

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF SPARTANBURG )

Tammy Renee Jones, ) Case No.: 2019-CP-42-00107  
S.C.D.C. No. 283271, )  
 )

Applicant, )

CONDITIONAL ORDER OF DISMISSAL

v. )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

This matter comes before the Court by way of an application for post-conviction relief filed by Tammy Renee Jones (Applicant) on January 9, 2019. Respondent made its Return, requesting the application be summarily dismissed.

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### I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the April 2002 term of the Spartanburg County Grand Jury for murder (2002-GS-42-01681), kidnapping (2002-GS-42-01680), and common law robbery (2002-GS-42-01679). Ricky Harris, Esq., represented Applicant. On November 17, 2003, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury acquitted Applicant of murder, but found Applicant guilty as indicted for kidnapping and robbery on November 21, 2003. Judge Cole sentenced Applicant to imprisonment for concurrent terms of thirty years for kidnapping and fifteen years for robbery.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which raised the following issue:

The judge erred by allowing hearsay evidence implying that a possible codefendant had not been present when the crimes were committed and that Jones, therefore, must have committed them.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Jones, Op. No. 2005-UP-610 (S.C. Ct. App. filed Dec. 8, 2005). The Remittitur was issued on January 3, 2006.

#### **First PCR Application: 2006-CP-42-03141**

Applicant filed his first application for post-conviction relief on September 6, 2006 (2006-CP-42-03141). The PCR court addressed the following grounds for relief in his application:

1. Ineffective assistance of trial counsel, in that:
  - a. Counsel failed to object to inconsistent statements of a witness.
2. Trial court error, in that:
  - a. The trial court erroneously admitted an audiotape into evidence; and
  - b. The trial court permitted hearsay.

Respondent made its return on March 30, 2007, and an evidentiary hearing into the matter was convened on November 8, 2007, before the Honorable Roger L. Couch. Applicant was present at the hearing and represented by Jacqueline A. Moss, Esq.. S. Prentiss Counts, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and Ricky Harris, Esq., also testified. By written order dated January 14, 2008, and filed January 15, 2008, Judge Couch denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by LaNelle C. Durant, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d

201 (1988). The Supreme Court of South Carolina denied Applicant's petition by unpublished order. The Remittitur was issued on November 24, 2008.

### **Second PCR Application: 2013-CP-42-00040**

Applicant filed his second application for post-conviction relief on January 14, 2013 (2013-CP-42-00040). He alleged the following grounds for relief in his application:

1. "Declaratory Judgment Act."
  - a. "Kidnapping offense did not include sexual misconduct necessary for sex offender registration. Court of Common Plea have jurisdiction to make [findings] as to the sexual offender registry off."

Respondent made its return and motion to dismiss on September 11, 2013, arguing the application was successive and untimely. On October 4, 2013, the Honorable J. Mark Hayes II issued a Conditional Order of Dismissal. The Honorable J. Derham Cole thereafter issued a Final Order on November 20, 2014, dismissing the matter with prejudice.

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### **II. CURRENT APPLICATION**

In her third and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "After Newly Discovered Evidence – which is material to guilt/innocence"
  - a. "A defendant is constitutionally entitled to effective assistance from appellant attorney"
2. "Violation of my 6<sup>th</sup> Amendment Rights"
  - a. "Denied effective assistance of counsel by Appellant attorney"
3. "Appellant attorney failed to raise valid and preserved arguments relating to trial courts errors in the trial."
  - a. "Post conviction relief judge and the Asst Attorney General both stated that grounds raised in PCR were grounds for appeals"

Applicant requests relief as follows:

- "Sentence Vacated as well as judgment of conviction vacated"

Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the

opinions of the Court from each of Applicant's prior appeals, the final orders of Applicant's previous PCR actions, and the records of this current PCR action.

### 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. § 17-27-130 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 was convicted on November 21, 2003, and the remittitur from her direct appeal issued on January 3, 2006. The current application was not filed until January 9, 2019—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

#### 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

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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, or on direct appeal; 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 she could not have raised her current allegations in her previous applications for post-conviction relief. Therefore, she has failed to meet the burden imposed upon her, and the Court shall summarily dismiss the application as successive to Applicant’s previous PCR application.

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## 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 more than 15 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.

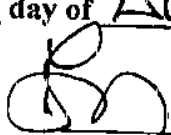
#### IV. CONCLUSION

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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Johnny E. James, Jr., Esquire  
PCR Division – 7<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

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

  
\_\_\_\_\_  
GRACE G. KNIE  
Chief Judge for Common Pleas  
Seventh Judicial Circuit

Spartanburg, South Carolina

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ALAN WILSON  
ATTORNEY GENERAL

August 19, 2019

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The Honorable Grace Gilchrist Knie  
Chief Judge, 7<sup>th</sup> Judicial Circuit  
180 Magnolia Street  
Spartanburg, South Carolina 29306

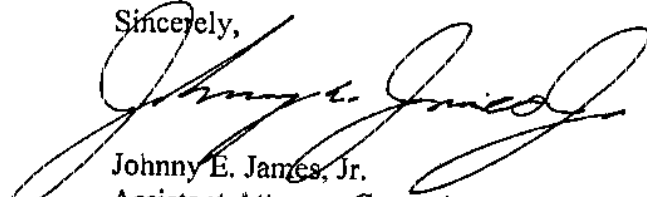
Re: Tammy Renee Jones, #283721 v. State of South Carolina  
2019-CP-42-00107

Dear Judge Knie:

Enclosed please find the proposed **Conditional Order of Dismissal** in the above-captioned case.

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,



Johnny E. James, Jr.  
Assistant Attorney General

JEJ/ec  
Enclosures

cc: Tammy Renee Jones, #283271