

RECEIVED

JUL 16 2021

S.C. SUPREME COURT

The State of South Carolina  
In The Supreme Court

Appeal from Spartanburg County  
Court of Common Pleas  
Post Conviction Relief  
R. Keith Kelly, Circuit Court Judge  
Case# 2019-CP-42-00107

Tammy R. Jones 283271

Appellant

vs

State of South Carolina

Respondent

### NOTICE OF APPEAL

The Appellant Tammy R. Jones 283271, appeal the final Order of Dismissal signed by the Honorable R. Keith Kelly dated June 18-2021 and filed on June 25-2021. Appellant received written notice of entry of this order dated on July 7-2021

Respectfully Submitted

Tammy R Jones 283271 Zion A / 26A  
Camille Griffin Graham Corr. Inst.  
4450 Broad River Road  
Columbia SC 29210

Dated: July 12-2021

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

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

Tammy R. Jones, #283271  
Applicant,

) Case No.: 2019-CP-42-00107  
)  
)

v.

) **FINAL ORDER OF DISMISSAL**  
)  
)

State of South Carolina,  
Respondent.

)  
)  
)  
)  
)

**RECEIVED**

JUL 16 2021

S.C. SUPREME COURT

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Tammy Jones on January 9, 2019. Respondent moved to summarily dismiss the application on August 19, 2019, for untimeliness, successiveness, and as barred by the doctrine of *laches*.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 21, 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 February 26, 2021, as evidenced by the attached affidavit of personal service.

On September 3, 2019, Applicant filed "Answer to Motion to Dismiss Amended Petition for Post-Conviction Relief." In this response, Applicant raised the following allegations:

1. "After Discovered Evidence, which is material to guilt or innocence."
2. "Violation of 6<sup>th</sup> Amendment Right[s]."
3. "Appe[llant] Attorney Joseph Savitz failed to investigate, raise and brief preserved arguments relating to Trial Court erroneous errors in trial."
  - a. "Jury instructions on accomplice liability."
  - b. "Charging jury on hands of one, hands of all theory."
  - c. "Mis-instructing and misleading the jury."
  - d. "Not including a lesser offense due to there being insufficient evidence to support the charges."

RRK

FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY M. COX

Applicant expanded upon this. Specifically, she stated that one of the instructions given during jury deliberations was misleading and confusing, specifically in regards to instructions on accomplice liability given. Applicant also expanded upon her ineffective assistance of Appellate Counsel claims. Applicant does not attempt to explain why her application is not untimely, successive, or barred by the doctrine of laches, nor does she expand upon her allegation of after discovered evidence.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not established a *prima facie* case of newly discovered evidence. Specifically, beyond stating that newly discovered evidence exists, Applicant has offered nothing else to substantiate this claim. Specifically, she has not identified what the evidence is, how it would impact the case at trial, when it was discovered, why it is not cumulative or impeaching, or why she could not have discovered it through due diligence before. Thus, Applicant has failed to make a *prima facie* case for why she is entitled to relief on this claim and, as such, this court should dismiss this claim for failure to make a *prima facie* case of newly discovered evidence.

Additionally, Applicant failed to show why the doctrine of *laches* is inapplicable to her case. Over fifteen years have passed between when Applicant was convicted and when she brought a PCR action. Applicant has offered no justification 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 for untimeliness. Applicant was convicted on November 21, 2003, and the remittitur from her direct appeal issued

RKK

FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPRINGFIELD COUNTY  
AMM:COX

January 3, 2006. Thus, her PCR application was due on January 4, 2007. The current application was not filed until January 9, 2019. Applicant has failed to sufficiently explain the twelve 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.

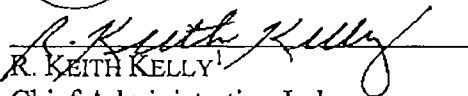
Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that she is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in her response, and, consequently, 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, as barred by the doctrine of *laches*, and for failure to establish a *prima facie* case of newly discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

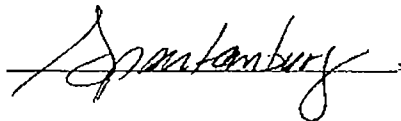


FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

**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 prejudice. This court hereby advises 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 18 day of June, 2021.

  
R. KEITH KELLY<sup>1</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

, South Carolina

**FILED**  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

---

<sup>1</sup> The Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit and the Honorable J. Mark Hayes, II is Chief Administrative Judge for General Sessions of the Seventh Judicial Circuit. However, because they both presided over Applicant's prior proceedings, the proposed final order of dismissal is being sent to the Honorable R. Keith Kelly, Seventh Circuit Court Judge.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
	)	
Tammy R. Jones, #283271	)	Case No.: 2019-CP-42-00107
Applicant,	)	
	)	
v.	)	<b>FINAL ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Tammy Jones on January 9, 2019. Respondent moved to summarily dismiss the application on August 19, 2019, for untimeliness, successiveness, and as barred by the doctrine of *laches*.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 21, 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 February 26, 2021, as evidenced by the attached affidavit of personal service.

On September 3, 2019, Applicant filed "Answer to Motion to Dismiss Amended Petition for Post-Conviction Relief." In this response, Applicant raised the following allegations:

1. "After Discovered Evidence, which is material to guilt or innocence."
2. "Violation of 6<sup>th</sup> Amendment Right[s]."
3. "Appe[llant] Attorney Joseph Savitz failed to investigate, raise and brief preserved arguments relating to Trial Court erroneous errors in trial."
  - a. "Jury instructions on accomplice liability."
  - b. "Charging jury on hands of one, hands of all theory."
  - c. "Mis-instructing and misleading the jury."
  - d. "Not including a lesser offense due to there being insufficient evidence to support the charges."

*RRK*

SPARTANBURG COUNTY  
 CLERK OF COURT  
 AMY M. COX  
 2021 JUN 25 PM 4: 28  
**FILED**

Applicant expanded upon this. Specifically, she stated that one of the instructions given during jury deliberations was misleading and confusing, specifically in regards to instructions on accomplice liability given. Applicant also expanded upon her ineffective assistance of Appellate Counsel claims. Applicant does not attempt to explain why her application is not untimely, successive, or barred by the doctrine of laches, nor does she expand upon her allegation of after discovered evidence.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not established a *prima facie* case of newly discovered evidence. Specifically, beyond stating that newly discovered evidence exists, Applicant has offered nothing else to substantiate this claim. Specifically, she has not identified what the evidence is, how it would impact the case at trial, when it was discovered, why it is not cumulative or impeaching, or why she could not have discovered it through due diligence before. Thus, Applicant has failed to make a *prima facie* case for why she is entitled to relief on this claim and, as such, this court should dismiss this claim for failure to make a *prima facie* case of newly discovered evidence.

Additionally, Applicant failed to show why the doctrine of *laches* is inapplicable to her case. Over fifteen years have passed between when Applicant was convicted and when she brought a PCR action. Applicant has offered no justification 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 for untimeliness. Applicant was convicted on November 21, 2003, and the remittitur from her direct appeal issued on

RKK

FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMM W. COX

January 3, 2006. Thus, her PCR application was due on January 4, 2007. The current application was not filed until January 9, 2019. Applicant has failed to sufficiently explain the twelve 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.

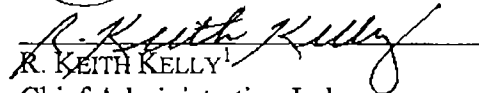
Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that she is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in her response, and, consequently, 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, as barred by the doctrine of *laches*, and for failure to establish a *prima facie* case of newly discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

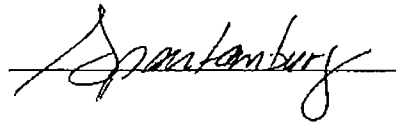


FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

**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 prejudice. This court hereby advises 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 18 day of June, 2021.

  
R. KEITH KELLY<sup>1</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

, South Carolina

**FILED**  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

---

<sup>1</sup> The Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit and the Honorable J. Mark Hayes, II is Chief Administrative Judge for General Sessions of the Seventh Judicial Circuit. However, because they both presided over Applicant's prior proceedings, the proposed final order of dismissal is being sent to the Honorable R. Keith Kelly, Seventh Circuit Court Judge.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
	)	
Tammy R. Jones, #283271	)	Case No.: 2019-CP-42-00107
Applicant,	)	
	)	
v.	)	<b>FINAL ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Tammy Jones on January 9, 2019. Respondent moved to summarily dismiss the application on August 19, 2019, for untimeliness, successiveness, and as barred by the doctrine of *laches*.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 21, 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 February 26, 2021, as evidenced by the attached affidavit of personal service.

On September 3, 2019, Applicant filed "Answer to Motion to Dismiss Amended Petition for Post-Conviction Relief." In this response, Applicant raised the following allegations:

1. "After Discovered Evidence, which is material to guilt or innocence."
2. "Violation of 6<sup>th</sup> Amendment Right[s]."
3. "Appe[llant] Attorney Joseph Savitz failed to investigate, raise and brief preserved arguments relating to Trial Court erroneous errors in trial."
  - a. "Jury instructions on accomplice liability."
  - b. "Charging jury on hands of one, hands of all theory."
  - c. "Mis-instructing and misleading the jury."
  - d. "Not including a lesser offense due to there being insufficient evidence to support the charges."

FILED  
 2021 JUN 25 PM 4: 28  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 AMANDA COX

Applicant expanded upon this. Specifically, she stated that one of the instructions given during jury deliberations was misleading and confusing, specifically in regards to instructions on accomplice liability given. Applicant also expanded upon her ineffective assistance of Appellate Counsel claims. Applicant does not attempt to explain why her application is not untimely, successive, or barred by the doctrine of laches, nor does she expand upon her allegation of after discovered evidence.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not established a *prima facie* case of newly discovered evidence. Specifically, beyond stating that newly discovered evidence exists, Applicant has offered nothing else to substantiate this claim. Specifically, she has not identified what the evidence is, how it would impact the case at trial, when it was discovered, why it is not cumulative or impeaching, or why she could not have discovered it through due diligence before. Thus, Applicant has failed to make a *prima facie* case for why she is entitled to relief on this claim and, as such, this court should dismiss this claim for failure to make a *prima facie* case of newly discovered evidence.

Additionally, Applicant failed to show why the doctrine of *laches* is inapplicable to her case. Over fifteen years have passed between when Applicant was convicted and when she brought a PCR action. Applicant has offered no justification 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 for untimeliness. Applicant was convicted on November 21, 2003, and the remittitur from her direct appeal issued on

RKK

FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMM/COX

January 3, 2006. Thus, her PCR application was due on January 4, 2007. The current application was not filed until January 9, 2019. Applicant has failed to sufficiently explain the twelve 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.

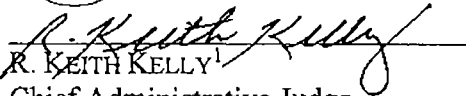
Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that she is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in her response, and, consequently, 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, as barred by the doctrine of *laches*, and for failure to establish a *prima facie* case of newly discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

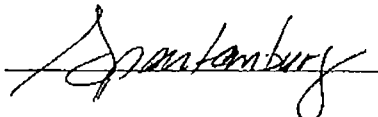


FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

**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 prejudice. This court hereby advises 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 18 day of June, 2021.

  
R. KEITH KELLY<sup>1</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

, South Carolina

FILED  
2021 JUN 25 PM 4:28  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

---

<sup>1</sup> The Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit and the Honorable J. Mark Hayes, II is Chief Administrative Judge for General Sessions of the Seventh Judicial Circuit. However, because they both presided over Applicant's prior proceedings, the proposed final order of dismissal is being sent to the Honorable R. Keith Kelly, Seventh Circuit Court Judge.