

RECEIVED

State of South Carolina

MAY 28 2013

v.
County of Berkeley

S.C. SUPREME COURT 2013-000937

Proof of Service

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below: by mailing one (1) copy in an envelope properly addressed to each party, with us postage prepaid this _____ day of 2013. Such matter being petition for a fast and speedy trial, with affidavit in support us.

Clerk of Court's

Danielle E. Starouse

cc. ~~_____~~ ~~_____~~

Solicitor Name

P.O. Box 11330

Address

Columbia, SC 29211

Sworn to before Me this 22nd day of May 2013 A-D

Emily Wadley
Notary Public of South Carolina

#348729 William Chesser
Tuckerville Correctional
P.O. Box 252
Tuckerville SC 29162

My Commission expires 4-27-2016

NO. 2013-000937

To whom it may concern:

I am writing in regards of my case No. 2013-000937. Do to the fact that I was not inform of a mandatory sentence until my state of limitation was up. I got probation on my sentence which was suppose to be 10 months which you know in Section 16:11:3.12 The offender must serve & serve a minimum of 3 years. no part which may be suspended. Only reason I didn't file with in the state of limitation is because of my knowledge, I got 10 months & why I was on probation they told me I had 10 months. I peacefully ask my lawyer what would happen if I violated probation, they told me I would get 10 months. My co-defendant got 90 day shock & I got probation, we had the same charges. He went to 90 day shock & they told him he couldn't go because he had a mandatory sentence, which he got his sentence over turn & he got his 10 months back. We got sentence at the same time with the same judge. My co-defendant is at home & I am here still doing my mandatory sentence. I don't understand, they trailed him at the same time. So if his paperwork was wrong and they didn't know about mandatory sentencing, so that means my paperwork is also mess-up. I was not inform of a mandatory sentence. All I am asking is for my 10 months back a motion of reconsideration, all I had was (1)-second degree Burglary. I'm just asking to drop it down to a third degree Burglary.

X (William Chesser) #348724



ALAN WILSON
ATTORNEY GENERAL

April 10, 2013

The Honorable Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401

RE: William Chesser, #348724 v. State of South Carolina
2012-CP-08-0349

Dear Solicitor Wilson:

Enclosed please find the **Final Order of Dismissal** regarding the above-referenced PCR matter. We are closing our file in this case.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosure

cc: William Chesser, # 348724
David M. Tatarsky, Esquire (SCDC)
Trisha Allen (Victim Services)

HW
9

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2012-CP-08-0349

William Chesser, 348724,)
Applicant,)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
2013 APR -2 AM 11:08
CLERK OF COURT
BERKELEY COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 6, 2012. The Respondent (the State) made a timely Return, requesting that the Application be summarily dismissed. 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 June 6, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 Respondent's proof of service dated January 7, 2013, serving the Conditional Order of Dismissal on the Applicant.

The Applicant made a response on January 17, 2013, alleging:

1. He was not properly informed of mandatory sentence until he got to Turbeville Correctional Institution. If he was properly sentenced and did not get a suspended sentence then he would have filed a PCR under the proper requirements.
2. Counsel failed to inform him about filing a PCR.

4/8/13
mail.
aw

4/8/13
mail.
we

R

B

This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.


IT IS THEREFORE ORDERED that, since this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act¹, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this _____ day of July, 2013.



Honorable Roger M. Young, Sr.
Chief Administrative Judge
9th Judicial Circuit


_____, South Carolina.

¹ The Applicant was convicted on December 1, 2010. Since all of the allegations raised in his PCR application referenced his guilty plea proceeding, his application should have been filed on or before December 1, 2011. This application was filed on February 6, 2012 which was at least one year from the expiration of the statutory filing period.

THW
9

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Wanda Pugh (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon) **AFFIDAVIT OF PERSONAL SERVICE**

On this 7 day of January, ²⁰¹³ ~~2012~~, I served the Conditional Order of Dismissal, on Inmate William Chesser, SCDC Inmate #348724, by delivering personally and leaving a copy of the same at Turbeville Correctional Institution. Deponent is not a party to this action.

s/ Wanda Pugh
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7 day of January, ²⁰¹³ ~~2012~~,
Paul J. [Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: 2017

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the S.C. Department of Corrections (Turbeville Correctional Institution),

Turbeville, Clarendon County, SC this 7 day of
January, ²⁰¹³ ~~2012~~.

s/ William Chesser
Inmate

SCDC Inmate # 348724

1013
0819

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-08-0349

William Chesser, #348724,

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

2012 JUN -6 AM 10:09
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 6, 2012. In its Return, Respondent requested that the application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Berkeley County Clerk of Court and Applicant's records from the South Carolina Department of Corrections. The Applicant was indicted at the November 2010 term of the Berkeley County Grand Jury for second degree burglary (2010-GS-08-1837). Debra K. Littlejohn, Esquire represented him. On December 1, 2010 the Applicant pled guilty as indicted before the Honorable Kristi Lea Harrington and was sentenced under the Youthful Offender Act to six (6) years imprisonment suspended to two (2) years probation. On November 17, 2011 Applicant's probation was revoked. Applicant did not file an appeal.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Kirkland changed my 10 months on a Y.O.A. sentence to a mandatory Y.O.A. sentence due to the fact that June 2, 2010 the law changed for Burglary 2nd degree, That I did not know about and my lawyer did not inform me about."

1043
[Signature]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held that 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). The Applicant was convicted of the offense(s) he challenges in this Application on December 1, 2010. Therefore Applicant would have to file his application on or before December 1, 2011. This Application was filed on February 6, 2012, which was well after the statutory filing period had expired.

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). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the PCR 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."

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the Berkeley County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Ashleigh Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 14th day of June, 2012.

DR Jefferson
DEADRA L. JEFFERSON
Chief Judge for Administrative Purposes
Ninth Judicial Circuit Court

Charleston, South Carolina.

William Chesser 398724
T.C. 348724

P.O. Box 252

Turbeville, SC, 29162

Ellyott-B-152A

RECEIVED

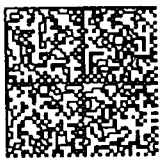
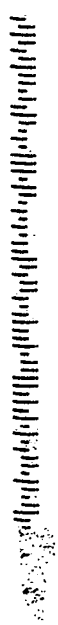
MAY 22 2013

SCDC

MAILROOM
TURBEVILLE, SC

MAIL ROOM

2921119030



UNITED STATES POSTAGE
FIRST CLASS
PRINCE BOWEN
02 1R
0002009326
MAY 22 2013
MAILED FROM ZIP CODE 29162
\$ 00.66

Supreme Court

Deniel. E. Sheerouse

P.O. Box 11350

Columbia, SC, 29211

