

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

Walter Keller, Jr., #303807 )

2021-CP-40-4546 )

Applicant )

v. )

**CONDITIONAL ORDER OF DISMISSAL** )

State of South Carolina, )

Respondent )

RICHLAND COUNTY  
FILED  
2021 NOV 18 AM 9:39  
CLERK OF COURT  
COURT HOUSE, 215 E. BROAD ST.  
COLUMBIA, SC 29201

This matter comes before the Court by way of Applicant, Walter Keller, Jr.’s action for post-conviction relief (PCR) filed September 8, 2021. Respondent made its return and motion to dismiss on November 12, 2021. The Court hereby grants Respondent’s motion to dismiss because the action is untimely.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the March 2015 term, the Richland County Grand Jury indicted Applicant for three counts of armed robbery (2015-GS-40-1363; -1365; -1369), and four counts of first degree assault and battery (2015-GS-40-1364; -1366; -1367; -1370). Applicant additionally indicted during the April 2015 term for an additional count of armed robbery (2015-GS-40-1368). Richland County Public Defender Maisie B. Osteen represented Applicant. Deputy Solicitor Daniel R. Goldberg of the Fifth Circuit Solicitor’s Office prosecuted the case.

Applicant pled guilty as negotiated on September 3, 2020, before the Honorable Clifton B. Newman. Pursuant to the negotiated agreement, Applicant plead guilty to four counts of armed robbery and one count of removal of an electronic monitoring device (2018-GS-40-2810) with a

discretionary sentencing range of twelve to twenty years. Applicant's remaining assault charges were nolle prossed by the State. Judge Newman sentenced Applicant to three years' imprisonment for removal of the monitoring device, and twenty years for each count of armed robbery, to run concurrently. Applicant did not appeal.

### **CURRENT APPLICATION**

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

1. "Involuntary Guilty Plea."
  - a. "I was offer/Promised 12 yrs."
2. Ineffective Assistance of Plea Counsel."
  - a. "Plea counsel failed to withdraw my Plea."
3. "Breach of Agreement."
  - a. "State offered 12 yrs, I plead to that only."

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the plea transcript, 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 is alleging he is entitled to post-conviction relief based on allegations of an involuntary guilty plea and ineffective counsel. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on September 3, 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 4, 2021. Applicant did not file his application until September 8, 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.

Applicant's allegations regarding his guilty plea are clearly refuted by the record. During Applicant's guilty plea proceeding, the terms of the negotiated agreement between Applicant and the State were placed on the record several times. The negotiated range of twelve to twenty years was introduced by Solicitor Goldberg at the outset of the plea proceeding and Applicant's counsel assented on record that the sentencing range was part of the negotiation. (Plea Tr. 3-4). The Plea Court then directly asked Applicant about the negotiated sentence, and whether he understood the nature of the negotiation, which Applicant responded he understood. (Plea Tr. 7-8). The Court then re-stated the negotiated sentence of a minimum of twelve and maximum of twenty years, and asked Applicant he if understood he would be sentenced within this range, to which Applicant responded affirmatively. (Plea Tr. 8). Applicant was again asked directly if this sentence was what he, his attorney, and the solicitor negotiated, which Applicant indicated it was. (Plea. Tr. 8). The negotiated range was discussed during his proceeding several times, and Applicant repeatedly

expressed understanding he could be sentenced anywhere within the range; thus, the record refutes Applicant's allegations. Accordingly, this matter shall be summarily dismissed with prejudice.

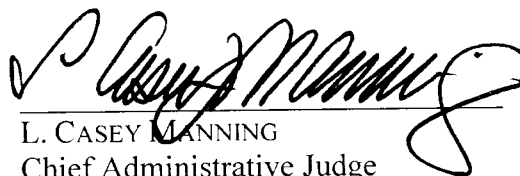
**CONCLUSION**

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 16 day of November, 2021.

  
L. CASEY MANNING  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina