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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Terence L. Rush, Appellant,

v.

Appellate Case No.: 2021-000817

Michael B. Stribble, Individually and  
in his Official Capacity as Sergeant at  
the Newberry County Sheriff's Office,  
Respondent.

**RECEIVED**

JUL 02 2024

SC Court of Appeals

AMENDED MOTION SUBMITTING WRITTEN OBJECTIONS

Terence L. Rush re-objects to the Appellate Court's reasoning in their Affirmance of the lower court's time-barred finding and of Stribble not being the proper party. He reiterates the following:

1. Terence L. Rush, swears and affirm to the facts listed below under pain of fines and further imprisonment by way of Jurat Oath at the ending of this document before a notary public that if he is ever demanded or allowed oral arguments, he will testify to the factual truth in the stated words written in his hand below:

Terence L. Rush, Sui Juris

2. No where in the complaint do Mr. Rush, aver, or state that he was aware or acknowledged that Stribble's claim to have a warrant was a ruse, and states this under oath while objecting to it. See complaint paragraph #15 and paragraph # 36 of the Affidavit in the Designation on Appeal.

3. Mr. Rush under oath states and objects to the fact that the Court is overlooking that his loss of his houses in 2018 is the injury suffered that made him look into the arrest as being without probable cause and thus fraudulent.

4. Under oath Mr. Rush states that on the date of his arrest he didn't lose the houses, so his injury due to being locked up did not occur.

5. Under oath Mr. Rush states the properties were still being paid for, even when his family came to stay in Florida until the disposition of his case so that they can return back home together at their house in Whitnire, S.C.

6. Under oath Mr. Rush, states that he submitted documents to the Court of Common pleas September 26, 2018. To Taylor C.I. - mailroom Notary Pamela Clague, which according to law, once prisoner's submit documents to prison officials for mailing to Court's it is considered filed.

7. Under oath Mr. Rush states that while his documents was being considered for in forma pauperis proceedings he discovered the identity of Corey Pena, a white male, and thus the discovery of Michael Stribble not having probable cause for a black male in 2019, whereupon he had to resubmit an Amended Complaint with the new information after the forma pauperis was denied in 2019.

8. Just like lawyers aren't required to predict future laws or possible decisions that would be harmful to their client with them pleading now should they reoffend or come in contact with the law, is there any way for Mr. Rush, to anticipate he'd have to put every type of pleading together in a simple complaint after being arrested on October 2, 2015 and never released out of anybody's custody for one day or minute after till this present day still that he'd have to plead such wording in a lower court as a pro se prisoner, who's pleadings are to be liberally construed and not held to those lawyers standards due to no formal legal education in order to preserve it for appeal to counter a statute of limitations defense.


9. Under oath Mr. Rush states that "Snail Mail" is the only reasonable diligence he was able to use and had available to him to find out any needed facts, with majority of his inquiries receiving no responses back.

10. Under oath Mr. Rush states he never received a response from the South Carolina Bar on recommended civil trial pro bono lawyers.

11. Under oath Mr. Rush states that never could he anticipate that he would have to plead an action for fraud without access to South Carolina laws, rules, procedures or constitution because South Carolina Legal Board of Continuing Education would not respond back so that he can try and obtain one due to being incarcerated in a state who doesn't have those in their county jails or institutions.

12. Under oath Mr. Rush states that he could be wrong, but all documents that were filed were told to the Clerk of the lower court to be forwarded to the Appeals Court where the lower court did have an opportunity to weigh in on that fact that Mr. Rush has been incarcerated since the day of his arrest in 2015 and never released, never had access to S.C. laws, rules, or procedures in a memorandum to Judge Donald B. Hocker in lieu of a hearing and also with objections submitted to him.

WHEREFORE, based on the following, the undersigned, Terence L. Rush, is submitting this Amended motion submitting written objections in numerical form 1-12 and would have this court to take note of the facts contained herein and reverse, rescind and revoke its opinion, then remand this case back to the lower tribunal for hearings to decide the facts in dispute.

  
Terence L. Rush

OATH

The undersigned, Terence L. Rush, do solemnly swear and affirm that the facts contained in this Amended Motion Submitting written objections are true, factual and correct as my own.

*Terence L. Rush*  
Terence L. Rush, Sui Juris

JURAT

STATE OF FLORIDA  
COUNTY OF WAKULLA

Personally appeared  physically .OR  by online notarization, the affiant, Terence L. Rush above, being duly sworn to or affirmed and signed before me on this 26<sup>th</sup> day of June, 2024 by Terence L. Rush



LANORA W. ADAMS  
Notary Public  
State of Florida  
Comm# HH402893  
Expires 5/24/2027

*Lanora W. Adams*  
NOTARY PUBLIC OR DEPUTY CLERK

Lanora W. Adams  
(Print, Type, or Stamp commissioned name of Notary Public or Deputy Clerk)

Personally Known  
 Produced Identification

Type of identification produced \_\_\_\_\_

Physical Presence Produced  
State of Fla Dept of Corrections  
State ID # E03490



## The South Carolina Court of Appeals

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May 29, 2024

Terence L. Rush #E03490  
Wakulla Correctional Institution - Main Unit  
110 Melaleuca Drive  
Crawfordville FL 32327

Mr. David Allan DeMasters, Esquire  
2838 Devine Street  
Columbia SC 29205

Re: Terence L. Rush v. Michael B. Stribble  
Appellate Case No. 2021-000817

Dear Counsel, and Mr. Rush:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

cc: The Honorable Donald B. Hocker

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Terence L. Rush, Appellant,

v.

Michael B. Stribble, Individually and in his Official  
capacity as Sergeant at the Newberry County Sheriff's  
Office, Respondent.

Appellate Case No. 2021-000817

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Appeal From Newberry County  
Donald B. Hocker, Circuit Court Judge

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Unpublished Opinion No. 2024-UP-195  
Submitted May 8, 2024 – Filed May 29, 2024

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**AFFIRMED**

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Terence L. Rush, pro se.

David Allan DeMasters, of Riley Pope & Laney, LLC, of  
Columbia, for Respondent.

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**PER CURIAM:** Terence L. Rush appeals the dismissal of his 2020 action for fraud against Michael B. Stribble, Individually and in his official capacity as Sergeant at the Newberry County Sheriff's Office (Stribble). The circuit court granted a motion by Stribble to dismiss the action based on findings that the claim

was time-barred and Stribble was not a proper party to the lawsuit. We affirm pursuant to Rule 220(b), SCACR.

The circuit court found Rush's claim was time-barred by the two-year statute of limitations provided in the South Carolina Tort Claims Act (SCTCA). See S.C. Code Ann. § 15-78-110 (2005) (providing an action pursuant to the SCTCA is "forever barred" if it was not "commenced within two years after the date the loss was or should have been discovered" or, if a verified claim was filed, "commenced within three years of the date the loss was or should have been discovered"). On appeal, Rush disputes the premise that his action was governed by the SCTCA and contends his action was subject to the three-year statute of limitations provided in section 15-3-530 of the South Carolina Code (2005). The circuit court did not rule on whether Rush's action was timely under section 15-3-530; nevertheless, we agree with Stribble that the order of dismissal should be affirmed because the action was time-barred under this section as well as under section 15-78-110. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court."); *id.* at 420, 526 S.E.2d at 723 ("The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.").

In South Carolina, the statute of limitations for a cause of action for fraud is governed by the "discovery rule." *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989). "In applying the discovery rule, inquiry is focused upon whether the complaining party acquired knowledge of any existing facts 'sufficient to put said party on inquiry which, if developed, will disclose the alleged fraud.'" *Id.* (quoting *Walter J. Klein Co., v. Kneece*, 239 S.C. 478, 483, 123 S.E.2d 870, 874 (1962)). "A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence, the same result follows." *Id.*

In the complaint, Rush asserted Stribble, while accompanied by several uniformed Newberry County deputy sheriffs, approached him in his backyard, misidentified him as Corey Pena, and advised him they had a warrant for Pena. Rush alleged he submitted to a finger scan out of fear he would be taken into custody based on

Stribble's insistence that he was Corey Pena, the finger scan resulted in his arrest for failure to appear at a proceeding in Florida, and he suffered pecuniary losses as a result of the arrest. The alleged fraud on which Rush's action was based concerned Stribble's claim of a valid warrant for Pena's apprehension.

On appeal, Rush argues to this court his action was timely because, as a result of his incarceration<sup>1</sup> in Florida, he lacked access to the internet as well as research materials on South Carolina law; therefore, his cause of action did not accrue until the end of 2018, when he was able to ascertain that he bore no physical resemblance to Pena. In his complaint, however, Rush averred he "demanded" Stribble produce the warrant, to no avail. Moreover, as Rush himself acknowledged, on the date of his arrest in 2015, he was aware of the possibility that Stribble's claim about a warrant for Pena was a ruse; therefore, he had at that time acquired knowledge of existing facts sufficient to put him on inquiry that, if developed, could have disclosed Stribble's alleged fraud. See *Burgess*, 300 S.C. at 185, 386 S.E.2d at 800 ("[E]ither actual or constructive knowledge of facts or circumstances, indicative of fraud, trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom."). Because Rush's arrest occurred in 2015 and he filed his lawsuit in 2020, his action was untimely pursuant to section 15-3-530.<sup>2</sup>

Rush also appeals the circuit court's determination that Stribble was not a proper party pursuant to SCTCA, arguing Stribble's alleged misconduct was outside the scope of his official duties. We decline to address this issue because our determination that Rush's action was untimely under section 15-3-530 is sufficient to support the circuit court's dismissal of the lawsuit regardless of whether Stribble was properly named as defendant. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that when a prior issue is dispositive of an appeal, the appellate court does not need to address any remaining issues); *Dwyer v. Tom Jenkins Realty*, 289 S.C. 118, 120, 344 S.E.2d

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<sup>1</sup> According to Rush's appellant's brief, he was sentenced in 2017 and has remained in the custody of the Florida Department of Corrections since that time.

<sup>2</sup> Rush also argues he is entitled to equitable tolling of the statute of limitations because of his incarcerated status and limited access to research materials, but did not make this argument during the circuit court proceedings. We therefore hold this issue is not preserved for appellate review. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

886, 888 (Ct. App. 1986) ("Where a decision is based on two grounds, either of which, independent of the other, is sufficient to support, it will not be reversed on appeal because one of those grounds is erroneous." (quoting 5 Am. Jur.2d *Appeal & Error* § 727 (1962))).<sup>3</sup>

**AFFIRMED.**<sup>4</sup>

**GEATHERS, HEWITT, and VINSON, JJ., concur.**

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<sup>3</sup> Rush also argues (1) Stribble failed to apply for a search warrant before entering his yard, (2) Stribble lacked probable cause to search for a person of Rush's description, (3) Rush could not have been mistaken for Corey Pena based on Pena's description, and (4) the circuit court, in denying his request to proceed in forma pauperis, discriminated against him. None of these issues were raised during the circuit court proceedings; therefore, they are not preserved for appellate review. *See Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

<sup>4</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I placed a copy of this document in the hand of a Mailroom Official for Wakulla Corr. Inst. - Main Unit for mailing by U.S. Postal mail to: David Allan De Masters, Esquire, 2538 Devine St., Columbia, S.C. 29205 and to S.C. Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211 on this 30<sup>th</sup> day of June, 2024.



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% RUSH, TERENCE L., #E03490  
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JUL 02 2024  
SC Court of Appeals

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