

STATE OF SOUTH Carolina  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
COURT OF COMMON PLEAS

George C. James, Jr.  
Chief Administrative Judge  
Third Judicial Circuit

CASE NO: 2012-CP-43-1782

Per

**RECEIVED**

AUG 05 2013

S.C. SUPREME COURT

Leroy Shaw #301480. . . . . Appellant

VS.

State of South Carolina. . . . . Respondent

Notice of Appeal

Leroy Shaw #301480 APPEALS the order of the  
Honorable George C. James, Jr. dated June  
18, 2013. APPELLANT received notice of entry of  
this order on July 1, 2013.

Other Counsel of Record  
Daniel Gourley  
ASST. ATTORNEY GENERAL  
P.O. Box 11549  
Columbia, S.C. 29211

Respectfully Submitted  
Leroy Shaw

Leroy Shaw #301480  
McCormick Corr. Inst.  
386 Redemption Way  
McCormick, S.C. 29899

Dated: July 31, 2013

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APR 2 2013

S.C. SUPREME COURT

LEGAL MAIL  
MAIL ROOM



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MAIL ROOM

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

**RECORDED**

2013 JUL 25 PM 1:31

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Leroy Shaw, #301480,

2012-CP-43-1782

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

Petitioner,

*James C. Campbell*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to a document captioned "Notice and Motion for Writ of Mandamus" (hereinafter "Petition") and filed July 16, 2013. In its Return and Motion to Dismiss, Respondent requested that the Petition be summarily dismissed because it fails to support the requested relief.

**PROCEDURAL HISTORY**

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was true bill indicted at the November 2003 term of the Sumter County Grand Jury for Burglary – 2nd Degree (2003-GS-43-0232). Joseph Spigner, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Reginald Lloyd. Applicant was found guilty, and on April 23, 2004, Applicant was sentenced to life imprisonment without parole.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals dismissed the appeal. State v. Shaw, Op. No. 2007-UP-201 (S.C. Ct. App. filed May 4, 2007). A

timely Petition for Rehearing was filed. On June 28, 2007, the South Carolina Court of Appeals denied the Petition for Rehearing. The Remittitur was issued on August 3, 2007.

**2007-CP-43-1626**

The Petitioner then filed an application for post-conviction relief (PCR) on August 1, 2009 and an amended application on July 24, 2009. The Petitioner set forth the following grounds for relief:

1. "The State violated Applicant's rights guaranteed by the Sixth, Eighth, Fourteenth Amendment and South Carolina Law."
  - a. "Trial court violated the Rights of Defendant, Based on the State's violation of Rule 5, and Due Process."
2. "Ineffective Assistance of Trial Counsel."
  - a. "Trial counsel [failed] to do simple research in case, thereby Prejudice and Impeded the Defendant from presenting a proper defense. U.S.C.A. Const. Amends. 6, 14."
  - b. "Defendant clothes that were seize[d] as eviden[ce] [were] also 'exculpatory' material that was disclose[d] to the Defendant that were in the State's possession."
  - c. "Forensic reports on seized clothes."
  - d. "Store clerks could have been subpoena as witness as reference to gloves and surveillance cameras."
  - e. "Also surveillance cameras video tapes could have been subpoena, And maintenance records of surveillance cameras."
3. "Ineffective Assistance of Appell[ate] Counsel."
  - a. "The Petitioner was deprived of Effective Assistance of Appellate Counsel in Violation of the Sixth Amendment of the United States Constitution where Appellate Counsel failed to raise on appeal the violation of Appellant's rights under Rule 5, S.C. CrimP. And the Due Process Clause of the United States Constitution. U.S.C.A. Const. Amends. 6, 14."
  - b. "Appellate Counsel failed to raise on appeal that the State did not reach its burden of proof. U.S.C.A. Const. Amends. 6, 14."

An evidentiary hearing was convened into the matter on October 29, 2009, at the Sumter County Courthouse, where Applicant was present and represented by counsel, A. Paul Weissenstein,



Jr., Esquire. By order dated January 25, 2010, and filed February 4, 2010, the Honorable R. Ferrell Cothran, Jr., denied and dismissed the application with prejudice. A timely notice of appeal was filed. In a written order, dated December 2, 2010, the South Carolina Supreme Court denied the petition for writ of certiorari and granted counsel's request to withdraw. The Remittitur was issued on December 21, 2010.

Incorporated herein by reference are the records of the Sumter County Clerk of Court, the South Carolina Department of Corrections records, Appellate records, and the Petitioner's prior PCR records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

In his Petition, the Petitioner argues that he that "respondent has failed to act upon his-her ministerial duties as requested and required." However, Petitioner merely cites various case law in support of his argument that Respondent has failed to perform his ministerial duties, but in no way alleges what duties Respondent allegedly failed to perform.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A mandamus will issue only to compel a public official to perform a mandatory duty. State v. Ansel, 76 S.C. 395, 414, 57 S.E. 185 (1906); Lombard Iron Works v. Town of Allendale, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. Charleston County School District v. Charleston County Election Commission, 336 S.C. 174, 519 S.E.2d 567 (1999). It is issued "only to **enforce** a clear legal right requiring the performance of only ministerial duties." Toal, et al, Appellate Practice in South Carolina, p. 281(1999), citing Wiblen v. Long, 262 S.C. 430, 205 S.E.2d 174 (1974) (emphasis added). To obtain a writ of mandamus requiring performance of an



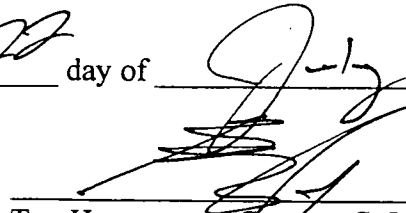
act, a Petitioner must show that the opposing party has an indisputable and plainly defined duty to perform the act, the ministerial nature of the act, the opposing party's specific legal right for which discharge of the duty is necessary, and the lack of other legal remedy. Id. at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. In Interest of Lyde, 284 S.C. 419, 327 S.E. 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. Id.

In his Petitioner, the Petitioner asserts that Respondent has failed to perform his ministerial duties. However, Petitioner fails to allege with any specificity what duties Respondent has allegedly failed to perform. The Petitioner has already had an opportunity to address his issues in his PCR case. Accordingly, the Petition for Writ of Mandamus should be denied and summarily dismissed because it fails any specific requested relief.

IT IS THEREFORE ORDERED that the Petition be DENIED AND DISMISSED. This Court hereby advises 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.

AND IT IS SO ORDERED this 20 day of July, 2013

James, South Carolina.

  
THE HONORABLE GEORGE C. JAMES, JR.  
Chief Administrative Judge  
Third Judicial Circuit Court



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

RECORDED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP4301782

Leroy Shaw

2013 JUL 25 PM 3:15

South Carolina State of

Alan Wilson  
CERTIFIED TRUE COPY  
OF ORIGINAL FILED

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

DEPUTY CLERK OF COURT  
SUMTER COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 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: \_\_\_\_\_
- 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: \_\_\_\_\_

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.

Circuit Court Judge

2143

Judge Code

For Clerk of Court Office Use Only

7/25/2013

Date

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JUL 29 2013

Referred to Gowley /dm

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:

Leroy #301480 Shaw McCormick Corr Inst 386 Redemption  
Way McCormick, SC 29899

Alan McCrory Wilson PO Box 11549 Columbia, SC  
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

Court Reporter

James C. Campbell - Clerk of Court

**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.

See attached Order.

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\_\_\_\_\_  
\_\_\_\_\_

Leroy Shaw # 301480

McCormick Corr. Inst.

386 Redemption Way

McCormick, S. C. 29899

The Department of Corrections has  
not entered the mail before the  
Department of Corrections has  
assumed the  
responsibility for the contents

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JUL 31 2013

MA

Daniel E. Shearouse  
Clerk of Supreme Court  
P. O. Box 11330  
Columbia, S. C. 29211