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Oct 19 2023

S.C. SUPREME COURT

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

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JUL 26 2021

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Ushah Down (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 Richland)

AFFIDAVIT OF PERSONAL SERVICE

On this 21st day of July 2021, I served the Conditional Order of Dismissal (2020-CP-23-01967), on Inmate Kenneth Rivera SCDC Inmate #318979 by delivering personally and leaving a copy of the same at Perry Correctional Institution. Deponent is not a party to this action.

Ushah Down

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 21st day of July, 2021

Lisa Brown-Alston (L.S.)
Notary Public for South Carolina

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal (2020-CP-23-01967) is admitted at the South Carolina Department of Corrections (Broad River Correctional Institution), Richland County, SC this 21st day of July, 2021.
s/ Kenneth Rivera
Inmate
SCDC Inmate #: 318979

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Kenneth Rivera, #318979,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT

) Case No.: 2020-CP-23-01967

) ENTERED COMPUTER
) **CONDITIONAL ORDER OF DISMISSAL**

FILED CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC
2021 JUN 25 PM 2:15

This matter comes before this Court by way of an application for post-conviction relief filed by Kenneth Rivera (“Applicant”) on April 2, 2020. The State (“Respondent”) made its return and motion to dismiss on or about May 18, 2021, moving for the summary dismissal of the application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections.¹ An arrest warrant for third-degree assault and battery was issued for Applicant on February 6, 2015. On May 5, 2016, Applicant appeared before the Honorable Diane Day Cagle and pleaded guilty as charged. Applicant was represented by Dorothy A. Manigault, Esquire. Judge Cagle sentenced Applicant to time served. Applicant did not appeal his conviction or sentence.

CURRENT APPLICATION

In his application for post-conviction relief, filed on April 2, 2020, Applicant argues he is entitled to relief based upon multiple claims, which this Court interprets as follows: (1) Applicant was not given the opportunity to plead not guilty, (2) Applicant was never seen by a judge, and

¹ This Court’s review of the records before it indicates that Applicant is presently imprisoned for a conviction that is not at issue in this application.

(3) Applicant was not represented by counsel². Applicant prays that the Court would grant relief and take “this conviction and crime off my record.”

Before this Court are the records of the Greenville County Magistrate’s Court regarding Applicant’s conviction and sentence; Applicant’s records from the South Carolina Department of Corrections.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. § 17-27-70(c), this Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). This Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

The application shall be dismissed summarily due to Applicant’s failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10

² This Court’s review of the records before it indicates that Applicant was represented in the underlying criminal case, despite his assertion to the contrary.

³ Respondent sent a letter to the West Greenville Summary Court on April 30, 2020, requesting a copy of “any and all documentation referring to [the underlying criminal] case number; including the transcript or a copy of a CD with this case on it.” The Summary Court did not provide Respondent with either a transcript or a recording of any proceeding in the underlying criminal case.

to -160 (the Act). 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). 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 offense 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 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). Applicant did not appeal his conviction or sentence, and he was convicted and sentenced on May 5, 2016. The application was, therefore, due on or before May 6, 2017. This application was not filed until April 2, 2020, almost four years after the statutory deadline had passed. Therefore, the application shall be dismissed summarily due Applicant's failure to file within the time mandated by Act and by Peloquin.

Applicant's second motion for discovery.

Applicant previously moved for court authorization to engage in discovery, pursuant to S.C. Code Ann. § 17-27-150. In an order issued on August 20, 2020, the Honorable Alex Kinlaw, Jr., denied that motion. Applicant filed a second motion for discovery on August 20, 2020, and another document supporting his motion on August 26, 2020. This Court finds that in light of Applicant's failure to supply this Court with a reason that discovery is required and in light of the lack of merit in his application, Applicant has failed to show good cause. Therefore, his second motion for discovery is denied.

CONCLUSION

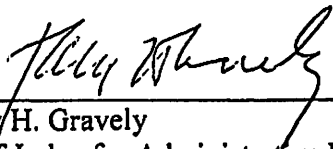
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application for post-conviction relief with prejudice unless Applicant provides specific reasons, factual or

legal, that the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this order upon him to provide reasons that this order should not become final. Applicant shall file any reasons he may have with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Taylor Zane Smith, Esquire
PCR Division – 13th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Greenville County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 10th day of June, 2021.



Perry H. Gravely
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to
Attorney: <u>general and applicant</u>
on <u>6 / 25 / 2021</u>

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	FOR THE 13TH JUDICIAL CIRCUIT
Kenneth Rivera, #318979,)	Case NO: 2020-CP-23-01967
Applicant,)	
v.)	MOTION TO RESPOND
State of South Carolina,)	CONDITIONAL ORDER OF
<u>Respondent.</u>)	DISMISSAL ENTERED COMPUTER

The following party Kenneth Rivera in the above-named case hereby moves) State of South Carolina, County of Greenville for an order to Respond to Respondent Conditional Order of Dismissal because:

1. Applicant was never transported to court On May 5, 2016.
2. Applicant never was given the opportunity to plead guilty or not guilty.
3. Applicant never discuss this matter with trial attorney.

Said motion is based upon the attached Memorandum of Law, and all of the files, records, and proceedings herein.

July 5, 2021

Kenneth Rivera
Kenneth Rivera # 318979
BRCI- Wateree B # 225
4460 Broad River Rd.
Columbia, SC 29210

Copy mailed to
Attorney general
on 7 / 21 / 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE 13th JUDICIAL CIRCUIT
))
Kenneth Rivera, #318979,) Case NO. 2020-CP-23-01967
Applicant,))
v.) Memorandum of Law In
State of South Carolina) Support of Motion to Respond
Respondent.) to Conditional order of Dismissal

1. Applicant was never transported to court on May 5, 2016.

Applicant was never transported to court on this May 5, 2016. The record shows that applicant never was transported to court.

2. Applicant never was given the opportunity to plead guilty or not guilty.

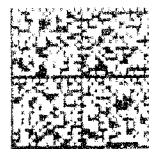
Applicant did not plead guilty nor was seen by a Judge if so where's the sentencing record?

July 5, 2021

Kenneth Rivera
Kenneth Rivera #318979
BRCI-Waterce B #225
4460 Broad River Road
Columbia, SC 29210

Cenneth Rivera #318979
BRCI-Waterloo B# 225
1460 Broad River Rd.
Columbia, SC 29210

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Greenville County Courthouse
Clerk of Court
305 E. North Street
Greenville, SC 29601

