

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
)   
Walter Keller, Jr., #303807 )  
)   
Applicant )  
)   
v. )  
)   
State of South Carolina, )  
)   
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

2021-CP-40-4546

**FINAL ORDER OF DISMISSAL**

2022 FEB -7 PM 4: 08  
 RICHLAND COUNTY  
 FILED

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Walter Keller, Jr. on September 8, 2021. Respondent made its Return and Motion to Dismiss on November 12, 2021, requesting the application be summarily dismissed because it was untimely filed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed November 18, 2021, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated December 9, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted a response filed on December 13, 2021, titled "Objection to Conditional Order of Dismissal" wherein Applicant argues the date of August 11, 2021 present on his PCR application establishes the actual date of filing pursuant to the mailbox rule. Applicant additionally executed an affidavit of his own statement to this affect. Applicant claims his application was mailed on the 11<sup>th</sup> of August 2021, but recognizes the application was not filed until September 8, 2021, outside of the one-year statutory period required by S.C. Code Ann. §

17-27-45 by approximately four days. Applicant speculates the delay was due to unforeseen circumstances in the COVID-19 pandemic.

Our Courts have expressly declined to adopt a rule that automatically deems a PCR application “filed” on the date an applicant claims it was delivered to prison authorities. *Mose v. State*, 420 S.C. 500, 510, 803 S.E.2d 718, 723 (2017). Rather, “if a PCR applicant relies on the defense of equitable tolling in response to a motion to dismiss, the applicant must *substantiate* that the correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations and that any delay in the Clerk of Court’s receipt of the application was due to processing.” *Id.* (Emphasis added).

Moreover, the judge should make the fact-specific determination of whether equitable tolling is justified if a PCR applicant raises the doctrine of equitable tolling as a defense to the statute of limitations. *See Hooper*, 386 S.C. at 117, 687 S.E.2d at 33 (“Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.”). As part of this determination, any “reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for purposes of mailing” should be considered. *Mose*, 420 S.C. at 511, 803 S.E.2d at 723. “To warrant tolling of the statute of limitations from receipt of the document by the prison until formally filed with the clerk’s office, the applicant must *verify by competent evidence* the date prison authorities received the document for mailing.” *Id.* (Emphasis added).

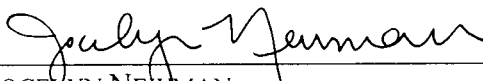
Here, in his response to this Court’s Conditional Order of Dismissal, Applicant has failed to provide proof or verifiable evidence his application was mailed prior the expiration of the one-year statute of limitations aside from Applicant’s own statements. Applicant has provided no

prison mail log or affidavit from the associate warden confirming the receipt of the application or even make a prima facie showing prior to the statute of limitations. Therefore he has failed to substantiate that he was prevented from timely filing for PCR due to circumstances beyond his control. Ultimately, this Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant 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 25<sup>th</sup> day of January, 2022.

  
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JOCELYN NEWMAN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina