

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

RECEIVED

JUDGM. T IN A CIVIL CASE

NOV - 7 2013

CASE NUMBER: 2013CP4001030

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James #273240 Robinson

State of South Carolina

S.C. Supreme Court

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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 \_\_\_\_\_

2013 AUG - 7 PM 2:48  
RICHLAND COUNTY  
JANETTE W. McBRIDE  
S.C. J.P. & S.S.

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 1 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

James #273240 Robinson

Megan E. Harrigan

James #273240 Robinson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

Jeanette W. McBride

RECEIVED  
JANETTE W. McBRIDE

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 James Robinson, #273240, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-01030

**CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
 2013 AUG - 1 PM 3:22  
 JEANETTE W. MERRITT  
 C.C.P. & G.

This matter comes before this Court by way of an Application for post-conviction relief filed February 19, 2013. In its return, Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior post-conviction relief records. Applicant was indicted during the April 2000 term of the Richland County Grand Jury for three counts of Armed Robbery (2000-GS-40-51186, -51187, and -51188). April Sampson and Tara Sheil, Esquires, represented Applicant. On March 1, 2001, Applicant proceed to trial after which he was found guilty as indicted. On March 2, 2001, the Honorable John L. Breeden sentenced Applicant to twenty-five years imprisonment for each count of Armed Robbery, with the sentences to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Daniel T. Stacy, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on March 6, 2003. State v. Robinson, Op. No. 2003-UP-182 (S.C. Ct. App. filed March 6, 2003).

Applicant thereafter filed his first application for post-conviction relief on June 25, 2003 (2003-CP-40-3195). In that application, Applicant alleged "ineffective assistance of counsel."<sup>1</sup> Tara Dawn Shurling, Esquire, represented Applicant. Respondent made a timely Return and an evidentiary hearing into the matter was convened on May 15, 2006 at the Richland County Courthouse before the Honorable L. Casey Manning. Judge Manning denied and dismissed Applicant's PCR with prejudice by Order on June 27, 2006.

Applicant subsequently filed a Petition for Writ of Certiorari, appealing Judge Manning's Order. M. Celia Robinson, Esquire, represented Applicant. The Court of Appeals denied Applicant's Petition on January 16, 2013. State v. Robinson, Op. No. 2013-UP-021 (S.C. Ct. App. filed January 16, 2013). The Remittitur was issued on February 2, 2013.

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

1. Constitutional violation—4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 12<sup>th</sup> Amendment; and
2. Ineffective assistance of counsel.

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

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior application for post-conviction relief filed on May 17, 2005. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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

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<sup>1</sup> Applicant subsequently filed two amended applications on February 7, 2006 and April 3, 2006, alleging other issues concerning counsel's representation.

was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his first application for post-conviction relief therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds, further, 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). Applicant was convicted of the offenses he challenges in this Application on March 2, 2001.

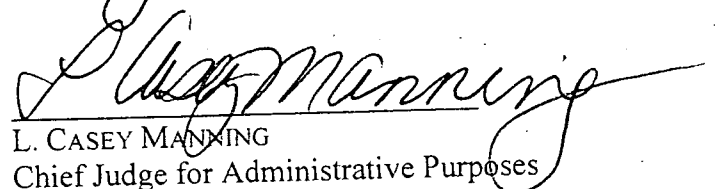
This Application was filed on February 19, 2013, which was well beyond after the statutory filing period had expired.


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 finds that the Application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and because it is successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Megan E. Harrigan, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 1 day of Aug., 2013.

  
L. CASEY MANNING  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

  
\_\_\_\_\_, South Carolina.