

TO THE SOUTH CAROLINA SUPREME COURT OF
APPEALS

RECEIVED

FEBRUARY 28TH, 2014

MAR 04 2014

S.C. SUPREME COURT

TO THE HONORABLE DANIEL E. SHEAROUSE, CLERK
SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 111330
COLUMBIA S.C. 29211

RE: DARNEIL E. HUDSON #227328 V. STATE OF SOUTH CAROLINA
CASE NO: 2013-CP-23-0993

DEAR CLERK,

ENCLOSED FOR FILING IS A TIMELY NOTICE OF
APPEAL IN CASE NO: 2013-CP-23-0993. ALSO INCLUDED ARE
THE FOLLOWINGS ATTACHED TO THE NOTICE OF APPEAL:

- 1). PROOF OF SERVICE OF THE NOTICE OF APPEAL SERVED UPON
MR. PAUL B. WICKENSIMER, CLERK FOR THE GREENVILLE COUNTY
CLERK OF COURT; AND PROOF OF SERVICE OF THE NOTICE OF
APPEAL SERVED UPON MS. KAREN C. RATIGAN, FOR THE
ATTORNEY GENERAL OFFICE FOR THE STATE OF SOUTH
CAROLINA.

- 2). A COPY OF APPELLANT'S ORDER OF DISMISSAL IN CASE NO:

RECEIVED

MAR 04 2014

S.C. SUPREME COURT

2013 - CP - 23 - 0993, HUDSON V. STATE, WHICH IS TO BE
CHALLENGED ON APPEAL.

- 3). A COPY OF APPELLANT'S PETITION FOR WRIT OF CERTIORARI
PURSUANT TO S.C. APP CT. RULES 227 (C) AND 243 (C).
- 4). A COPY OF APPELLANT'S RECORDS IN THE MATTER OF HUDSON
V. STATE CASE No: 2013-CP-23-0993

THIS APPEAL IS BEING FILED TO THE SUPREME COURT OF
APPEALS PURSUANT TO RULES 203, 206, 227(C) AND 243(C)
OF S.C. APP. CT. RULES.

THANK YOU FOR YOUR TIME AND ASSISTANCE IN THIS MATTER.

SINCERELY

DARNEIL E. HUDSON #227328

LIEBER CORR INST, SMU CELL 211

P.O. Box 205

Ridgeville S.C. 29472

C.C. FILED

DARNEIL E. HUDSON #227328

MS. KAREN C. RATIGAN, ATT GEN

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT OF APPEALS
APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

THE HON. G EDWARD WELMAKER, CIR CT JUDGE

CASE NO: 2013-CP-23-0993

FEBRUARY 28TH, 2014

DARNEILE HUDSON #227328 APPELLANT

v.

STATE OF SOUTH CAROLINA RESPONDENT

NOTICE OF APPEAL

PURSUANT TO RULES 203, 206, 227 (C) AND 243 (C) OF S.C. APP. CT. RULES THE APPELLANT DARNEILE HUDSON APPEALS THE DECISION OF THE HON G. EDWARD WELMAKER, PRESIDING JUDGE FOR THE THIRTEENTH JUDICIAL CIRCUIT OF GREENVILLE COUNTY COURT OF COMMON PLEAS ORDER OF DISMISSAL DATED JANUARY 22, 2014 WHICH ORDER APPELLANT P.C.R. APPLICATION IN CASE NO: 2013-CP-23-0993 DISMISSED WITH PREJUDICE. APPELLANT RECEIVED WRITTEN NOTICE OF ENTRY OF THE ORDER ON JANUARY 30, 2014. THIS NOTICE OF APPEAL IS TIMELY FILED. APPELLANT ORDER OF DISMISSAL IS ATTACHED HERETO WITH PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULES 227 (C) AND 243 (C) OF S.C. APP. CT. RULES.

OTHER COUNSEL OF RECORD
MS. KAREN C. RATIGAN, ESQ.
OFFICE OF THE ATT. GEN.
P.O. BOX 11549
COLUMBIA S.C. 29211

FOR RESPONDENT

DARNEILE HUDSON #227328
LIEBER CORR INST
P.O. BOX 205
RIDGEVILLE S.C. 29472

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT OF APPEALS
APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
HON. G EDWARD WEIMAKER, CIR CT. JUDGE
CASE NO: 2013-CP-23-0993
FEBRUARY 28TH, 2014

DARNEIL E. HUDSON # 227328 APPELLANT

v.

STATE OF SOUTH CAROLINA RESPONDENT

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED NOTICE OF APPEAL UPON THE FOLLOWING PARTIES

1). MR. PAUL B. WICKENSIMMER, CLERK OF COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA AND 2). MS KAREN C. RATIGAN, SENIOR ASSISTANT DEPUTY ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA. BY DEPOSITING COPIES OF SAME IN THE UNITED STATES MAIL ON FEBRUARY 28TH 2014 ADDRESSED AS FOLLOWS:

HON. PAUL B. WICKENSIMMER, CLERK
GREENVILLE COUNTY COURTHOUSE
305 E. NORTH ST
GREENVILLE S.C. 29601

DARNEIL E. HUDSON # 227328
LIEBER CORR INST, SMU
P.O. Box 205
RIDGEVILLE S.C. 29472

MS. KAREN C. RATIGAN, ATT GEN
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 11549
COLUMBIA S.C. 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Darnell East Hudson,)
 S.C.D.C. No. 227328,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-23-0993

**ORDER OF DISMISSAL
 WITH PREJUDICE**

FILED-CLERK OF COURT
 GREENVILLE COUNTY S.C.
 PAUL B. WILSON, CLERK
 2014 JAN 23 PM 3 11

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 19, 2013. The Respondent made its return and motion to dismiss on August 5, 2013.¹ A hearing was convened at the Greenville County Courthouse on December 19, 2013 at which time the Applicant was present in court and proceeded pro se. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss based upon the expiration of the statute of limitations.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

¹ The Honorable D. Garrison Hill, acting in his capacity as Chief Administrative Judge, signed a Conditional Order of Dismissal that was filed on August 21, 2013. Judge Hill subsequently set the State's motion to dismiss for a hearing.

[Handwritten signature]

Copy to App. A.E.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

II. ALLEGATIONS

In his PCR application, the Applicant makes the following allegations in support of his claim for relief:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

A.

This Court finds the current PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina 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 Applicant pled guilty to the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the one-

²


year statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. The Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's guilty plea hearing – except for that of a belated appeal – are summarily dismissed.

B.

The Applicant argued there was after-discovered evidence (that was also Brady² material) in his case. The Applicant argued that he discovered in January 2013 that the victim in this case had committed a prior suicide attempt in November of 1993. The Applicant argued that, as the crimes in this case occurred in March 1995, this was relevant because the victim had brain damage but still identified him in a photographic lineup. The Applicant argued that, if the State had known about the victim's prior suicide attempt, it should have been disclosed.

This Court finds the Applicant has failed to meet his burden of proving there is after-discovered evidence or a Brady violation in this case. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”). The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

² Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). “A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added).

This Court finds the Applicant has not shown that the alleged evidence meets any of the requirements for proving either after-discovered evidence or a Brady violation. This Court finds the Applicant has not demonstrated an inability to have discovered this information (through due diligence) prior to the plea hearing. This Court finds the Applicant has not demonstrated this information is more than simply impeaching evidence. This Court finds the Applicant has not demonstrated that he would have gone to trial if he had been in possession of this information. See *id.* at 525, 514 S.E.2d at 325 (“A Brady violation is material when there is a reasonable probability that, but for the government’s failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial.”). This Court concludes the Applicant has not presented credible after-discovered evidence or demonstrated that this information was Brady material. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“The credibility of newly-discovered evidence is for the trial court to determine.”).

C.

The Applicant argued at the PCR hearing that the plea court lacked subject matter jurisdiction. The Applicant argued there was a violation of Rule 3(c), SCRCrimP and that no one explained the concept of waiving presentment.



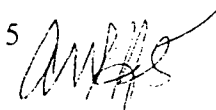
This Court finds the Applicant has failed to meet his burden of proving the plea court lacked subject matter jurisdiction in his case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. This Court finds the Applicant's Rule 3(c), SCRCrimP argument is without merit. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.”). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated). This Court notes the Applicant signed the written waiver of presentment when he pled guilty. This Court finds the Applicant has not raised a valid subject matter jurisdiction claim.

IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the Applicant failed to file his PCR application within the time mandated by the Uniform Post-Conviction Procedure Act. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

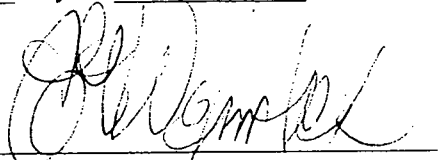
IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for

5 

the completion of his sentence.

AND IT IS SO ORDERED this 22 day of Aug, 2014.



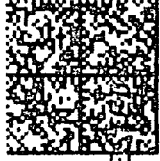
G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

AFTER FIVE DAYS RETURN TO

PAUL B. WICKENSIMMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

UNITED STATES POSTAGE
0.2 1M
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MAILED FROM ZIP CODE 29687



POSTED
FIRST CLASS

RECEIVED SERVICE

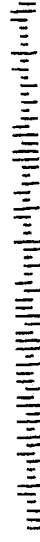
JAN 30 2014

WARDEN'S OFFICE

LIEBER CLERK
Darnelle Hudson 227328
Lieber Correctional Institution
P O Box 205
Ridgeville, SC 29472

Handwritten signature

31 LEIDUNN 29472



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Darnell East Hudson,)
 S.C.D.C. No. 227328,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-23-0993

CONDITIONAL ORDER OF DISMISSAL

2013 AUG 21 PM 4:02
 FILED - CLERK OF COURT
 GREENVILLE CO S C
 PAUL B. WALKER, CLERK

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 19, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

II.

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

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had expired.

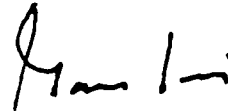
A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

Based upon its review of the pleadings in this matter, this Court 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 twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8 day of Aug., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2300993

2013 AUG 21 PM 4: 02
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL WICKENSIMER

Darnell E Hudson vs. South Carolina State Of

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):**
SCRCP (Vol. Nonsuit); Rule 12(b), SCRCP; Rule 41(a),
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 21st day of August, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 21st day of August, 2013, and a copy mailed first class this 21st day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Darnell E Hudson Lieber Correctional Institution P
O Box 205 Ridgeville, SC 29472

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Ratigan, P O Box 11549 Columbia SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court
- Clerk of Court