



ALAN WILSON
ATTORNEY GENERAL

September 8, 2021

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304

2021 SEP 13 AM 9:03
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Re: Rusty Jones, #333264 v. State of South Carolina
2020-CP-42-00982

Dear Ms. Cox:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable J. Derham Cole in the above-captioned case, for filing in your office.

Should you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Chelsey F. Marto
Assistant Attorney General

CFM/ec

Enclosure(s)

cc: Rusty Jones, #333264

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Rusty Jones, #333264,
Applicant,

) Case No.: 2020-CP-42-00982
)
)

v.

) **FINAL ORDER OF DISMISSAL**
)
)

State of South Carolina,
Respondent.

)
)
)
)
)
)

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Rusty Jones on March 12, 2020. Respondent moved to summarily dismiss the application on October 7, 2020, for untimeliness.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated October 14, 2020, 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 be finalized. Applicant was personally served with this conditional order of dismissal on October 27, 2020, as evidenced by the attached affidavit of personal service.

On November 2, 2020, Applicant filed his reply to the conditional order of dismissal. Applicant claims that his application is not untimely because he proceeded to trial on unrelated charges¹ on October 17-18, 2017, which was appealed and dismissed on appeal by November 6, 2019. These charges were not addressed in his PCR Application.

This Court has reviewed the response in full and finds it is insufficient to warrant an

¹ The appeal discussed in Applicant's response stemmed from a 2015 distribution of cocaine offense (2015-GS-42-949). The underlying convictions listed in the PCR application were two distribution of crack cocaine offense from 2011 (2011-GS-42-05491 and -05492).

evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

This Court finds that the application is barred for untimeliness. Applicant pled guilty to all charges on November 29, 2012. The application was therefore due on November 30, 2013. This application was filed on March 12, 2020, well beyond the statutory filing period. Further, regardless of when the remittitur his recent direct appeal was issued, this appeal was related to unrelated charges not listed in his PCR application and, thus, the appeal date is not a proper basis for deeming the action timely. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Before this 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). Applicant has failed to make such a showing based on the information set forth in his 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. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.


[conclusion and signature line on following page]

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IT IS THEREFORE ORDERED that, for the reasons 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 30 day of August, 2021.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina

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2021 SEP 13 AM 9:04
CLERK OF COURT
SPARTANBURG COUNTY
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