STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
John Bates, Jr., #356426 Applicant v. State of South Carolina, Respondent	)	2021-CP-40-4621 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant, John Bates, Jr.'s action for post-conviction relief (PCR) filed September 14, 2021. Respondent made its return and motion to dismiss on November 24, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely and fails to state a cognizable claim for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the January 2017 term, the Richland County Grand Jury indicted Applicant for seven counts of attempted murder (2018-GS-40-8260; -8261; -8263; -8264; -8266; -8267; -8268), possession of a firearm by person convicted of a violent felony (2018-GS-40-8271), and possession of a weapon during a violent crime (2018-GS-40-8270). Justin Kata, Esquire, represented Applicant at Applicant's guilty plea on March 25, 2019, and J. Taylor Bell, Esquire represented Applicant at his sentencing on Sepetember 2, 2020. Assistant Solicitor Vance Eaton prosecuted the case.

Applicant pled guilty pursuant to a negotiated agreement on March 25, 2019, before the Honorable Jocelyn Newman. As part of the negotiated plea, Applicant agreed to cooperate and

testify against his codefendant Jenorris Lartman in exchange for a sentencing cap of seventeen years, concurrent on all charges. Judge Newman did not agree to enter the guilty plea at that time without the negotiations set forth in writing. Thereafter, Applicant appeared before Judge Newman again on September 2, 2020, to plead guilty. Judge Newman sentenced Applicant to five years for possession of a firearm during a violent crime, five years for possession of a firearm by a felon, and seventeen years for each charge of attempted murder, to run concurrently. Applicant did not appeal.

CURRENT APPLICATION

In his application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "See Page 3A, and Page 3B."

Respondent notes that while Applicant made reference to attachments in his application, no attachments were provided as part of the filing, as such it is unclear what specific allegations Applicant is raising. As relief, Applicant requests: "Resentencing!!! I want what I was promised (0 to 10) I told the court on record I was promised a '0 to 10' please reconsider."

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the guilty plea and sentencing transcripts, and the records of this PCR action.

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 -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *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). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

The Court finds that this PCR shall 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:

> (A) 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 upon an appeal, whichever is later.
>
> (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
>
> (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

The South Carolina Supreme Court has held 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). Additionally, 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."

In the present case, Applicant fails to specifically allege why he is entitled to post-conviction relief. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on March 25, 2019, was sentenced September 2, 2020, and did not pursue a direct appeal. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before September 3, 2021. Applicant did not file his application until September 14, 2021, beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively, and raised no allegations of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and shall be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Failure to State a Claim

This Court finds the application shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Pursuant to the Act, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence . . . .*" *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original). Applicant's application contains no specific or identifiable claim for relief under the Act. The only identifiable issue raised by Applicant is in his requested relief where he asks for resentencing and claims he was promised a sentence of 0 to 10 years and alleges he told the plea court on the record of this promise. As an initial matter, the relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per curiam*) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 n.103 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences"). Applicant's only claim is that he was promised a 0 to 10 year sentence which is a non-collateral attack on his conviction and is not cognizable in PCR.

Further, this Court finds the record of Applicant's guilty plea and sentencing proceedings are dispositive to the negotiated sentence in this case. During Applicant's guilty plea the plea court asked him directly, "Now the negotiation in this case is a cap of 17 years. Do you understand that?"

to which Applicant responded "Yes, sir." (Guilty Plea Tr. 8). The plea court continued to ask Applicant if he understood that a negotiated agreement meant the court could not sentence Applicant to any more than 17 years in prison, Applicant responded in the affirmative to all questions. (Guilty Plea Tr. 8). Sentencing was then deferred pursuant to the plea court's request to have the terms and conditions of the plea agreement and the cap of 17 years documented in writing. (Guilty Plea Tr. 17). At Applicant's sentencing hearing the negotiated cap of 17 years, and conditions of the agreement, was articulated on the record by the solicitor, including that as part of the negotiations it was made very clear to Applicant that the sentencing cap was in exchange for his agreement to testify against his codefendant. (Sentencing Tr. 4). The record demonstrates that at no point did the Court or parties discuss a range of 0 to 10 years, let alone that Applicant was "promised" that range. Moreover, the record is dispositive of Applicant's claim he informed the plea court directly of the promised 0 to 10 years. Applicant was provided the opportunity to address the plea court at length during his sentencing hearing, but at no point did he tell the plea court he was promised 0 to 10 years as he alleges in his application (Sentencing Tr. 21-24). The record is irrefutable. For these reasons and pursuant to Rule 12(b)(6), SCRCP, this Court shall dismiss the application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

CONCLUSION

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

Office of the Attorney General
Yasmeen E. Klein, Assistant Attorney General
PCR Division – Fifth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, 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 29th day of November, 2021.

L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina