

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FOR THE FIFTH JUDICIAL CIRCUIT

Marlon L. Miller, #339382 ) 2021-CP-40-4999

Applicant )

v. )

State of South Carolina, )

Respondent )

**CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
FILED  
2021 DEC -9 AM 9:21  
COURT CLERK

This matter comes before the Court by way of Applicant, Marlon L. Miller's action for post-conviction relief (PCR) filed October 5, 2021. Respondent made its Return and motion to dismiss on December 7, 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 May 2011 term, the Richland County Grand Jury indicted Applicant for first degree criminal sexual conduct with a minor (2011-GS-40-1700), and lewd act on a minor child (2011-GS-40-1699). James D. Cooper, Esquire represented Applicant. Assistant Solicitor Margaret F. Bodman prosecuted the case. Applicant pled guilty as negotiated on August 30, 2012, before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to twenty years imprisonment for first degree criminal sexual conduct with a minor, and fifteen years imprisonment for lewd act on a minor, to be served 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 Attachments"
  - a. "After Discovered Evidence."

As requested relief, Applicant is seeking "Declaratory Judgment, Permanent Injunction and immediate removal from the lifetime Sexual Registry with an judicial review to assess the risk of re-offending." This Court finds the referenced attachments were not included as part of the application and are not available on the Public Index. For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, 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 has failed to provide specific allegations for why he believes he is being held in custody unlawfully. Applicant additionally failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on August 30, 2012, 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 August 31, 2013. Applicant did not file his application until October 5, 2021, eight years 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.

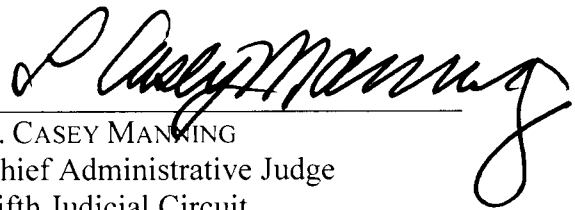
### CONCLUSION

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 8 day of December, 2021.

  
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L. CASEY MANNING  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina