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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

2012-CP-10-3185

Darrell L. Goss, #305517 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

CONDITIONAL ORDER OF DISMISSAL

FILED  
2012 OCT 24 PM 3:36  
JULIE JARSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before the Court by way of a post-conviction relief application filed May 15, 2012. The Respondent made its Return and Motion to Dismiss on September 24, 2012.

**PROCEDURAL HISTORY**

The Court has before it the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The records indicate the Applicant is presently confined in the South Carolina Department of Corrections for separate offenses, pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the August 2003 term of the Charleston County Grand Jury for possession of a stolen motor vehicle (2003-GS-10-5210), and unlawful operation of a motor vehicle chop shop (2003-GS-10-5211). He was represented by James W. Smiley, Esquire.

On October 20, 2004, the Applicant pled guilty as indicted. The Honorable Marc H. Westerbrook sentenced the Applicant under the Youthful Offender Act to confinement for five

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(5) years for the possession charge and six (6) years for the unlawful operation charge. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

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Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

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

1. 6<sup>th</sup> Amendment Violation
  - a. Ineffective Assistance of Counsel
2. 14<sup>th</sup> Amendment Violation

#### **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 the Application for Post-Conviction Relief must 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). The Applicant pled guilty to the offenses he challenges in his application on October 20, 2004. The Applicant was therefore required to file his application before October 20, 2005. This

2004  
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[Signature]

Application was filed on May 15, 2012, well over six (6) years beyond the time that the statutory filing period had expired.

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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 summarily dismisses the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

#### 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 an 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.

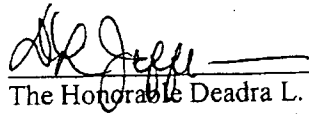
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

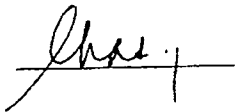
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Office of the Attorney General  
Attn: Ashleigh R. Wilson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

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AND IT IS SO ORDERED this 1<sup>st</sup> day of Oct., 2012.

  
\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Chief Administrative Judge  
Ninth Judicial Circuit

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

