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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Billy W. McIntosh, #231018,
Applicant,

Case No.: 2020-CP-32-01083

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,
Respondent.

LISA M. COMPTON
CLERK OF COURT
LEXINGTON, SC

2021 JUN 30 PM 1:03

FILED

This matter comes before the Court by way of Billy W. McIntosh's ("Applicant") action for post-conviction relief ("PCR") commenced on March 5, 2020. The State made its return on December 18, 2020, requesting the action be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. On September 6, 1977, Applicant was indicted by the Lexington County Grand Jury for murder and kidnapping (1977-GS-32-0343).

On September 12, 1977, Applicant proceeded to a jury trial before the Honorable Rodney A. Peebles. The jury convicted Applicant as indicted on September 14, 1977. Judge Peebles sentenced Applicant to consecutive terms of life imprisonment for murder and kidnapping. Applicant's convictions and sentences were affirmed on appeal.

Applicant commenced this PCR action on March 5, 2020.¹ The State made its return on December 18, 2020, requesting the action be summarily dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by

¹ Since these convictions occurred over forty years ago, the State indicated in its return that it was unable to produce sufficient records to fully summarize Applicant's procedural history because the files have been destroyed. However, Applicant indicates in his application—and the State's record confirm—that he filed three previous PCR actions. These actions—filed in 1982, 1992, and 1994—were all dismissed. Additionally, the State's records indicate that Applicant's direct appeal file was opened on January 10, 1978, and was closed on July 26, 1978.

the doctrine of laches; Applicant failed to make a prima facie case of newly-discovered evidence; and because continued litigation by Applicant frustrates the need for finality of litigation.

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 December 23, 2020, and filed February 17, 2021, 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 March 29, 2021, serving the above-mentioned conditional order of dismissal on Applicant.

On January 14, 2021, Applicant filed a document titled "Opposition to Motion to Dismiss." Applicant then submitted a document titled "Reply to Conditional Order of Dismissal" dated April 5, 2021, and filed April 7, 2021.

II. CONCLUSION

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his responses, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

This Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrines of *res judicata* and *laches*; Applicant failed to make a *prima facie* case of newly-discovered evidence; and because continued

litigation by Applicant frustrates the need for finality of litigation.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty (30) 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.



WALTON J. McLEOD, IV.
Presiding Judge
Twelfth Judicial Circuit

Lexington, South Carolina
June 29, 2021