

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4003697

Nakia Jones

Leroy Cartledge

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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 and 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 _____

RICHLAND COUNTY
 FILED
 2014 MAR 10 PM 12:04
 JEANETTE W. McBRIDE
 CLERK OF COURT

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 10 March 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Nakia #231592 Jones

David Edward Belding

Leroy Cartledge

Robert Daniel Corney

Nakia #231592 Jones

Leroy Cartledge

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
Nakia Jones, #231592,)
) Petitioner,)
)
) v.)
)
State of South Carolina,)
) Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03697

**ORDER DENYING AND DISMISSING
PETITION FOR WRIT OF
HABEAS CORPUS**

2014 MAR -5 AM 10:39
FILED
RICHLAND COUNTY
COURT CLERK
C.C.P. & G.S.

This matter comes before this Court by way of a *pro se* document filed with the Richland County Clerk of Court on May 25, 2012, and received by Respondent on August 10, 2012, captioned “Complaint: Uniform Declaratory Judgment Act.” In response, Respondent filed a Return and Motion to Dismiss, seeking to summarily dismiss the filing. The Court declined to summarily dismiss the action and requested that counsel be appointed to represent Petitioner and Respondent’s Motion to Dismiss be set for a hearing¹.

A hearing was convened on November 19, 2013 at the Richland County Courthouse. Applicant was present and represented by David E. Belding, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General’s Office. This Court finds the action must be dismissed because it fails to support the requested relief.

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Petitioner was

¹ Respondent’s Return and Motion to Dismiss along with a proposed Order of Dismissal were originally sent to the Chief Administrative Judge of Common Pleas for the Fifth Judicial Circuit, the Honorable G. Thomas Cooper, Jr. At Judge Cooper’s request, counsel was appointed and a hearing on Respondent’s Motion to Dismiss was placed upon the roster.

true bill indicted during the June 1995 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill (1995-GS-40-01328). On February 29, 1996, Petitioner appeared before the Honorable L. Casey Manning, where he pled guilty to the charge as indicted and was sentenced under the Youthful Offender Act to an indeterminate sentence not to exceed six years.

Thereafter, Petitioner was indicted at the May 1998 term of the Richland County Grand Jury for Failure to Stop for a Blue Light, Possession/Making Implements Capable of Being Used in Crime, Unlawful Sale or Delivery of a Pistol, and three counts of Armed Robbery (1998-GS-40-23850, -24551 through -24555). On June 16, 1998, Petitioner proceeded to jury trial before the Honorable H. Dean Hall, where Petitioner was acquitted of Failure to Stop for a Blue Light, but convicted of three counts of Armed Robbery and the weapons charge as indicted. The Possession/Making Implements charge was *nolle prossed* by the State. Judge Hall sentenced Petitioner to life imprisonment without parole for each count of Armed Robbery pursuant to S.C. Code Ann. § 17-25-45; Petitioner was not sentenced for the Weapons charge as a result pursuant to S.C. Code § 16-23-490(a).

A notice of appeal was filed and an appeal was perfected. Petitioner was represented by Senior Appellate Defender Wanda Haile Carter, Esquire, of the South Carolina Office of Appellate Defense. After briefing, the South Carolina Supreme Court affirmed the convictions and sentences by Order filed March 12, 2001. State v. Jones, Op. No. 25257 (S.C. filed March 12, 2001). Specifically, regarding the imposition of life without parole under S.C. Code § 17-25-45 due to Petitioner's prior Assault and Battery with Intent to Kill conviction, the Court found:

“Here, Jones’ armed robberies occurred subsequent to passage of 17-25-45, and, as such, there is no *ex post facto* violation. Accord Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998) (no *ex post facto* violation for legislation to enhance punishment for later

offenses based on prior conviction, even though enhancement provision was not in effect at time of prior offense).

To the extent Jones contends that the Two-Strikes law changes the consequences of his 1996 plea to ABIK, he is correct. See Gryger v. Burke, 334 U.S. 728 (1948) (holding that sentencing as a habitual criminal is not viewed as new jeopardy or additional penalty for an earlier crime; rather it is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one). Accord State v. Oliver, *supra*.

In sum, we find no constitutional violation in application of the Two-Strikes law to Jones.”

State v. Jones, 344 S.C. 48, 59, 543 S.E.2d 541, 546-47 (2001). The Remittitur was issued March 28, 2001.

Petitioner filed an initial application for post-conviction relief on June 27, 2001 challenging his 1998 convictions (C.A. No. 2001-CP-40-2660). Respondent filed its Return on July 12, 2002, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 28, 2003, at the Richland County Courthouse before the Honorable James R. Barber, III. Petitioner was present with counsel, Melissa J. Kimbrough, Esquire. By order filed May 23, 2003, Judge Barber denied and dismissed the action with prejudice. The subsequent motion for reconsideration was denied by Judge Barber on June 25, 2003. Petitioner filed a notice of appeal and a Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court on Petitioner’s behalf. By Order on or about August 19, 2004, the South Carolina Supreme Court denied the petition. The Remittitur was issued on or about March 11, 2005.

Petitioner thereafter filed a second application for post-conviction relief on August 14, 2003 (C.A. No. 2003-CP-40-03963). In this second application, Petitioner raised a claim of ineffective assistance of counsel regarding his 1995 conviction for Assault and Battery with Intent to Kill. Respondent filed a Return and Motion to Dismiss on June 21, 2004, requesting the

court summarily dismiss the application with prejudice. After receiving Petitioner's objections to the summary dismissal, the Honorable G. Thomas Cooper, Jr. summarily dismissed the application with prejudice by order filed February 22, 2006. A notice of appeal was filed, but later dismissed by the South Carolina Supreme Court by order on or about May 2, 2006. The remittitur was received May 22, 2006.

II. CURRENT ACTION

In the current petition, Petitioner alleges he is currently being held in custody unlawfully for the following reasons:

1. "That Plaintiff/Petitioner has exhausted his claims in a prior post-conviction relief application, and that Plaintiff/Petitioner is currently being held in custody unlawfully, and in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice. My claim which may be set forth herein, but was not previously exhausted in a prior application for post-conviction relief was either not cognizable by the court at that time, or unavailable to him as a matter of law or otherwise undiscoverable by the exercise of due diligence at the relevant times.

Rights to be Declared

2. That Plaintiff/Petitioner was arbitrarily denied his constitutional rights as conferred upon him by provisions of the United States Constitution, the South Carolina Constitution, statutes and court rules.
3. Declare that it is a clearly erroneous judicial finding that the Plaintiff/Petitioner during his 1996 guilty plea was both "At least seventeen years of age but less than twenty-one years of age" and "At least twenty-one years of age but less than twenty-five years of age".
4. Declare that the absence of Plaintiff/Petitioner's election to consent in writing to be "sentenced as a Youthful Offender under the Act" constituted a fundamental defect or structural defect in the trial mechanism and/or deprived the circuit court of any lawful authority to sentence the Plaintiff/Petitioner for assault and battery with intent to kill under the Youthful Offender Act.
5. Declare the Plaintiff/Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, where counsel during the 1996 guilty plea failed to adequately protect

Plaintiff/Petitioner against anticipatory breach of the plea agreement by the State of South Carolina who was party to said agreement, as by later enactment of the Two-Strikes law which worked an impairment of the contract or agreement between the parties to the case at that time; and further that the consequences of the 1996 conviction and/or guilty plea still persist.

6. Declare that at the time of Plaintiff/Petitioner's 1996 guilty plea, the offense of assault and battery with intent to kill was not enumerated in the codified law as a "most serious" offense, nor applicable to the Two Strikes law at that time.
7. Declare that the failure of the circuit court to select and specifically mark the checkboxes related to a judicial finding that the offense in question was deemed to be a "most serious" offense on each sentencing sheet for the subsequent offenses and conviction for armed robbery; conclusively establishes that not such finding was made.
8. Declare that failure to file either of the indictments involving the 1996 guilty plea, and the later offenses involving armed robbery constitute a structural defect in the trial mechanism violative [sic] of due process and/or otherwise deprived the circuit court in each case of subject-matter jurisdiction.
9. Declare that the failure of the indictments for armed robbery to allege that the offenses were "most serious" and that the Plaintiff/Petitioner had been the subject of a conviction for a previous "most serious" offense, so as to bring the Plaintiff/Petitioner within the ambit [sic] of the Two Strikes law, constitutes a structural defect in the trial mechanism violative [sic] of due process right to notice, and further failed to allege each of the elements of the enhancement provisions.
10. Declare that the failure to file the sentence within the applicable terms of court violated Plaintiff/Petitioner's right to due process of law.
11. Declare that Plaintiff/Petitioner was deprived of effective assistance of counsel where trial counsel failed to object to or otherwise challenge the defects and matters set forth throughout this pleading.
12. Declare that Plaintiff/Petitioner's continued incarceration is in violation of the provisions of the United States Constitution and relevant counterparts of the South Carolina Constitution and laws."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a preliminary matter, this Court notes it has interpreted the current petition as one for habeas corpus based on the nature of the allegations and the relief requested by Petitioner. While

Petitioner has captioned the pleading as an action for “Declaratory Judgment,” a judgment for Petitioner under the Uniform Declaratory Judgments Act would not terminate the uncertainty or controversy giving rise to the proceeding based on the relief requested and allegations set forth.² Accordingly, in an effort to fully consider the merits of the pleading, this Court has construed the current action as a petition for writ of habeas corpus.

After reviewing the petition in its entirety, in conjunction with a thorough review of Petitioner’s underlying charges, appeals and post-conviction proceedings, the testimony of Petitioner at the hearing, and Petitioner’s Trial Brief, this Court finds that the petition must be dismissed. “A habeas corpus petition must support the requested relief.” Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief. Id. at 40, 495 S.E.2d at 427-28.

To proceed forward to a full hearing on the merits, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as post-conviction relief, are unavailable or inadequate. Id. Post-conviction relief is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

² See S.C. Code § 15-53-70: “The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.”

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in post-conviction relief application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in post-conviction relief proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

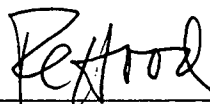
Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a post-conviction relief application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id. Here, Petitioner improperly filed the petition with the Richland County Clerk of Court, not in the South Carolina Supreme Court.

In the current action, Petitioner sets forth numerous, extensive allegations that could have, and in some cases even were, raised on direct appeal and/or in his prior post-conviction relief actions. He has failed to set forth any reason he could not have raised the allegations in his previous post-conviction relief actions or why other remedies, such as post-conviction relief, were unavailable or inadequate. Therefore, the current claims cannot be raised in a Petition for Writ of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition must be summarily dismissed.

III. CONCLUSION

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the current Petition is hereby denied and **dismissed with prejudice**. This Court notes that Petitioner must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 4th day of March, 2014.



Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.