

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP4600768

Jimmy Charles Kendall 319409	State Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: J. Rutledge Johnson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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), 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:

CONDITIONAL ORDER OF DISMISSAL

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Use 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)
n/a	n/a	n/a

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.

<i>s/John C. Hayes, 999</i>	2049	5-21-2012
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on May 30, 2012, and a copy mailed first class or placed in the appropriate attorney's box on May 30, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Jimmy Charles Kendall Kirkland Correctional Institution (F-1) 4344 Broad
River Road Columbia, SC 29210

J Rutledge Johnson Office Of The Attorney General PO Box 11549
Columbia, SC 292111549

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29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jimmy Charles Kendall, III, # 319409,)
Applicant,)

2012-CP-46-0768

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED-RECEIVED
2012 MAY 30 AM 9:36
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed

February 29, 2012. The Respondent made its Return and Motion to Dismiss on

May 15, 2012

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the July 2011 term of the York County Grand Jury for Murder (2011-GS-46-2217). On January 23, 2011, the Applicant appeared pro se and pled pursuant to North Carolina v. Alford as indicted to murder. The Honorable Lee S. Alford sentenced Applicant to a term of imprisonment for thirty (30) years. The Applicant did not appeal his conviction or sentence.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Judge Misconduct"
2. "Lawyer Misconduct"

[Handwritten signature]

3. "Evidence withheld from me"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

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 [was] 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.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

These facts do not support a cognizable claim for post-conviction relief under any of

the statutory grounds. Therefore, this Court summarily dismisses this application for post-conviction relief.

In his application, the Applicant states that he asked for and the court granted the relief of Phillip Smith, Esquire as counsel. Thus, an Applicant who represents himself in a proceeding cannot claim ineffective assistance of counsel. Pursuant to Rule 12(b)(6), SCRPC, this Court summarily dismisses this allegation because it does not state a claim for which relief may be granted.

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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 York 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 21st day of May, 2012.

John C. Hayes, III
JOHN C. HAYES, III
Presiding Judge,
Sixteenth Judicial Circuit Court

York, South Carolina.