



ALAN WILSON
ATTORNEY GENERAL

Monday, July 02, 2012

Filed July 12, 2012

The Honorable James R. Barber, III
Chief Administrative Judge – Fifth Judicial Circuit
P.O. Box 2766
Columbia, South Carolina 29202-2766

Re: PCR (2011-CP-40-8297) – John D. Barnett #00250432 v. State

Dear Judge Barber:

Enclosed, please find the State's proposed Conditional Order of Dismissal in the above-captioned case. If the order meets with your approval, please sign it and file it with the clerk so it may be served on all parties involved in the matter. Thank you for your consideration in this matter and if you have any questions or concerns with the Conditional Order, please contact me at any time.

With highest regards,

Robert D. Corney
Assistant Attorney General

Enclosure

cc: (Pro Se Applicant)
John D. Barnett, #00250432
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

JUL 20 2012

GENERAL COUNSEL

MCCI

July 17, 2012

Christina Kellett, Esquire
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221-1787

RE: John D. Barnett, 250432 v. State of South Carolina
2011-CP-40-8297

Dear Ms. Kellett:

Enclosed please find the Conditional Order of Dismissal dated July 12, 2012, dismissing the post-conviction relief application without a hearing in the above referenced case signed by the Honorable James R. Barber. Please serve inmate John D. Barnett, #250432 with the order and provide our office with an affidavit of service so that we may prepare a final order concluding the case. If you have any questions, please feel free to call: 803-734-5178.

Sincerely,

Robert D. Corney
Assistant Attorney General

Enclosure(s)

Barnett, John

B-92

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Sgt. J. Tuttle (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF) AFFIDAVIT OF PERSONAL SERVICE

On this 27 day of July, 2012, I served the signed **Conditional Order of Dismissal** on Inmate John Barnett, SCDC Inmate No. 250432, by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick, South Carolina. Deponent is not a party to this action.

s/ [Signature]
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 27th day of July, 2012
Stephanie Marshall (L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2021

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, MCT, McCormick County, South Carolina, this 27 day of July, 2012.

s/ [Signature]

Inmate Signature
SCDC No. 250432

List case number here

2011-CP-40-8297

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4008297

John David #250432 Barnett

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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.
- 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 PUBLIC 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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 July 2012 to attorneys of record or to parties (when appearing pro se) as follows:

John David #250432 Barnett

Brian T. Petrano

John David #250432 Barnett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

John D. Barnett #00250432,

2011-CP-40-8297

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2012 JUL 12 AM 8:08
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before this Court by way of an application for post-conviction relief filed December 6, 2011. Respondent made a Return and Motion to Dismiss on January 6, 2012, requesting that the application be summarily dismissed as barred by the statute of limitations and successive in nature.

Applicant is presently confined at McCormick Correctional Institution pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the July 2000 term of the Richland Grand Jury for one count of Grand Larceny of a Motor Vehicle Under \$5000 (2000-GS-40-49993), two counts of Burglary in the 1st Degree (2000-GS-40-49994; 49995), four counts of Kidnapping (2000-GS-40-49996; 49997; 50008; 50010), five counts of Armed Robbery (2000-GS-40-49998; 50004; 50005; 50007; 50009), one count of Grand Larceny of Motor Vehicle Over \$5000 (2000-GS-40-49999), and one count of Discharging a Firearm at or into a Dwelling (2000-GS-40-50000). The State also *nolle prossed* one count of Assault and Battery of a High and Aggravated Nature (2000-GS-40-50006), one count of Kidnapping (2000-GS-40-50003), one count of Armed Robbery (2000-GS-40-50002), and one count of Burglary (2000-GS-40-50001). Applicant was represented by Leslie Coggiola, Esquire, on all charges. On March 30, 2001, Applicant appeared before The Honorable Marc H.

Westbrook, where he pled guilty as indicted for a negotiated sentence of five (years) imprisonment for Grand Larceny of a Motor Vehicle under \$5000, forty (40) years imprisonment for each-count of Burglary in the First Degree, and thirty (30) years imprisonment for two counts of Kidnapping (2000-GS-49996; 49997), all sentences to run concurrently with credit for time served.

Thereafter, on November 14, 2001, Applicant appeared before the Honorable L. Henry McKellar, where he pled guilty as indicted for a negotiated sentence of thirty (30) years imprisonment to run concurrent to March 31, 2001, for three counts of Armed Robbery (2000-GS-40-49998; 50004; 50005); twenty (20) years to run consecutive to March 30, 2011, for two counts of Armed Robbery (2000-GS-40-50007; 50009); twenty (20) years to run consecutive to March 30, 2011, for two counts of Kidnapping (2000-GS-40-50008; 50010), five (5) years imprisonment to run concurrent to March 31, 2001, for Grand Larceny of a Motor Vehicle over \$5000 (2000-GS-40-49999); and ten (10) years imprisonment to run concurrent to March 31, 2001, for Discharging a Firearm at or into a Dwelling (2000-GS-40-50000), with credit for time served and for an aggregate fifty (50) year term of imprisonment.

Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. The Court affirmed the convictions and sentences, and the Remittitur was sent on August 30, 2005. State v. John Barnett, Op. No. 04-UP- 3751 (S.C. Ct. App. Filed March 8, 2004).

Applicant filed his first post-conviction relief application on November 18, 2002 (2002-CP-40-5633). An evidentiary hearing on this application was held, at which Applicant was present with counsel, Tara Dawn Shurling, Esquire. The application was denied and dismissed by order served March 29, 2006.

*INCORRECT / FALSE / PREVARICATED KNOWINGLY,
WITH RECORDS BEFORE RESPONDANT (CORNEY).*

Applicant filed the current application for post-conviction relief on December 6, 2011. In

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

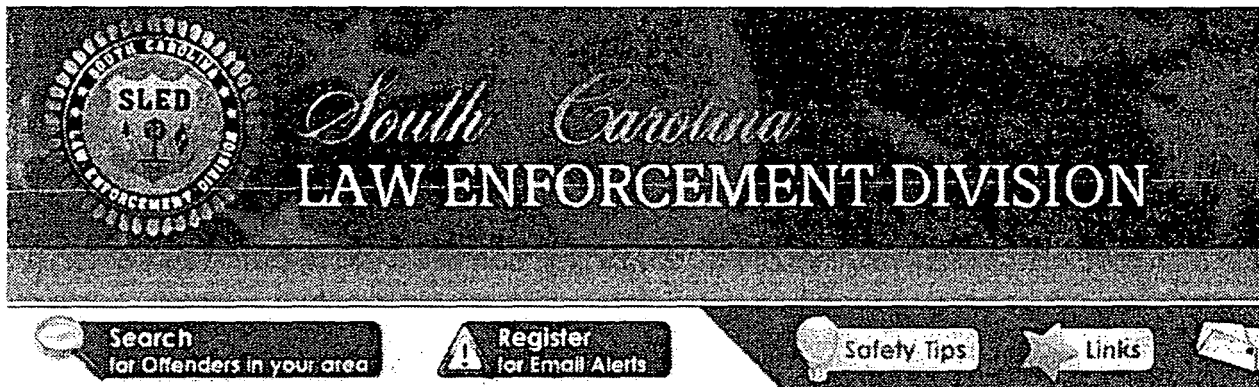
- (a) BEING HELD UNLAWFULLY IN CUSTODY UNDER CONVICTED SEX OFFENSES &
- (b) SEX OFFENDER REGISTRY, YET NEVER INDICTED ON CRIMINAL SEX OFFENSES OR
- (c) ATTEMPT, NOR CONVICTED OF ANY SEX OFFENSES & DEPRIVED LIBERTY INTEREST ^{over} OVER

it, he alleges he is being held in custody unlawfully for the following reasons:

OF EQUAL PROTECTION & DUE PROCESS (14th U.S.C.A.) OF HIM TO BE INDICTED, TRIAL & CON-
 VICTED OF CRIMINAL SEX OFFENSES PRIOR TO THE STATE CLASSICAL APPELLANT
 AS A CONVICTED SEX OFFENDER AND MANDATING APPELLANT TO REGISTER AS A SEX OFFE-
 NDER, RESULTING IN PERMANENT REPUTATION DAMAGE AND SUBJECTING APPELLANT TO EXCESS-
 IVE RISK OF HARM SUBJECTING, COMPROMISING APPELLANT RELUCTANTLY TO ENROLL IN MOR-
 TAL COMBAT IN SELF DEFENSE WHILE IN GENERAL POPULATION.
 AS HELD IN (UGAL V. SIMMONS) 131 F.3D AT 829, 9th CIR. 1997) THE COURT CAN HONOR
 CONCEPT OF A STATE ACTION BEARING MORE "STIGMATIZING CONSEQUENCES" THAN
 THE LABEL OF A PRISON INMATE AS A SEX OFFENDER.
 THE CLASSIFICATION OF AN INMATE AS A SEX OFFENDER IS PRECISELY THE TYPE OF
 "ATYPICAL AND SUBSTANTIAL HARASSMENT ON THE INMATE IN RELATION TO THE ORDINA-
 RY LIBERTY OF PRISON INMATE" THAT THE SUPREME COURT HAS OBSERVED IS PROTECTED
 LIBERTY INTEREST (SANDERS 575 U.S. AT 482, 115 S.Ct. AT 2300).
 STATE NOT HONORING ITS PRISON BAILIWS.

Moot

In regards to Applicant's claim that he has been unjustly added to the Sex Offender Registry this Court finds the issue to be moot as a Consent Order to Remove Defendant from Sex Registry was filed with the Richland County Clerk of Court on May 29, 2012 (attached and incorporated herein). A subsequent examination of the South Carolina Sex Offender Registry has revealed that Applicant is no longer listed as a sex offender. The result of this search has been attached below: (next pg.)



Offender Search: Results

Found 0 offenders Name: John Barnett City:

	#	Alert	Name	Address	City	Zip	Type	View
Found 0 offenders			Name: John Barnett City:		Viewing locations 0 through 0			

Applicant has already received the relief which he seeks in the current action. Therefore, the current request for relief is moot.

Findings of Fact and Conclusions of Law

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

Timeliness – S.C. Code §17-27-45(a)

This Court agrees with the Respondent 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 judgment 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). For the purposes of this Order, the Applicant's conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. August 30, 2005. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCP means that this PCR application had to be filed by August 31, 2006. **This Application was filed on December 6, 2011, which was 1929 days beyond the time that the statutory filing period had expired.**

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). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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 judgment as a matter of law." Therefore, this Court shall summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

SUCCESSIVE-S.C. Code § Ann. 17-27-90

This Court further finds the current PCR application is successive. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently

waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the 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.

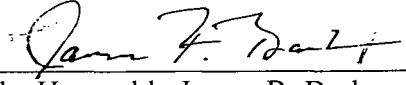
Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel. Aice v. State, 409 S.E.2d 392 (1991). Even a belated direct appeal claim is subject to limitations. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008)(Petitioner was barred from raising in successive post-conviction relief (PCR) application claim that he was denied the right to direct appeal due to the ineffective assistance of counsel, where claim could have been raised in first PCR application).

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. Applicant is granted thirty (30) 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General
Robert D. Corney
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29201

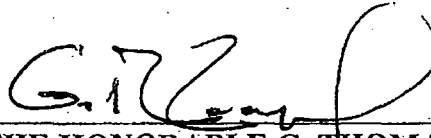
AND IT IS SO ORDERED this 12 day of July, 2012.


The Honorable James R. Barber, III
Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

I hereby find that the kidnapping offenses referenced in this Order did not include a criminal sexual offense or an attempted criminal sexual offense. Therefore, the Defendant does not have to register as a Sex Offender pursuant to 23-3-430 (c)(15) as a result of his conviction for the above-captioned offenses, and should be removed from the Sex Offender Registry as a result of these offenses.

AND IT IS SO ORDERED.

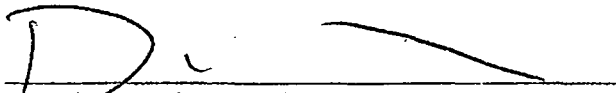
 5.24.12

THE HONORABLE G. THOMAS COOPER, JR.
Chief Judge for Administrative Purposes
Court of General Sessions
Fifth Judicial Circuit

Columbia, South Carolina

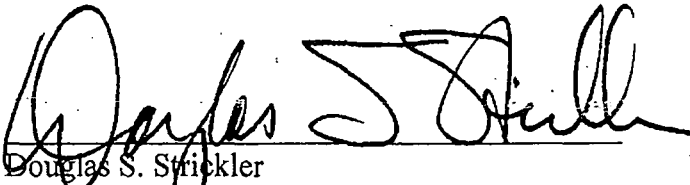
This 23 day of May, 2012.

I CONSENT:



The Honorable Daniel E. Johnson
Solicitor, Fifth Judicial Circuit

I SO MOVE:



Douglas S. Strickler
Circuit Public Defender, Fifth Judicial Circuit

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 MAY 29 AM 9:07

RICHLAND COUNTY
FILED

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

John D. Barnett)
 Plaintiff)

v.)

State Of South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-400-8297

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RICHLAND COUNTY
FILED
2012 JUL 12 AM 8:08
JEANETTE W. MCBRIDE
C.C.P. & G.S. 17-33

Plaintiff's Attorney:
John D. Barnett, Bar No.
Address:
McCORMICK CORRECTIONAL INSTITUTION
Route 2 Box 100
McCormick, SC, 29899
phone: fax:
e-mail: other:

Defendant's Attorney:
Robert D. Corney, Bar No.
Address:
Post Office Box 11549
Columbia, South Carolina 29211
phone: 803-734-5178 fax: 803-734-4283
e-mail: rcorney@scag.gov other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

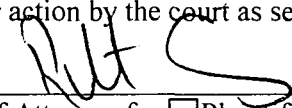
Nature of Motion:

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

July 9, 2012

Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT: Rule to Show Cause in Child or Spousal Support
(check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

MOTION FEE COLLECTED: _____