STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS IN THE SECOND JUDICIAL CIRCUIT
Darrell Williams, #334447, Applicant,	)	Case No.: 2017-CP-02-2286
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Darrell Williams (Applicant) on September 25, 2017. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the November 10, 2008 term of the Aiken County Grand Jury for kidnapping (2008-GS-02-1770). Applicant was represented by Brian Katonak, Esquire. On April 27, 2009, Applicant pleaded guilty as indicted. The Honorable Doyet A. Early, III, sentenced Applicant to a period of confinement for thirty years.

Applicant subsequently filed a Notice of Appeal. The appeal was perfected by Wanda H. Carter, Esquire. The South Carolina Court of Appeals dismissed the Appeal. State v. Williams, Op. No. 2012-UP-297 (S.C. Ct. App. May 16, 2012). Remittitur was sent on June 4, 2012.

Applicant filed an application for post-conviction relief (PCR) on May 21, 2012 (2012-CP-02-1339). Applicant raised the following issue:

1. Ineffective Assistance of Counsel
   a. Counsel informed applicant he would receive sentence of 15 years.

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Subsequently, Applicant amended his PCR application on January 13, 2014, alleging he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
   a. "Attorney failed to investigate evidence mitigating Petitioner's role in the matter."
   b. "Attorney failed to provide Petitioner with a copy of his discovery and/or failed to properly review said discovery with Petitioner."
2. Involuntary guilty plea
   a. Petitioner's plea of guilty was not knowingly and intelligently entered insomuch as his attorney failed to properly advise him of the sentence he could receive as a result of a guilty plea."

An evidentiary hearing was convened on January 22, 2014, at which the Applicant was present and represented by Kurt Worthington, Esquire. On April 9, 2014, The Honorable Edgar W. Dickson denied and dismissed Applicant's application by written Order.

A timely Notice of Appeal was filed at the South Carolina Supreme Court on April 14, 2014. Lanelle Cantey Durant, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson[1] brief. By Order dated April 8, 2015, the South Carolina Supreme Court denied Applicant's PCR appeal. The Remittitur was issued on April 24, 2015.

CURRENT APPLICATION

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

1. "Applicant was mentally ill, and disabled."
2. 30 year sentence constitutes "de facto life sentence" which violates the 8th and 14th amendments.
3. "Ex post facto" application of sentencing guidelines.
4. Trial court failed to mitigate sentence.

On January 31, 2019, Applicant, through retained counsel, made a motion to amend his PCR application to add the following claims:

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

1. "Defense counsel was ineffective in that they failed to object to lack of jurisdiction in this matter."

2. "The trial plea court did not obtain a necessary waiver of jurisdiction in this matter where the conduct and actions of Mr. Williams never took place in Aiken County, the same is attested to by the solicitor in his statement of facts, further not waiver of granting concurrent jurisdiction to the Court to accept a plea offer from a separate judicial circuit."

Before this Court are the Aiken County Clerk of Court records, the South Carolina Department of Corrections' records, prior direct appeal records, prior PCR records, prior PCR appeal records, and records pertaining to the current PCR action.

FACTUAL BACKGROUND

On December 26, 2007, Frances Rudd (Rudd), Victim's aunt, called the Lexington County Sheriff's Department to inform officers that Victim was missing. (GP Tr. 29). Rudd informed law enforcement that she previously received two phone calls from Victim during which he told her "they" want their guns or $5,000, and if "they" did not receive either, "they" would shoot him. (GP Tr. 29). Law enforcement thereafter discovered Victim was last seen entering a maroon car with Applicant and Johnnie Walker (Walker). (GP Tr. 29).

Applicant and Walker brought Victim to a trailer in Saluda County, where Applicant and all of his co-defendants held Victim captive and tortured him. (GP Tr. 31). Victim eventually left the Saluda trailer with co-defendants Frankie Gantt (Gantt), Marion Abner (Abner), John Oakman (Oakman), Andre Norris (Norris). (GP Tr. 33). Applicant and Walker stayed behind at the Saluda trailer until after Victim was killed. (GP Tr. 33). Ultimately, Gannt shot and killed Victim in Aiken County in the presence of the other co-defendants, while Applicant and Walker were still in Saluda County. (GP Tr. 34).

Three counties were involved in the crime: Lexington, Saluda, and Aiken. (GP Tr. 30). Victim was ultimately taken to Aiken County where Gantt shot and killed Victim the presence of

Abner, Oakman, and Norris. (GP Tr. 34). Applicant was not present at the scene in Aiken County when Victim was shot. (GP Tr. 36). However after Victim was killed, all eight defendants, including Applicant, went back to the location in Aiken County where Victim was killed to retrieve and hide the body. (GP Tr. 36).

At the plea hearing, Weeks stated:

> "Your Honor, this plea to these charges of these individuals will take care of any potential kidnapping charges from this incident or any charges from this incident in these other two counties. I have spoken to the Assistant Solicitor in Lexington and the Assistant Solicitor in Edgefield Saluda County and they actually transferred their kidnapping cases to us to dispose of in this fashion on Darrell Williams.
>
> There was a real question as to whether or not he was kidnapped initially and they were all to (sic) happy to allow us to pursue the kidnapping charges here, but, actually, him being held against his will in Saluda County for that period of time and tortured and beat, there could have been charges in Saluda County, but since the buck kind of ended in Aiken County we felt like it was appropriate to take all of the pleas here."
>
> (GP Tr. 34-35).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This PCR Action is Barred by Statute of Limitations

This 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).

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). 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). In addition, S.C. Code Ann. § 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 pleaded guilty and was sentenced on April 27, 2009. The Remittitur for the direct appeal was sent on June 4, 2012. The application was therefore due on June 5, 2013. This application was filed on September 25, 2017, well beyond the statutory filing period. Therefore, the application must be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

This PCR Action Barred Due to Successiveness

This Court also finds this application must be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Applicant has failed to meet the burden imposed upon him, and therefore, this Court summarily dismisses the application as successive to Applicant's previous PCR application.

This PCR Action is Barred by the Doctrine of Laches

This Court finds that the application should also be barred under the 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). This requirement "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)). In due consideration of the above requirement, Laches is an equitable doctrine 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 filed this PCR application over eight years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant form seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review 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, this Court finds the application must be summarily dismissed as barred by the doctrine of laches.

Applicant's "Jurisdiction" Allegation Must be Dismissed as a Matter of Law

Applicant makes several allegations, which are based on the premise that Aiken County Court of General Sessions did not have jurisdiction to accept Applicant's plea because Applicant's involvement in the kidnapping did not occur in Aiken County. In addition to being barred by the statute of limitations and successiveness, this Court finds these allegations must also be summarily dismissed as a matter of law on the basis that determining which county is appropriate for prosecution is a matter of venue, and Aiken County was a proper venue for these charges.

The legal basis for determining which county may prosecute a particular crime is venue, not jurisdiction, for the Supreme Court of South Carolina in Evans observed that "[a]lthough an accused as a right to be tried in the county in which the offense is alleged to have been committed, we hold this right is not jurisdictional. State v. Evans, 307 SC. 477, 415 S.E.2d 816 (1992). The right to be tried in the county in which the offense is alleged to have been committed, then, is a matter of venue. State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005). The standard for establishing venue is not a stringent one, for "venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient...." State v. Williams, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996). "[W]here some acts material to the offense ... occur in one county, and some in another, venue is proper in either county." Id.

Here, Applicant was involved in a complex crime involving eight individuals and three counties in South Carolina. While Saluda, Lexington, and Aiken counties were all involved in the underlying crimes of Applicant and his seven co-defendants, a major portion of the crimes occurred in Aiken County. Applicant and Walker drove Victim to the Saluda trailer where he

was held captive and tortured for a period of time. Thereafter, the kidnapping continued when several of Applicant's co-defendants drove Victim to Aiken County where the Victim was ultimately shot by Gannt. Additionally, all of the co-defendants, including Applicant, later returned to the scene of the murder in Aiken County to load Victim's body into a car in an attempt to hide the body. Additionally, when asked by the plea court, "Mr. Darrell Williams, I ask did you here in **Aiken County** on or about December 24, 2007, participate in or in fact, kidnap one [Victim]." Applicant replied affirmatively. (GP Tr. 27). Accordingly, this Court dismisses these allegations as a matter of law.

CONCLUSION

Pursuant to S.C. Code Ann. § 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 Aiken County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Brianna L. Schill, Esquire
PCR Division – 2nd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 4th **day of** August**, 2020.**

CLIFTON NEWMAN
Chief Administrative Judge
Second Judicial Circuit

Columbia, South Carolina