

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP4300002

2020 MAR 23 PM 2:53

Michael Alonza Rufus		South Carolina State of
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JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2762	3/23/2020
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Michael Alonza #1000788776 Rufus Coffee Correctional Facility P O Box 650 Nicholls, GA 31554

Alan McCrory Wilson S.C. Attorney General's Office PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



RECORDED
2020 MAR 23 PM 2:37
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

March 20, 2020

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, South Carolina 29150

Re: Michael Rufus v. State of South Carolina
2018-CP-43-0002

Dear Mr. Campbell:

Enclosed please find the original **Conditional Order of Dismissal**, signed by the Honorable Kristi F. Curtis, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Brianna L. Schill
Assistant Attorney General

BLS/ks
Enclosure(s)

cc: Michael Rufus

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
))
Michael Rufus,)
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2018-CP-43-0002

CONDITIONAL ORDER OF DISMISSAL

RECORDED
2020 MAR 23 PM 2:37
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Michael Rufus (Applicant) on January 2, 2018. Respondent, its attorney, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the Georgia Department of Corrections. Applicant was indicted at the August 1995 term of the Sumter County Grand Jury for possession of a pistol by a person under 21 years of age (1995-GS-43-0645). Applicant was represented by Harry B. Burchstead, Esquire. On July 12, 1995, Applicant pleaded guilty before the Honorable M. Duane Shuler. Judge Schuler sentenced Applicant to two years of imprisonment. Applicant did not file a direct appeal.

CURRENT APPLICATION

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

1. "Petitioner's trial court fraudulently, in violation of the Due Process"
 - a. Applicant argues that because he is a "private citizen" the court's exercise of jurisdiction is void.
2. "Petitioner's infusion in the trial court's jurisdiction as pleaded"
 - a. Ineffective assistance of counsel due to counsel's failure to inform Applicant of his "civil status as [a] private citizen"

3. "Petitioner's trial court's unlawful exercise of jurisdiction and issuance of the judgement"
 - a. Applicant makes an Equal Protection Clause argument in conjunction with the Statute of Frauds and "similar provisions of the SSA"

For the purpose of this Return, the Respondent incorporates the Sumter County Clerk of Court records and the current PCR records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds this application must 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:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). 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) 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."

Applicant pleaded guilty to possession of a pistol by a person under 21 years of age on July 12, 1995. The application was therefore due on July 13, 1996. This application was filed on

December 21, 2017, over twenty years beyond the statutory filing period. Therefore, this Court summarily dismisses this application for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Equitable Doctrine of Laches

This Court also finds this application must be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief nearly 23 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d

at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years' time” when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this Court summarily dismisses this application as barred by the equitable doctrine of laches.

Lack of Jurisdiction Claim

In his application for post-conviction relief, Applicant alleges the circuit court did not have jurisdiction over his case due to his status as a “private citizen.” An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 11. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in the Court of General Sessions. Accordingly, the circuit court had subject matter jurisdiction over Applicant’s case. Applicant has failed to present any facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to preside. Therefore, this Court dismisses

Applicant's subject matter jurisdiction claim as a matter of law pursuant to S.C. Code Ann. § 17-27-70(c).

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 Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Brianna Schill, Esquire
PCR Division – Second Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Sumter 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 18th day of March, 2020.

Kristi Curtis
KRISTI F. CURTIS
Chief Administrative Judge
Third Judicial Circuit

Sumter, South Carolina