

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 )  
 Rusty A. Jones, #333246, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-00982

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
 2020 OCT 14 PM 2:05  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 JIMMY M. COX

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Rusty A. Jones on March 12, 2020. Respondent made its Return, requesting the application be summarily dismissed.

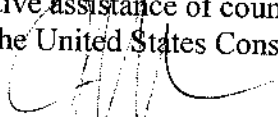
**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In September 2011, the Spartanburg County Grand Jury indicted Applicant for two counts of Possession with Intent to Distribute Methamphetamine or Cocaine Base (2011-GS-42-05491 and -05492). Matthew W. Shealy, Esquire represented Applicant. On November 29, 2012, Applicant pleaded guilty as indicted to all charges before the Honorable Thomas A. Russo, circuit court judge. Judge Russo sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his conviction or sentence.

**II. Current Action before this Court**

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Applicant was denied and deprived of Due Process and Equal Protection of the law through and by way of ineffective assistance of counsel under the Fifth, Sixth, and Fourteenth Amendment[s] of the United States Constitution – Article One Section Three

  
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of the South Carolina Constitution as well as all other federal and state constitutions, statutes, laws, and applicable citings.”

- a. “Trial Counsel failed to have compulsory process for obtaining witnesses in favor of applicant.”
- b. “Trial Counsel failed to present testimony that would have been exculpatory to Applicant.”
- c. Counsel failed to pursue objection when the prosecutor misrepresented physical evidence at trial.”
- d. “Trial Counsel failed to request a change of venue in order to ensure a fair and impartial trial.”

Before this Court are Applicant’s Spartanburg County Clerk of Court Records, Applicant’s South Carolina Department of Corrections Records, and the current PCR application.

**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 South Carolina Code Annotated Sections 17-27-70 and 17-27-80, this Court informs the parties of its intent to dismiss the application based upon untimeliness.

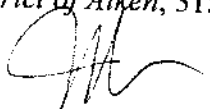
The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

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).

Our Supreme Court has held that the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). 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).



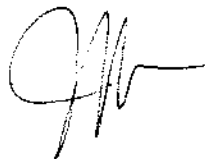
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Additionally, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

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. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

[Conclusion and Signature Line on Following Page]

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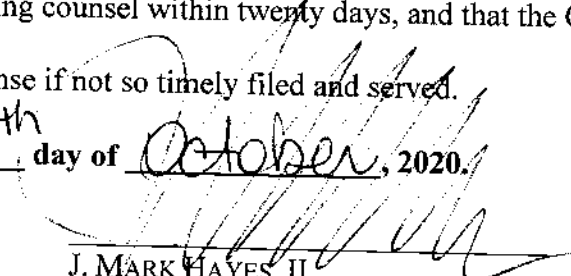
**IV. Conclusion**

Pursuant to South Carolina Code Annotated Section 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 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  
Attn: Chelsey F. Marto, Esquire  
PCR Division – Seventh 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 days, 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 4<sup>th</sup> day of October, 2020.

  
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J. MARK HAYES, II  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

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