ELECTRONICALLY FILED - 2022 Aug 17 5:36 PM - CHEROKEE - COMMON PLEAS - CASE#2021CP1100593

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS IN THE SEVENTH JUDICIAL CIRCUIT
Alonzo C. Jeter, III, Plaintiff,	)	Civil Action No. 2021-CP-11-00593 **ORDER**
vs.	)	
State of South Carolina, Defendant.	)	

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S.C. SUPREME COURT

This matter comes before the Court on Defendant's Renewed Motion to Dismiss filed on May 23, 2022. A hearing was held on the matter on July 18, 2022. Present for the State was Assistant Attorney General David Leggett. The hearing was held virtually, and Mr. Jeter attended via WebEx. For the reasons outlined below, the State's Motion to Dismiss is granted.

I. Procedural History

Plaintiff filed this action on September 7, 2021, and the State received a copy via regular U.S. mail on September 17 and September 27, 2021. The State moved to dismiss Plaintiff's Complaint with prejudice pursuant to Rule 12(b)(2), (4), (5), and (6) on October 15, 2021.

On April 27, 2022, the Office of the Attorney General was hand delivered a copy of the Summons and Complaint. In light of this, the State withdrew its motion for dismissal pursuant to Rule 12(b)(2), (4), and (5) and renewed its Motion to Dismiss pursuant to Rule 12(b)(6). A hearing was held on this matter on July 18, 2022.

II. Standard of Review

"Under Rule 12(b)(6), SCRCP, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011) (citing *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006)). "In considering a motion to dismiss under Rule 12(b)(6), the

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circuit court must base its ruling solely on the allegations set forth in the complaint." *Id.* (citing *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007)). "Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 148–49. "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* at 149.

III. Argument

Mr. Jeter has failed to state grounds sufficient to constitute a cause of action. He challenges the constitutionality of S.C. Code § 44-53-470 ("Section 470"),[1] but all of Mr. Jeter's

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[1] Section 470 has been amended since Mr. Jeter's conviction and sentencing, *see* 2016 Act No. 154 (H. 3545), Section 10, *eff* April 21, 2016 (inserting a new subsection regarding trafficking offenses and providing additional guidance for calculating terms of confinement); *compare* S.C. Code Ann. § 44-53-470 (2011) and § 44-53-470 (2017). The amendment did not change any of the language involved in this case. However, for ease of reference, the law in effect at the time of Mr. Jeter's conviction and sentencing is provided below for reference.

(A) An offense is considered a second or subsequent offense if:

(1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession;
(2) for an offense involving marijuana pursuant to the provisions of this article, the offender has at any time been convicted of a first, second, or subsequent violation of a marijuana offense provision of this article or of another state or federal statute relating to marijuana offenses, except a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana offenses;
(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and
(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants,

arguments are barred by *res judicata*; his arguments must be brought in a Post-Conviction Relief action, and his arguments are without merit.

i. *Mr. Jeter's Claims are Barred by Res Judicata*

First, Mr. Jeter's arguments are barred by *res judicata*. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 34, 512 S.E.2d 109 (1999)). The elements of *res judicata* are: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Judy*, 393 S.C. at 167, 712 S.E.2d at 412 (citing *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992)). "[F]or purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted but, rather the 'cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.'" *Plum Creek Dev. Co.*, 334 S.C. at 36, 512 S.E.2d at 110 (quoting 50 C.J.S. Judgment § 749 (1997)).

Mr. Jeter filed a 2016 Post-Conviction Relief ("PCR") action to challenge his conviction. *See Jeter v. State*, 2016-CP-11-0293. When considering this case and Mr. Jeter's 2016 PCR case, the parties are the same, the subject matter is the same, and the 2016 PCR action was adjudicated on its merits. *See Jeter v. State*, 2016-CP-11-0293, July 27, 2017 Order.

Specifically, the subject matter is the same. Mr. Jeter's claims could have been included

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stimulants, or hallucinogenic drugs.
(B) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later.

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in his 2016 PCR action. PCR actions are possible when:

> Any person who has been convicted of, or sentenced for, a crime [claims]:
>
> (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
>
> (2) That the court was without jurisdiction to impose sentence;
>
> (3) That the sentence exceeds the maximum authorized by law;
>
> (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20(A). As is demonstrated in Section 17-27-20, PCR covers more than just 6th Amendment ineffectiveness of counsel claims. Mr. Jeter's claim that Section 470 violates his due process rights is a claim that his conviction "was in violation of the constitution of the United States." Also, his implicit allegation that he has been improperly sentenced is an assertion that his sentence "exceeds the maximum authorized by law." Therefore, Mr. Jeter's arguments could have been raised in his 2016 PCR action.

Mr. Jeter ultimately premises this case on the fact that he was indicted for a third or subsequent offense and pled to a second offense charge. Addressing this claim, the PCR Court found Mr. Jeter's indictment was not prejudicial "because [Mr. Jeter] did have prior convictions to properly enhance his charges to at least a second offense. [Mr. Jeter] pled guilty to trafficking,

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second offense." *Jeter v. State*, 2016-CP-11-0293, July 27, 2017, Order page 12.[2] The PCR court then concluded, "[H]is conviction was proper and should not be overturned." *Id.* Mr. Jeter's contention that his indictment was improper or had an impact on the eventual outcome of his 2015 case has been ruled upon and is thus barred by *res judicata.*

Again, comparing this case and Mr. Jeter's 2016 PCR case, the parties are the same, the subject matter is the same, and the 2016 PCR action was adjudicated on its merits. Therefore, *res judicata* precludes Mr. Jeter from raising these arguments now, and his suit is dismissed pursuant to Rule 12(b)(6).

ii. <u>*Mr. Jeter's Claims Must Be Brought in a Post-Conviction Relief Action*</u>

Secondly, Mr. Jeter asks the court to declare that his sentence violates constitutional provisions. Because Mr. Jeter is ultimately challenging the constitutional validity of his conviction and sentence, he must make his constitutional claim in a post-conviction relief action. S.C. Code Ann. §17-27-20(A)(1). PCR has taken the place of all other remedies formerly available for challenging the validity of a conviction or sentence, including actions for declaratory judgment. S.C. Code Ann. §17-27-20(B) ("Except as otherwise provided in this chapter, [the PCR Act] comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. *It shall be used exclusively in place of them.*") (Emphasis added)); *see also Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Because Mr. Jeter is challenging his conviction and sentence in this action for declaratory judgment rather than a PCR, he has failed to state facts sufficient to constitute a cause of action. Consequently, this case is dismissed pursuant to Rule

[2] The State maintains, as it did in the PCR action that Mr. Jeter was properly indicted for a third or subsequent offense based upon his two 2004 convictions, *see* 2016-CP-11-0293, Motion to Reopen Record filed May 1, 2017, page 2, but this contention is ultimately moot because the conviction was affirmed by the PCR court.

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12(b)(6).[3]

iii. *Section 470 is Constitutional*

Even considering the merits of Mr. Jeter's claims, his complaint fails to state grounds sufficient to constitute a cause of action. He asserts that Section 470 does not provide sufficient process. Specifically, he argues that Section is impermissibly vague and does not give adequate notice of which offenses qualify as prior offenses. *See* Compl. 4. Mr. Jeter asserts both a facial and as applied challenge to Section 470. While the standards for these two claims are normally distinct, either a statute gives fair notice to everyone or no one, so in this case, the analysis is the same for both theories and is therefore not repeated.

A criminal statute is invalid under the Due Process Clause "if it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.'" *United States v. Batchelder*, 442 U.S. 114 (1979) (*quoting United States v. Harriss*, 347 U.S. 612, 617 (1954)); *see United States v. Lanier*, 520 U.S. 259, 265 (1997) (requiring "fair warning . . . in language that the common world will understand, of what the law intends to do if a certain line is passed") (*quoting McBoyle v. United States*, 283 U.S. 25, 27 (1931)). Sentencing provisions may also violate due process if they do not afford fair notice of the penalty that applies to the forbidden conduct. *Batchelder*, 442 U.S. at 123. Ambiguities as to the applicable penalty must be resolved

[3] To the extent that this case is construed as a PCR action, it is procedurally barred as successive and untimely. *See* S.C. Code Ann. § 17-27-45(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.") and § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.").

in favor of lenity, granting the defendant the benefit of the doubt. *Id.* at 121.

Section 470 provides fair notice of what constitutes a second or subsequent offense. The text of Section 470 is clear. Section 470 lays out which offenses constitute prior offenses and the time table by which prior offenses "roll off" and can no longer be considered. In considering a similar due process challenge to S.C. Code Ann. § 44-53-370(e)(1)(a)(3), the United States Court of Appeals for the Fourth Circuit held that adequate notice was provided in Section 44-53-370(e)(1)(a)(3) because there was no ambiguity in the law. *See Thomas v. Davis*, 192 F.3d 445, 456-457 (1999). Furthermore, the Court held that using second or subsequent offenses to enhance a sentence and, impliedly, the definition of second or subsequent offenses found in Section 470 does not violate due process. *Id.*

In *Thomas*, the plaintiff was convicted of a third offense and challenged the use of second and subsequent offences to enhance his sentence. *Id.* at 448-450. After answering several procedural threshold questions, the court turned to "Whether the sentencing provisions under scrutiny in this case violated Thomas's due process rights . . . ." *Id.* at 455. The court held:

> We perceive no ambiguity in the sentencing provisions for marijuana trafficking contained within South Carolina's Controlled Substances Act. Section 44–53–370(e)(1)(a)(3) of the Act mandates a term of imprisonment of twenty-five years "for a third or subsequent offense." The Act is replete with references to "subsequent offenses," in Section 44–53–370 and elsewhere. Section 44–53–470, which is plainly intended to apply generally to the Act, defines a "subsequent offense" as one predicated on at least two previous convictions of any state or federal statute "relating to" a broad range of controlled substances, specifically including marijuana. Thomas's prior convictions clearly qualify.

Id. at 455-456. The court therefore concluded that the Section 44-53-370 and Section 470 do not violate due process and Thomas was not entitled to relief. *Id.*

As is described in *Thomas*, Section 470 provides adequate notice that Mr. Jeter's conduct was unlawful, that it would qualify as a second or subsequent offense, and what method would be used to determine whether his prior offenses could be used to enhance his sentence.

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Therefore, Section 470 does not violate due process and is constitutional, so Mr. Jeter's case again is dismissed pursuant to Rule 12(b)(6).

IV. Conclusion

For the aforementioned reasons, this case is be dismissed with prejudice pursuant to Rule 12(b)(6).

IT IS SO ORDERED.

By: *s/ R. Keith Kelly*
CIRCUIT COURT JUDGE R. KEITH KELLY

17 August 2022
DATE

SPARTANBURG, SOUTH CAROLINA.

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The Supreme Court of South Carolina

Alonzo C. Jeter, III, Appellant,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-001355

The Honorable R. Keith Kelly
Cherokee County
Trial Court Case No. 2021CP1100593

FILED IN THE OFFICE
CLERK OF COURT
2022 OCT 11 A 11:31
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

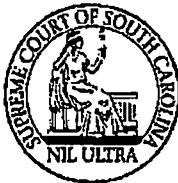
ORDER

Petitioner has filed a document which has been construed as a notice of appeal.

The public case index for Cherokee County shows a motion under Rule 59 of the South Carolina Rules of Civil Procedure is pending before the court of common pleas in this case. Accordingly, the notice of appeal is dismissed without prejudice pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

C.J.
FOR THE COURT

Columbia, South Carolina
September 28, 2022



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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October 14, 2022

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2022 OCT 17 A 11: 31
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

The Honorable Brandy W. McBee
PO Drawer 2289
Gaffney SC 29342-2289

REMITTITUR

Re: Alonzo C. Jeter, III v. State
Lower Court Case No. 2021CP1100593
Appellate Case No. 2022-001355

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Brenda F. Shealy

CHIEF DEPUTY CLERK

cc: Alonzo C. Jeter, III, 282902
Harley Littleton Kirkland, Esquire

Cherokee Common Pleas

Case Caption: Alonzo C. Jeter III VS State Of South Carolina

Case Number: 2021CP1100593

Type: Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

SCDC
JAN 3 2023
MCI
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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1100593

Alonzo C. Jeter, III
PLAINTIFF(S)

State Of South Carolina
DEFENDANT(S)

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

The Motion to Reconsider filed by Mr. Jeter is DENIED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/20/2022 .

Alonzo C. Jeter, III for Alonzo C. Jeter, III
Alonzo C. Jeter, III for Alonzo C. Jeter, III

'NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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JAN 3 2023
MCI
MAIL ROOM

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Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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