

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4000642

John A #81883 Gist Jr

State of South Carolina

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. Non Suit);  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 17 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

John A #81883 Gist Jr

Robert Daniel Corney

David A. Spencer

John A #81883 Gist Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

RECEIVED  
Clerk of Court

*Jeanette W. McBride*

SEP 23 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
) )  
) )  
) )  
John A. Gist, #81883, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-00642

CONDITIONAL ORDER OF DISMISSAL

2013 APR 17 AM 9:54  
RICHLAND COUNTY  
FILED  
JANETTE W. McBRIDE  
C.C.P. & S.S.

This matter comes before this Court by way of an application for post-conviction relief filed February 1, 2013.

Applicant was true bill indicted at the May 2007 term of the Richland County Grand Jury for Criminal Sexual Conduct with a Minor – First Degree (2007-GS-40-01575). Greg Collins, Esquire, represented Applicant on the charge. On July 20, 2009, Applicant appeared before The Honorable Paul M. Burch where he waived presentment to a charge of Assault and Battery of a High and Aggravated Nature and pled guilty in lieu of the indicted charge. He was sentenced to eight (8) years imprisonment. Applicant did not appeal the plea or sentence.

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

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



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

(a) Ineffective Assistance of Counsel.

(b) Subject Matter Jurisdiction.

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Attorney Did Not Inform me of right to Appeal.

(b) Sentencing Judge Did Not have <sup>Sub. Matter</sup> Jurisdiction to Accept Ple

(c) \_\_\_\_\_

### Findings of Fact and Conclusions of Law

#### Timeliness – S.C. Code §17-27-45(a)

This Court agrees with 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, 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. July 20, 2009. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCF means that this PCR application had to be filed by July 21, 2010. **This Application was filed on February 1, 2013, which was well beyond the expiration of the statutory time period for filing.**

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.

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 the reasons explained above.

#### **FAILURE TO STATE A CLAIM**

Further, the current application fails to state a claim which would entitle Applicant to relief. Applicant contends his plea counsel was ineffective for failing to advise him of the right to direct appeal following the entry of his plea. Even if taken as true, such an allegation is not sufficient grounds to warrant a grant of relief to Applicant. Therefore, Applicant has failed to set forth a claim which would entitle him to relief.

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no

constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. Roe v. Flores-Ortega, 528 U.S. 470 (2000). The South Carolina Supreme Court has applied this standard to guilty pleas as well, saying:

...absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to appeal from a guilty plea... The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.

Weathers v. State, 319 S.C. 59, 459 S.E.2 838 (S.C. 1995). Therefore, even if taken as true, an allegation that counsel did not inform Applicant of the right to direct appeal is not *per se* reason to warrant a belated direct appeal. Accordingly, this claim must be summarily dismissed.

#### **NO GENUINE ISSUE OF MATERIAL FACT**

Applicant also contends the plea court was without proper subject matter jurisdiction to accept the underlying guilty plea. Applicant has failed to set forth anything to support such a claim and that allegation, standing alone, fails to set forth any genuine issue of material fact for this Court to consider.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. *See* S.C. Code §§ 17-27-45 *and* -90 (2003).

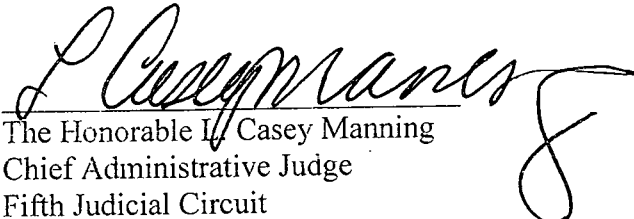
An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However,

“[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction and this claim fails to set forth any *genuine* issue of material fact for this Court to consider. Accordingly, it must be summarily dismissed.

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 the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The 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 29211

AND IT IS SO ORDERED this 15 day of April, 2013.

  
The Honorable P. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

John A. Gist )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-400-0642

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

RICHLAND COUNTY  
FILED  
2013 APR 17 AM 9:54  
JEANETTE W. MCBRIDE  
C.P. & G.S.

Plaintiff's Attorney:  
John A. Gist, Bar No.  
Address:  
6564 Margate Road  
Columbia, South Carolina 29203  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
Megan Harrigan, Bar No.  
Address:  
Post Office Box 11549  
Columbia, South Carolina 29211  
phone: 803-734-3319 fax: 803-734-4113  
e-mail: mharrigan@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**

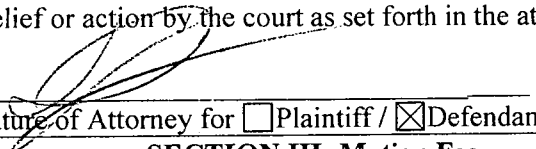
Nature of Motion:

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

March 19, 2013  
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**

Date Filed:

Collected by: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_