

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Marlon L. Miller, #339382)
)
 Applicant)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-40-4999

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2022 FEB 24 AM 10:35
 CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Marlon L. Miller on October 5, 2021. Respondent made its Return and Motion to Dismiss on December 7, 2021, requesting the application be summarily dismissed because it was untimely.

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 December 9, 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 January 12, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted a response filed on December 31, 2021, titled "Reply in Opposition to the Defendants Return and Motion to Dismiss/ Proposed Conditional Order of Dismissal" wherein Applicant argues his application is timely pursuant to S.C. Code Ann. § 17-27-45(B), and that being placed on the sex offender registry for life was unlawful and unconstitutional under §§ 23-3-430, 23-3-460(A), and 23-3-540(H). Applicant argues the statute of limitations does not apply, and that Respondent's dismissal is frivolous and without merit. Applicant claims his action

is being filed as after-discovered evidence pursuant to section 17-27-45(B) of the Uniform Post-Conviction Relief Procedure Act, due to the recent ruling in *Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (2021), *reh'g denied* (Aug. 4, 2021).

This Court finds Applicant has failed to comply with the filing requirements under section 17-27-45 of the South Carolina Code. Applicant pled guilty on August 30, 2012. Pursuant to section 17-27-^{45(A)}~~45(B)~~, 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 expiration of the statute of limitations.

Further, while Applicant filed this action as an application for post-conviction relief alleging upon after-discovered evidence regarding the constitutionality of the sex-offender registry, post-conviction relief is not the proper avenue to challenge a statutory requirement to register as a sex offender. *See Williams v. State*, 378 S.C. 511, 514–15, 662 S.E.2d 615, 617 (Ct. App. 2008) (providing that post-conviction relief (PCR) is a proper avenue of relief only when the applicant mounts a collateral attack challenging validity of his conviction or sentence; the only exceptions are claims, specifically listed in PCR Act, that an applicant's sentence has expired, or that an applicant's probation, parole, or conditional release has been unlawfully revoked). Therefore, having to register as a sex offender is a civil collateral consequence of a criminal conviction, and as such, it cannot be appropriately challenged under the Uniform Post-Conviction Relief Act. *See Thompson v. State*, 415 S.C. 560, 564, 785 S.E.2d 189, 191 (2016) ("As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state." *State v. Nation*, 408 S.C. 474, 481, 759 S.E.2d 428, 432 (2014) (citing *In re Justin B.*, 405 S.C. 391, 394, 404-08, 747 S.E.2d

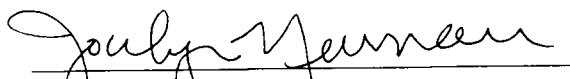


774, 775, 781-83 (2013)). Accordingly, the application for PCR fails to state a claim which is cognizable under the Uniform Post-Conviction Relief Act, and the application must be dismissed.

Moreover, Applicant is not currently subject to sex-offender registry requirements as he is presently incarcerated due to his convictions for first degree criminal sexual conduct with a minor and lewd act with a minor. These convictions may mandate registration as a sex offender in the future, but the requirements of section 23-3-430 have not been triggered at this time and will not be triggered until Applicant is released from incarceration. *Thompson v. State*, 415 S.C. 560, 785 S.E.2d 189 (2016); *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). Accordingly, this application does not present a justiciable controversy, and the Court does not have subject-matter jurisdiction. 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 23rd day of February, 2022.



JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

