

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

RECEIVED
JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4605249
FEB 28 2014

26

Therl Taylor

South Carolina State Of
S.C. Supreme Court

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by: J. Rutledge Johnson

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. See Page 2 for additional information.
- 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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:

RECEIVED

FINAL ORDER

FEB 28 2014

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

S.C. Supreme Court

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)
n/a	n/a	n/a

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.

Sl Roger L Couch

2135

12/30/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 14, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **January 14, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

**Therl Taylor Allendale Institute F-4-B-#43 PO Box 1151
Character Housing Unit Fairfax, SC 29827**

**J. Rutledge Johnson Office Of The Attorney General P O
Box 11549 Columbia, SC 29211-1549**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court


ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

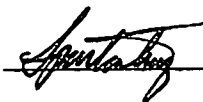
Conditional Order of Dismissal should not become final. This Court also finds the Applicant had ample time in which to file his response to the Conditional Order of Dismissal and has failed to do so.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 30th day of December, 2013.



ROGER L. COUCH
Presiding Judge
Sixteenth Judicial Circuit

 _____, South Carolina.

RECEIVED

FEB 28 2014

ef

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4605249

S.C. Supreme Court

Therl Taylor 260961	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: J Rutledge Johnson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <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:

CONDITIONAL ORDER OF DISMISSAL

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)
n/a	n/a	n/a

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.**

S/ Roger L Couch
Circuit Court Judge

2135
Judge Code

5/15/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on May 29, 2013, and a copy mailed first class or placed in the appropriate attorney's box on May 29, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Therl Taylor Allendale Institute F-4-B-#43 PO Box 1151
Character Housing Unit Fairfax, SC 29827

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Rutledge Johnson Office Of The Attorney General P.O
Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

d. Shullery
2013 MAY 29 AM 8:36
Assoc. Deputy Clerk
CLERK OF COURT
YORK COUNTY, SC

Theryl Taylor, #260961,

2010-CP-46-5249

DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

FILED-RECEIVED
2013 MAY 29 AM 8:26

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed December 7, 2010. The Respondent made its return and motion to dismiss on

April 19, 2013

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the January 1999, term of the York County Grand Jury for Murder and Possession of a Weapon During the Commission of a Violent Crime (1999-GS-46-0244). Michael G. Matthews, Esquire and Matthew R. Niemiec, Esquire represented him. On January 14, 2005, Applicant underwent a second trial, pursuant to which he was found guilty as indicted¹. The Honorable Lee S. Alford concurrently sentenced him to confinement for thirty-six (36) years for Murder and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

¹ Applicant was originally convicted on September 9, 1999, but this conviction was overturned by the South Carolina Supreme Court.

asc
11

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Taylor, Op. No. 2007-UP-425 (S.C. Ct. App. filed October 9, 2007). The Remittitur was sent on October 26, 2007.

2008-CP-46-3756

On September 25, 2008, the Applicant filed his first application for PCR. The State made its Return on or about April 23, 2009. The Applicant amended his application on January 22, 2010. An evidentiary hearing into the matter was convened on February 5, 2010, at the Moss Justice Center in York County, South Carolina. The Applicant was present at the hearing and was represented by Charles T. Brooks, Esquire. Jennifer A. Kinzeler, of the South Carolina Attorney General's Office, represented the Respondent. At the beginning of the hearing, the Applicant, through counsel, moved for a continuance. He stated he was in communication with another attorney that he wanted to retain to represent him in this PCR action. The State opposed, and this Court denied the Applicant's motion for a continuance at the hearing. The Applicant also moved to relieve PCR counsel and proceed pro se. The State opposed, and this Court denied the Applicant's motion to relieve counsel and proceed pro se at the hearing.

The Application alleged the following reason that he was being held in custody unlawfully:

1. Ineffective Assistance of Trial Counsel, and
2. Ineffective Assistance of Appellate Counsel.

On April 16, 2010, the Honorable Brooks P. Goldsmith denied and dismissed the application by written Order.

Blc
P2

Subsequently, the Applicant filed a timely notice of appeal and a petition for writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) was on his behalf. This appeal is currently pending.

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

1. "Ineffective assistance of appointed trial & appellate counsel"
2. "Civil Conspiracy"
3. "Exhaustion(sic) issues. Failure to properly rule or otherwise address all specific issues raised/adjudicated"
4. "Prosecutorial misconduct"

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 his prior application for post-conviction relief. 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 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 sufficient reason why he could not have raised his current allegations in his previous 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 v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds 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 judgement 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 was convicted of the offense(s) he challenges in this Application on January 14, 2005. The Remittitur after the Applicant's unsuccessful appeal was issued on October 26, 2007. Therefore, the Applicant was required to file his application by October 27, 2008. This Application was filed on December 7, 2010, which was well 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

Pl
P4

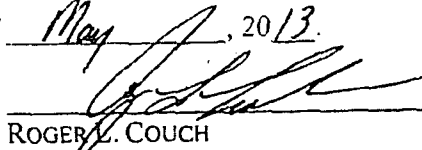
either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

CONCLUSION


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 York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

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



ROGER L. COUCH
Presiding Judge
Sixteenth Judicial Circuit


_____, South Carolina