

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeroid John Price, 298791,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

2014-CP-40-04524

**CONDITIONAL ORDER OF DISMISSAL**

2014 NOV 13 AM 11:29  
CLERK OF COURT  
RICHLAND COUNTY

This matter comes before the Court by way of the application for post-conviction relief (PCR) filed July 21, 2014 by Jeroid John Price ("Applicant"). Respondent made its return requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the May 2003 term of the Richland County Grand Jury for murder (2003-GS-40-2295). From December 15 - 19, 2003, Applicant proceeded to trial before the Honorable Reginald I. Lloyd, III and a jury. He was represented by Cameron B. Littlejohn, Jr. and Amye Rushing, Esquires. The matter was prosecuted by David M. Pascoe, Jr., Donald N. Sorenson, and Bryan Jeffries, Esquires. Applicant was found guilty as indicted, and was sentenced by Judge Lloyd to confinement for a period of 35 years.

Applicant filed a notice of appeal that was perfected by Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense and Amye L. Rushing, Esquire. His conviction was ultimately affirmed by the Supreme Court of South Carolina in an order filed April 17, 2006.

State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006). Remittitur issued to the circuit court on May 5, 2006.

**2006-CP-40-7168**

Applicant filed his first application for post-conviction relief on December 4, 2006, alleging he was being held in custody unlawfully due to ineffective assistance of counsel for failure to object to a gang expert's testimony as a violation of the Confrontation Clause. Respondent made its return on or about May 14, 2007, and Applicant filed an amended application on April 30, 2008. Applicant was present and represented by Charles Thomas Brooks, III, Esquire for the evidentiary hearing held at the Richland County Courthouse on June 25, 2008. Respondent was represented by Brian T. Petrano, Esquire of the South Carolina Attorney General's Office. By written order dated June 27, 2008, the Honorable William P. Keesley denied and dismissed the application with prejudice. Upon information and belief, Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed on his behalf by Appellate Defender Elizabeth Franklin-Best of the South Carolina Office of Indigent Defense on June 15, 2009. The State, again through Mr. Petrano, filed its return to the petition on August 31, 2009. The South Carolina Supreme Court referred the case to the South Carolina Court of Appeals for disposition pursuant to South Carolina Appellate Court Rule 227(l) (now 243(l)). On January 12, 2011, the Court of Appeals issued an order denying the petition. Price v. State, Order (S.C. Ct. App., filed Jan. 12, 2011). Remittitur issued January 28, 2011.

Ms. Franklin-Best appealed to the Supreme Court of the United States on behalf of Applicant, filing a petition for writ of certiorari during the October 2010 term. A letter was issued June 13, 2011 from the Court denying the petition. Jeroid J. Price v. State of South Carolina, No. 10-9966, \_\_\_ U.S. \_\_\_ (U.S. June 13, 2011).

## 1:11-1172-JMC-SVH

Applicant filed a pro se petition for a writ of habeas corpus in the federal courts on May 12, 2011. Respondent, represented by Assistant Deputy Attorney General Donald J. Zelenka filed a motion for summary judgment on August 31, 2011, as well as a return and memorandum of law in support of motion for summary judgment on the same date. On March 21, 2012, the Honorable J. Michelle Childs issued an order adopting the report and recommendation of the Honorable Shiva V. Hodges and thereby granted the motion for summary judgment and denied Applicant's motions for evidentiary hearings. A certificate of appealability was denied.

### CURRENT APPLICATION

In his *third* and current application for collateral relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of self-defense
  - a. New witness affidavit or sworn statement
2. Ineffective assistance of counsel
  - a. Per Missouri v. Frye
3. Unconstitutional jury charge
  - a. Hands of one hands of all jury charge

Applicant added the follow amendments via a filing dated September 27, 2016 and received by Respondent on November 14, 2016:

1. "Counsel was ineffective for failing to object that the Judge erred in finding Petitioner was not prejudice by trial counsel's failure to object to the charge on the inference of malice from the sue of a deadly weapon. *Gibson v. State* decided May 11, 2016."
2. "The Judge abused his discretion when he allowed the State's key witness (aunt) to be qualified and be seated as a juror after she disclosed her relationship to the State's key witness during the proceedings."

Respondent stated that it is also in possession of the letter that Applicant contends is newly discovered evidence, which also includes a typewritten statement by Applicant alleging that the letter meets the requirements of “McCoy v. State, 737 S.E.2d 623 (S.C. 2013)” and “Clark v. State, 434 S.E.2d (1993).” It also reiterates ineffective assistance of counsel and includes an allegation of ineffective assistance of appellate counsel. This letter was dated July 8, 2014.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Statute of Limitations**

This Court finds that the application should 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 (“the Act”). 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 offense 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). The remittitur from Applicant’s direct appeal issued on May 5, 2006. Accordingly, Applicant was required to file this application on or before May 6, 2007. Applicant did not file this application until July 21, 2014, which was well beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to “grant a motion by either

party for summary disposition of [an] application when it appears from the pleadings ...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, this application is dismissed for failure to file within the time mandated by the Act.

### Successive

Similarly, this application for post-conviction relief should be summarily dismissed because it is successive to the previous application for post-conviction relief and fails to state a claim upon which relief can be granted. S.C. Code Ann. § 17-27-90 (1985) 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). “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). “Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than ‘one bite at the apple’ as it were.” Id. The “burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised in a previous application.” Id.

Applicant raised his claims of ineffective assistance of plea counsel. Applicant received his “one bite at the apple.” Furthermore, Applicant could have raised his additional claims and allegations of ineffective assistance of counsel in his previous PCR application but failed to do

so. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations, other than that regarding newly-discovered evidence, in his previous application for post-conviction relief. Accordingly, he has failed to meet the burden imposed upon him, and the Court summarily dismisses the application as successive to Applicant's previous PCR application.

### **Laches**

This application is also 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 was convicted and sentenced in 2003 and appealed immediately thereafter, but filed this application approximately eight 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 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). Therefore, the Application should be summarily dismissed as barred by the doctrine of laches.

#### **Newly-Discovered Evidence**

The Court finds Applicant has failed to set forth a *prima facie* showing that he is in possession of newly-discovered evidence, such that he should be entitled to an evidentiary hearing. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;

- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant has failed to allege facts sufficient to support his claims of newly discovered evidence. Generally, Applicant does not assert any specific date upon which he discovered this “new evidence,” but only alleges that it is “new evidence.” The letter itself is dated August 4, 2013, and postmarked August 7, 2013, and the contents describe the writer’s viewing of a television show called Gangland. The writer, a Joshua Hamilton, states that he saw the program and realized that he was at the scene of the incident, which played out differently than depicted. Respondent alleges that these factors are inadequate to establish a *prima facie* showing that the evidence could not have been discovered before trial by the exercise of due diligence—as required by either Hayden or the statutory exception to the timeliness requirement. See S.C. Code Ann. 17-27-45(C).

The evidence presented in this letter is wholly consistent with the evidence presented at trial. Mr. Hamilton, the author, describes several people struggling in a hallway, and several gunshots sounding as part of that struggle. He does not describe a single individual as the shooter, nor does he affirmatively state that Applicant was not the shooter. He states that a person with a silver object approached Applicant while he was struggling with another gentleman, and asserts that Applicant was fighting for his life. This is consistent with evidence produced at trial. See State’s opening, trial tr. p. 71-73.

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



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2014CP4004524**

**Jeroid John #298791 Price**

**State of South Carolina**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case. Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Nov, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Jeroid John #298791 Price

John B. Shupper

Jessica Elizabeth Kinard

Jeroid John #298791 Price

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court *Jessica W. Kinard*