in 2004 that was dismissed by the Court.

II. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
2. Subject Matter Jurisdiction
 - a. "Court lacked jurisdiction to impose sentence."
3. Trial Errors
 - a. "Applicant is illegally imprisoned because of breach of plea agreement."
 - b. "All Applicant's convictions are to run concurrent, should have been released."
 - c. "Applicant's sentence and convictions are void because the two offenses were run concurrently, but want vacated with the failure to stop for a blue light."

Applicant seeks relief and request this Court reverse his convictions and remand.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, and the current PCR application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

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).

Applicant pled guilty and was sentenced on May 18, 2001. Applicant did not file an appeal. Therefore, the application was due on May 18, 2002. This application was filed on July 5, 2017 – well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the matter 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 *over 16 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, the Court shall summarily dismiss the application as barred by the equitable doctrine of laches.



Successive

The Court finds the application must also 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 applications 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 applications 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.

IV. 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 Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Sara E. Gunton, Esquire
PCR Division – 1st Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Orangeburg 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 21st day of August, 2019.



EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit
Calhoun & Orangeburg County

Orangeburg, South Carolina