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Anderson, SC COC, CP/SS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
)
)
Michael Braxton,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2021-CP-04-0320

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Michael Braxton (Applicant) on February 17, 2021. The State made its return on September 10, 2021, requesting the action be summarily dismissed.¹

I. PROCEDURAL HISTORY

Applicant is **not** presently confined in the South Carolina Department of Corrections.² On April 6–7, 1983, Applicant and three co-defendants sexually assaulted Elizabeth Daniel—anally, orally, and vaginally—to the extent she required surgery.

¹ The State’s return was originally due on April 26, 2021. *See* Rule 12(a), SCRCPP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”). However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State’s request to accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

² Applicant is currently in the custody of the Anderson County Sheriff’s Office awaiting trial pursuant to a petition filed by the State under the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10 to -170, a civil commitment procedure for the long-term care and treatment of

Action under the APA (17-ALJ-04-0154-AP) and Subsequent Appeal (2017-001964)

The factual background relevant to this case is described by the Court of Appeals in *Braxton v. South Carolina Department of Corrections*:

On November 17, 1983, Braxton was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). Braxton served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, Braxton was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on Braxton. Braxton was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC), and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on Braxton. Braxton completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, Braxton served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, Braxton was incarcerated in Anderson County, South Carolina. Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, Braxton was transferred back into the custody of SCDC with a release date of June 22, 2022.

Braxton timely filed a Step 1 grievance with SCDC, claiming SCDC failed to give him credit towards his remaining CSC sentence for the time he spent on successful parole supervision and for the time he spent incarcerated in Tennessee. Braxton's Step 1 grievance was denied. Braxton then filed a Step 2 grievance with SCDC, restating the allegations set forth in his Step 1 grievance and also arguing he should be credited for time served "incarcerated in Tennessee . . . (which includes the time served during the extradition process)." His Step 2 grievance was subsequently denied.

Braxton then appealed SCDC's denial of his grievances to the ALC. He argued SCDC erred in refusing to give him credit (1) for the time he spent on parole, (2) for the time he spent in pretrial detention and incarcerated for unrelated charges in Tennessee while there were

sexually violent predators. He is detained pursuant to an Order for Evaluation issued November 12, 2020, by the Honorable R. Scott Sprouse.

parole violation warrants from South Carolina in place, and (3) for the time he served for the period he was held in Anderson County before returning to the custody of SCDC. By order dated August 24, 2017, the ALC affirmed SCDC's final decision regarding the calculation of Braxton's sentence.

430 S.C. 637, 641–42, 846 S.E.2d 383, 385 (Ct. App. 2020) (footnotes omitted).

Addressing Applicant's claims, the Court of Appeals held that "the ALC erred in affirming SCDC's refusal to grant him credit for time served while he was successfully on parole prior to his Tennessee arrest" and therefore remanded that "issue to the ALC to recalculate Braxton's sentences such that he receives credit for the time he served while on parole." *Id.* at 386. Regarding Applicant's arguments the ALC erred in refusing to give him credit for time served before and after he was sentenced on charges in Tennessee and in refusing to give him credit for the time he was held in Anderson County, the Court affirmed.³ *Id.* at 387–88.

On August 26, 2020, the ALC issued an amended order on remand, finding Applicant was entitled to credit for time spent on parole from March 31, 1994 through April 16, 1996—a total of two years and sixteen days. Thereafter, SCDC sent a final decision letter to Applicant explaining that he had already received credit for that precise period of time. Applicant did not appeal from that second agency determination.

Federal Habeas Corpus Action (8:20-3168-HMH-JDA)

On August 31, 2020, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. *Braxton v.*

³ Applicant filed a notice of appeal and a petition for a writ of certiorari in the Supreme Court of South Carolina, attempting to challenge the portion of the decision in which the appellate court had affirmed. However, the Court struck the notice of appeal and petition, holding that the decision appealed from was not final insofar as no petition for rehearing or reinstatement had been acted on by the Court of Appeals.

Warden of Kershaw Corr. Inst., 8:20-3168-HMH-JDA.⁴ Applicant raised the following allegations in his *pro se* petition:

1. Is the State of South Carolina in violation of the 5th, 8th and 14th Amendments of the United States Constitution by confining the [Applicant] to an expired sentence?
 - a. After being remanded back to the South Carolina Department of Corrections after 22 years due to a parole violation, in which no probable cause or revocation hearing was rendered prior to, the agency erroneously miscalculated the [Applicant]'s remaining sentence, and has refused to recognize the expiration status of the sentence, in spite of his numerous appeals both formal and informal. The [Applicant]'s sentence has been invalidated by the South Carolina Court of Appeals, on July 1, 2020. SCDC still refuses to recognize status.
2. Is the State of South Carolina in violation of Ex Post Facto provisions in the case of the [Applicant].
 - a. The South Carolina Court of Appeals ordered on July 1, 2020, that the Petitioner be awarded his time on Parole, the South Carolina Administrative Law court in its Order on Remand deemed the [Applicant]'s parole time to be from March 31, 1994, to April 16, 1996, 2 years, 16 days. Case No. 20-ALJ-04-0325-A-AP. In response to this order the South Carolina Department of Corrections has implemented a potential punishment without probable cause, that was NOT present at the time of the [Applicant]'s sentence, or his initial release before revocation of his parole. See State of S.C., County of Anderson, SENTENCE HAS EXPIRED!!.

Respondent filed a return and motion for summary judgment on November 17, 2020. On January 4, 2021, the Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a report and recommendation that Respondent's motion for summary judgment be granted and the petition dismissed with prejudice. Applicant did not file timely objections to the R&R.

⁴ In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C., all pre-trial proceedings were referred to a United States Magistrate Judge.

On January 26, 2021, the Honorable Henry M. Herlong, Jr., Senior United States District Judge, issued an order adopting and incorporating the R&R by reference; granting Respondent's motion for summary judgment; dismissing the petition with prejudice; and denying a certificate of appealability. *Braxton v. Warden of Kershaw Corr. Inst.*, No. CV 8:20-3168-HMH-JDA (D.S.C. Jan. 26, 2021). Applicant filed untimely objections to the R&R on January 27, 2021, which the Court construed as a motion to alter or amend pursuant to Rule 59(e), FRCP. On February 3, 2021, Judge Herlong issued an order denying Applicant's 59(e). Applicant filed a motion for relief from judgment pursuant to Rule 60(b), FRCP, that same day. On February 11, 2021, in light of the mail delays due to COVID-19, Judge Herlong issued an order granting Applicant's 60(b) motion; accepting Applicant's objections as timely; and vacating the January 27, 2021, and February 3, 2021, orders. In that same order, Judge Herlong granted Respondent's motion for summary judgment, dismissed the petition with prejudice, and denied a certificate of appealability.

On February 22, 2021, Applicant filed a notice of appeal with the Fourth Circuit Court of Appeals. This matter is currently pending.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "Misapplication of WORK CREDITS, GOOD TIME & BONUS EDUCATION CREDITS AFTER Revocation of Parole"
 - a. "Record clearly reflects that sentence would have EXPIRED in 2017, SCDC REFUSED to acknowledge Expiration status, inspite[sic] of NUMEROUS contact attempts."

Applicant requests relief as follows:

"Proper application of my WORK CREDITS, GOOD TIME &

BONUS EDUCATIONAL CREDITS, to magnify the GROSS Inaction of SCDC in regard to its INDIFFERENCE to Sentencing Issues.”

Before this Court are the Anderson County Clerk of Court records regarding the subject convictions; the records from Applicant’s action under the APA; Applicant’s federal habeas records; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Because there is no genuine issue of material fact which would necessitate an evidentiary hearing, this Court hereby informs the parties of its intent to dismiss the application as procedurally barred. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts, and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) (“A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings”), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a prima facie showing he is entitled to relief before the court will hold an evidentiary hearing). Pursuant to section 17-27-70 and -80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law:

1. Statute of Limitations

As an initial matter, this Court finds this action must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act⁵ (Act).

⁵ S.C. Code Ann. § 17-27-10 to -160

Specifically, the Act states:

If the applicant contends there is evidence of a material fact not previously presented, the PCR 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) (emphasis added); *See Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”).

Here, Applicant completed his sentence in Tennessee on November 2, 2015. Following his release, beginning November 8, 2015, Applicant was incarcerated in Anderson County until he appeared before the South Carolina Board of Pardons and Parole on January 20, 2016. He was then transferred back into the custody of SCDC, where he filed his Step 1 grievance on December 22, 2016, seeking a change to his sentence calculation. Thus, the requisite filing period to raise this claim expired well before February 2021.

Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant’s misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

2. Mootness

Applicant’s claim that his sentence has expired falls squarely within section 17-27-

20(A)(5), which provides that “[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired . . . may institute . . . a proceeding under [the PCR Act] to secure relief.” See *Al-Shabazz v. State*, 338 S.C. 354, 368, 527 S.E.2d 742, 749 (2000) (explaining that an application for PCR is not the appropriate method for raising a sentencing credits issue unless it has caused an inmate to remain imprisoned past the expiration of his lawful sentence). Applicant filed this action on February 17, 2021, but was released less than a month later after completing the sentence he claims expired. Our Supreme Court has held that

A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief.

Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)

In *Hayes v. State*, the applicant filed for PCR, claiming his reinstated sentence upon revocation of probation exceeded the maximum authorized by law because sentencing credit for time served was not properly applied by SCDC. 413 S.C. 553, 558, 777 S.E.2d 6, 9 (Ct. App. 2015). The Court agreed, noting “[t]he PCR statute allows an inmate to file an application for PCR when he claims his sentence has expired and he is being unlawfully held in custody. *Id.* (citing S.C. Code Ann. § 17-27-20(5) (2014)). However, because the applicant had subsequently been released, the Court found the issue to be moot. Applicant’s situation is nearly identical.

Accordingly, this action must be summarily dismissed for failing to state a cognizable claim for which relief can be granted pursuant to Rule 12(b)(6), SCRPC.

IV. CONCLUSION

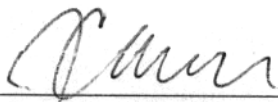
Pursuant to section 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of

this order upon him to show why this order should not become final. Applicant shall file any reasons he may have with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lillian L. Meadows
Post-Conviction Relief Division – 10th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Anderson County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 15th day of September, 2021.



J. CORDELL MADDOX, JR.
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

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ALAN WILSON
ATTORNEY GENERAL

September 10, 2021

The Honorable J. Cordell Maddox Jr.
Chief Administrative Judge – Tenth Judicial Circuit
Post Office Box 8002
Anderson, South Carolina 29622

Re: Michael Braxton v. State of South Carolina
2021-CP-04-0320

Dear Judge Maddox:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. A copy of the State's return and motion to dismiss also was sent to your chambers today for your consideration. If this proposed order meets your approval, please sign and forward to the Anderson County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Lillian L. Meadows
Assistant Attorney General

LLM/geh
Enclosure(s)

cc: Michael Braxton