

FORM 4

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

JUDGMENT IN A CIVIL CASE

Samuel T. Lary, #296099,

CASE NO. 2012-CP-30-649
State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

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), 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 _____.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Conditional Order of Dismissal

Dated at _____, South Carolina, this _____ day of _____, 20_____.

PRESIDING JUDGE

This judgment was entered on the 25th day of October, 2012, and a copy mailed first class this 25th day of October, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel T. Lary, #296099
(Pro Se)

J. Rutledge Johnson, Esq.
Asst. Attorney General

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn M. Lancaster
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS LYNN W. LANCASTER) EIGHTH JUDICIAL CIRCUIT

2012 OCT 25 A 11: 28

Samuel T. Gary, #296099,

2012-CP-30-0649

Applicant, LAURENS COUNTY
CLERK OF COURT

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

A TRUE COPY OF ORIGINAL

Respondent.

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

PROCEDURAL HISTORY

This matter comes before this Court by way of an application for post-conviction relief filed August 16, 2012. The State made its Return and Motion to Dismiss on October 18, 2012

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted at the October 2008 term of the Laurens County Grand Jury for two counts of Armed Robbery (2008-GS-30-1427, 1430), two counts of Possession of a Weapon During the Commission of a Violent Crime (2008-GS-30-1428, 1431), and Malicious Injury to a Jail (2009-GS-30-1824). Rodney W. Richey, Esquire, represented him. On January 25, 2010, the Applicant pled guilty as indicted to the aforementioned charges. The Honorable D. Garrison Hill sentenced the Applicant, pursuant to the parties' negotiated plea, to confinement for a period of eighteen (18) years for the two armed robbery charges, five (5) years, concurrent, for the weapons charges, and three (3) years, concurrent for the malicious injury

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charge. At the time of his plea the Applicant was on probation for other unrelated charges, and his probation was revoked at the time of this plea. As a result of the plea negotiations, the State also dismissed additional charges against the Applicant for criminal conspiracy (2008-GS-30-1432, 1429) and an escape charge (2009-GS-30-1823). The Applicant did not appeal his convictions or sentences.

2010-CP-30-539

The Applicant then filed an application for post conviction relief on May 4, 2010. The Respondent filed its Return on October 27, 2010. An evidentiary hearing was convened on April 13, 2011 at the Newberry County Courthouse. The Petitioner raised the following issues in his first PCR:

2. "Ineffective assistance of counsel"
3. "Violation of fast and speedy trial"
4. "Newly discovered evidence"

The Applicant was present and represented by M. Rita Metts, Esquire. The Honorable Eugene C. Griffith, Jr. denied and dismissed the Petitioner's PCR application by written Order on June 27, 2011.

The Applicant subsequently filed a Motion to Reconsider and a Motion for a New Trial, and the Honorable Eugene C. Griffith denied this motion on August 4, 2011.

The Applicant then filed a Notice of Appeal on August 11, 2011. The Office of Appellate Defense submitted a brief on his behalf pursuant to Johnson v. State, 292 S.C. 310, 364 S.E.2d 201 (1988). This appeal is currently pending with the South Carolina Court of Appeals.

In his current application for PCR, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "After Discovered Evidence"
2. "Subject Matter Jurisdiction"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State,



274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court also finds that this Application for Post-Conviction Relief should 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 . 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 judgement 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 January 25, 2010. The Applicant was therefore required to file his application by January 26, 2011. This Application was filed on August 16, 2012, which is more than six (6) months after the statutory filing period had expired.

A motion for summary judgement 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 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 judgement as a matter of law."



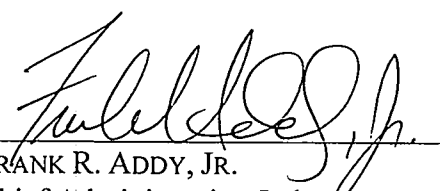
This Court further finds the Applicant cannot satisfy the requirements of the Lanier test for newly discovered evidence. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. The Applicant has failed to properly allege newly discovered evidence that would entitle him to a belated PCR action. Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for being successive, for failure to file within the time mandated by statute and for failing to properly allege newly discovered evidence.

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

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211



AND IT IS SO ORDERED this 19th day of Oct., 2012



FRANK R. ADDY, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Greenwood, South Carolina