

RECEIVED

MAY 27 2014

S.C. SUPREME COURT

James Anthony Primus 252315
MacDougall Correctional Institution
Magnolia unit 2 USA
1516 Old Gilliard Road
Ridgeville S.C. 29477
May 16 2014

The Supreme Court of South Carolina
Clerk of Court
P.O. Box 11330
Columbia S.C. 29211

RE: James Anthony Primus 252315 VS STATE OF
SOUTH CAROLINA Case No. 2013-CP-18-0382

Dear Honorable Clerk

Please find Enclosed Applicant James Anthony Primus
Notice of appeal to be filed in your office in
the above mention case Please clock stamp and
return and copy back to me at the above enclosed
address

I would like to thank you in advanced

Sincerely

James Anthony Primus

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT OF SOUTH CAROLINA

Appeal from Dorchester County
Common PLEA'S

RECEIVED

MAY 27 2014

S.C. SUPREME COURT

THE HONORABLE EDGAR W. DICKSON

CASE No. 2013 - CP - 18 - 0382

James Anthony Primus 252315 Appellant

VS.

THE STATE OF SOUTH CAROLINA Respondent

NOTICE OF APPEAL

James Anthony Primus 252315 Appeals His Denial
For Post Conviction Relief In this Case. The
Order of dismissal was imposed and Signed
by The Honorable Edgar W. Dickson on Date -

5-2-2014
5-16-2014 which I James Anthony Primus 252315 received

on Date

Counsel on Record

Ms. Megan E. Harrigan
Asst. Attorney General S.C.
P.O. Box 11549
Columbia S.C. 29211

by

James Anthony Primus 252315
James Anthony Primus Pro Se
MacDougal Correctional Inst.
1516 Old Gilliard Road
Ridgeville S.C. 29472

THE SUPREME COURT OF SOUTH CAROLINA
IN THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO PROCEED IN FORMA PAUPERIS
AFFIDAVIT IN SUPPORT

CASE NO. 2013 - CP - 18 - 0382

James Anthony Primus 252315 APPELLANT

v. s.

STATE OF SOUTH CAROLINA RESPONDENT

Now comes James Anthony Primus Pro. Se. 252315 Hereby
Certify under Penalty of Perjury that the information
given in this about a affidavit is True and correct
Submitts as follows

- 1 That due to my Incarceration that I am unable to
Pay the cost of filing and Service
- 2 I Proceed in this action in good faith with Profound
belief that the Issues are meritorious and that I
am entitled to Relief
- 3 I Respect fully Submit that if This Honorable Court
Should deny This motion that Such would defeat the Fair
Administration of Justice

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 21st DAY OF MAY 2013
NOTARY Sisa M Cross
my commission expires January 26, 2024

By ~~James Anthony Primus~~
James Anthony Primus 252315
MacDougall Corr. Inst
1516 Old Gilliard Rd
Ridgeville S.C. 29472

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT OF SOUTH CAROLINA

MOTION FOR APPOINTMENT OF COUNSEL

CASE No. 2013-CP-18-0382

James Anthony Primus 252315 - - - - - Appellant

vs.

STATE OF SOUTH CAROLINA - - - - - Respondent

Pursuant to 28 S.C. 1915 (C) Appellant moves for
an order appointing counsel to represent him in
this case. In support of this motion Applicant states

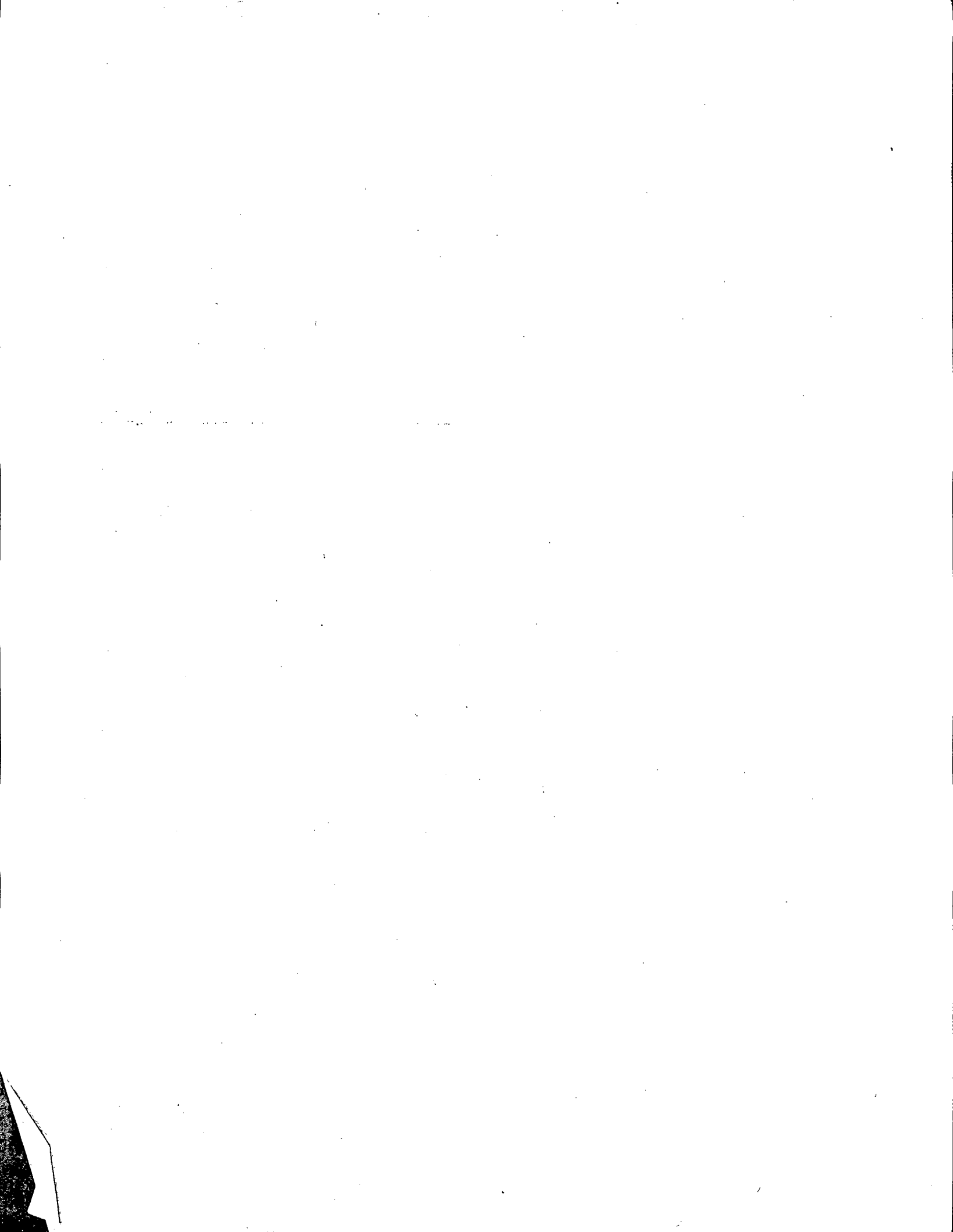
- 1 Appellant is unable to afford counsel. He has requested leave to proceed in forma pauperis.
- 2 Appellant's imprisonment will greatly limit his ability to litigate the issues involved in this case. The issues are complex and will require significant research and investigation. Appellant has limited access to the law library and limited knowledge of the law.
- 3 A trial in this case will likely involve conflicting testimony and counsel would better enable Appellant to present evidence and cross-examine witnesses.

WHEREFORE Appellant Request that the Court
Appoint Appellant a lawyer a member of the
South Carolina Bar as counsel in this case.

DATE MAY 16 2014

By

James Anthony Primus 252315
James Anthony Primus Pro Se
MacDougal Corr. Inst. M205A
1516 Old Gilliard Road
Ridgeville S.C. 29472



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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800382

CERTIFIED COPY

2013 NOV 27 PM 3:16

James Anthony Primus

South Carolina State of

Cheryl Melan

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. 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;
 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 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) |
|--|--|--|
| | | |
| | | |
| | | |
| | | |

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.**

Edgar Dickson
Circuit Court Judge

2153
Judge Code

11-20-13
Date

For Clerk of Court Office Use Only

This judgment was entered on 11-27-2013, and a copy mailed first class or placed in the appropriate attorney's box on 11-27-2013, to attorneys of record or to parties (when appearing pro se) as follows:

James Anthony Primus Macdougall Correctional Inst.
#252315 1516 Old Gilliard Rd. Magnolia Unit2 05A
Ridgeville, SC 29472

Megan E. Harrigan PO Box 11549 Columbia, SC 29211
Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549
John W. McIntosh PO Box 11549 Columbia, SC 29211
Salley W. Elliott PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham

Cheryl Graham - 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.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 James Anthony Primus, #252315,)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-18-0382

FINAL ORDER OF DISMISSAL

Richard L. Williams
 CLERK OF COURT
 DORCHESTER COUNTY
 2013 NOV 27 PM 3:16
 CERTIFIED COPY

This matter comes before the Court pursuant to an application for post-conviction relief filed March 14, 2013¹. Respondent made its Return and Motion to Dismiss on September 17, 2013, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal, signed September 23, 2013 and filed on October 4, 2013, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 17, 2013, serving the aforementioned Conditional Order of Dismissal on Applicant.

In a document captioned "Notice of Applicant Objection to Respondent Order of Dismissal" filed September 19, 2013, and received by Respondent September 24, 2013, Applicant set forth reasons why he believed his application should not be summarily dismissed.

¹ The Application was received by Respondent on April 3, 2013.

In this response, Applicant alleges he did not voluntarily give his guilty plea. Specifically, Applicant states there was a due process violation because his guilty plea was involuntary, he was subject to double jeopardy, the plea was involuntary because the State failed to disclose exculpatory evidence, he was never made aware of his rights, and Counsel never advised him of the minimum he could be facing if he pled guilty. Applicant has shown no reason why this issue of involuntary guilty plea could not have been raised in his prior post-conviction relief applications or within the statute of limitations for filing a post-conviction relief application pursuant to S.C. Code. § 17-27-45.

Applicant then filed a document captioned "Addendum to Application for Post-Conviction Relief" on October 3, 2013, which Respondent received on October 7, 2013. In this document, Applicant alleges again there was an involuntary guilty plea, but also states there is after discovered evidence to support his claim. However, Applicant does not provide any specific evidence which would support his claim of involuntary guilty plea. Therefore, Applicant's claim of involuntary guilty plea is without merit and provides no reason why the Conditional Order should not become final.

Subsequently, Applicant filed two documents captioned "Documents Amendment to Post-Conviction Application" and "Motion for Appointment of Counsel" on October 4, 2013, which were received by Respondent on received October 7, 2013². These documents outline the same allegations Applicant raised in his prior filings. Specifically he argues involuntary guilty plea, after discovered evidence, and a Due Process violation due to his involuntary guilty plea. Again, Applicant failed to provide any specific evidence to support his claims of after discovered

² Applicant sent Respondent the same documents on October 8, 2013 that he filed on October 4, 2013.

evidence and involuntary guilty plea. Therefore, this Court finds the October 4, 2013 filing has no bearing on this Final Order of Dismissal.

In a letter dated October 7, 2013, and received by Respondent on October 9, 2013, Applicant sent a page from his Post-Conviction Relief Application. This Court notes the page sent to Respondent by Applicant was already a part of his original application. Therefore, this filing has no merit in the outcome of Applicant's case.

On October 9 2013, Applicant filed a document captioned "Objection to Conditional Order of Dismissal and Applicant Motion for Reconsideration", which was received by Respondent on October 11, 2013. Applicant alleges that the South Carolina Supreme Court Opinion, McCoy v. South Carolina, No. 27214 (S.C. Sup. Ct. February 6, 2013), supports his Post-Conviction Relief claim. This Court finds that the opinion rendered in McCoy v. South Carolina does not support Applicant's position. Unlike McCoy, Applicant has failed to present any evidence which would prove there is a genuine issue of material fact which has not been already decided in his previous applications. Therefore, this Court finds Applicant's claim without merit and does not affect the outcome of this case.

Applicant then resent the October 9, 2013 filing "Objection to Conditional Order of Dismissal and Applicant Motion for Reconsideration" along with his September 19, 2013 filing "Applicant Objection to Respondent Order of Dismissal", which was received by Respondent on October 23, 2013. For reasons stated previously in this Final Order, Applicant failed to provide any information which would show why this Order should not become final. Applicant has provided no evidence which would amount to newly discovered evidence or involuntary guilty plea. Therefore, his claim is without merit and has not bearing in Applicant's case.

On October 30, 2013 Applicant filed a document captioned “59E Motion to Alter or Amend the Judgment”, which was received by Respondent on November 1, 2013. Respondent interpreted this subsequent document not as a 59(e) motion, but as a response to the Conditional Order of Dismissal served upon Applicant on October 17, 2013³. Applicant only set forth that PCR is a proper avenue to challenge being on the sex offender list and that Assault and Battery of a High and Aggravated Nature (ABHAN) is not a lesser included of Criminal Sexual Conduct – first degree. Post-Conviction Relief is not a proper venue for either of the issues raised by Applicant in his filing. Williams v. State, 378 S.C. 511, 662 S.E.2d 615 (Ct. App. 2008).

In a letter dated November 8, 2013, and received by Respondent November 12, 2013, Applicant resent his October 9, 2013 filing captioned “Objection to Conditional Order of Dismissal and Applicant Motion for Reconsideration”. As previously discussed, the allegations Applicant raises in the filing are not proper for Post-Conviction Relief.

In a document captioned “Motion for Leave to File an Amended Complaint 59 E Ineffective Assistance of Counsel Adding a New Legal Claim”, dated November 12, 2013⁴, and received by Respondent on November 15, 2013, Applicant alleges involuntary guilty plea. Respondent interpreted this subsequent document not as a 59(e) motion, but as a response to the Conditional Order of Dismissal served upon Applicant on October 17, 2013⁵. This allegation has been previously addressed, and this Court finds the allegation without merit. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

³ A Rule 59(e) would not be proper since there has been no final disposition of this case. Rule 59, SCRPC. Only a Conditional Order of Dismissal was served upon Applicant at the time he submitted his response.

⁴ Applicant has not filed this document with the Dorchester Clerk of Court .

⁵ A Rule 59(e) would not be proper since there has been no final disposition of this case. Rule 59, SCRPC. Only a Conditional Order of Dismissal was served upon Applicant at the time he submitted his response.

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.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The 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 20th day of November, 2013.



EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina.

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800382

CERTIFIED COPY

2014 MAY 14 PM 2:10

James Anthony Primus

South Carolina State of

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
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 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 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) |
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Edgar Dickson
Circuit Court Judge

2153
Judge Code

5-2-14
Date

For Clerk of Court Office Use Only

This judgment was entered on 5-14-2014, and a copy mailed first class or placed in the appropriate attorney's box on 5-14-2014, to attorneys of record or to parties (when appearing pro se) as follows:

James Anthony Primus Macdougall Correctional Inst.
#252315 1516 Old Gilliard Rd. Magnolia Unit 2 05A
Ridgeville, SC 29472

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - 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.

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
)
 James Primus, #252315,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-0382

**ORDER DENYING APPLICANT'S
 MOTIONS TO ALTER OR AMEND
 JUDGMENT PURSUANT TO
 RULE 59(e), SCRPC**

2014 MAY 14 PM 2:11
 CERTIFIED COPY
 CLERK OF COURT
 DORCHESTER COUNTY

This matter comes before this Court by way of an application for post-conviction relief filed March 14, 2013 and received by Respondent on April 3, 2013. In its Return and Motion to Dismiss, Respondent requested that the action be summarily dismissed as filed beyond the statute of limitations and successive to his previous applications for post-conviction relief pursuant to S.C. Code Ann. § 17-27-10 through -160. A Conditional Order of Dismissal was filed on October 4, 2013, giving Applicant twenty days to provide sufficient explanation or reason as to why the dismissal should not become final. Applicant was served with the Conditional Order of Dismissal on October 17, 2013. Applicant responded to the Conditional Order of Dismissal. Following this Court's review of Applicant's replies to the Conditional Order of Dismissal, this Court issued a Final Order of Dismissal on November 20, 2013, which was filed on November 27, 2013. Applicant filed various "Motion to Alter or Amend Judgment Pursuant to SCRPC Rule 59(e)" on December 16, 2013, December 18, 2013, January 31, 2014, February 5, 2014, ~~and~~ March 21, 2014, *and April 2, 2014, and a letter dated April 4, 2014.*

In these ~~five~~ ^{six} Motions, all which raise identical arguments and request identical relief, Applicant raises similar arguments to those posed in his responses to the Conditional Order of Dismissal. Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or

amending its prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 2nd day of May, 2014.



EDGAR W. DICKSON
Judge, First Judicial Circuit

Orangeburg, South Carolina

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRPC.



ALAN WILSON
ATTORNEY GENERAL

May 7, 2014

FILED-RECORDED
2014 MAY 12 PM 12:19
CHERYL L. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Honorable Cheryl L. Graham
Dorchester County Clerk of Court
5200 E Jim Bilton Boulevard
St. George, South Carolina 29477-8020

Re: James Primus, #252315 v. State of South Carolina
2013-CP-18-0382

Dear Ms. Graham:

Enclosed please find the signed original **Order Denying Applicant's Motions to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP** in the above mentioned case for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737 or MHarrigan@scag.gov.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/ko
Enclosure

RECEIVED

INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES

APR 07 2014

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom, ^{MacDougal Corr. Inst. Mailroom} returned from Accounting, you must mail this form with any payment to the Court.

MacDougal

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): James Anthony Primus

SCDC # 252315 INMATE SIGNATURE: James A. Primus

I plan to file this action in the SC County of Richland

The section below is for SCDC - Financial Accounting Branch's use ONLY.

| | | |
|---|----|--------------|
| (1) Total deposits to inmate's account for preceding six months' period* | \$ | <u>60.01</u> |
| (2) Twenty percent (20%) of line 1 | \$ | <u>12.00</u> |
| (3) Account balance - current date | \$ | <u>14.99</u> |
| (4) PAYMENT AMOUNT ** (lesser of line 2 or line 3) Enclosed check # _____ | \$ | <u>0</u> |

* Prior court restitution account hold

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months / /

Prepared by [Signature] Date 4/14/14
 Prepared by Financial Accounting Branch - SCDC Date efile\scstrust\prepared 7/97

Mr

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800382

James Anthony Primus

2013 OCT -4

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):
 - Rule 43(k), SCRCP (Settled);
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRCP;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Bankruptcy;
 - 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

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Edgar Dickson
Circuit Court Judge

2153

Judge Code

Date

9-23-13

For Clerk of Court Office Use Only

WITNESSED BY THE CLERK OF COURT

This judgment was entered on 10-4-2013, and a copy mailed first class or placed in the appropriate attorney's box on 10-4-2013, to attorneys of record or to parties (when appearing pro se) as follows:

James Anthony Primus Maccougall Correctional Inst.
#252315 1516 Old Gilliard Rd. Magnolia Unit2 05A
Ridgeville, SC 29472

Megan E. Harrigan PO Box 11549 Columbia, SC 29211
Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549
John W. McIntosh PO Box 11549 Columbia, SC 29211
Salley W. Elliott PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham

Cheryl Graham - Clerk of Court

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

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

James Anthony Primus, #252315,)
Applicant,)

Case No. 2013-CP-18-0382

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 March 4, 2013.¹ In its Return, Respondent requested the Application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Dorchester County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior post-conviction relief records. Applicant was true bill indicted during the September 1997 term of the Dorchester County Grand Jury for Criminal Sexual Conduct in the First Degree (1997-GS-18-1045) and Kidnapping (1997-GS-18-1046). William Runyon, Esquire, represented Applicant. Applicant proceeded to a jury trial and on September 1, 1998 the jury convicted Applicant of Kidnapping and Assault and Battery of a High and Aggravated Nature. The Honorable Luke N. Brown, Jr. sentenced Applicant to ten years consecutive imprisonment for Assault and Battery of a High and Aggravated Nature and thirty years imprisonment for Kidnapping.

¹ Applicant has since filed various addendums to his Application.

A timely Notice of Appeal was filed on Applicant's behalf in the South Carolina Court of Appeals. Katherine Link, Esquire, represented Applicant and perfected an appeal on Applicant's behalf. On July 10, 2000, the Court of Appeals reversed Applicant's convictions. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000). The State appealed the Court of Appeal's decision to the South Carolina Supreme Court. The Supreme Court granted Certiorari. On May 20, 2002, the Supreme Court affirmed in part and reversed in part, upholding Applicant's convictions and sentences. State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002).

Applicant thereafter filed an initial application for post-conviction relief on July 11, 2002 (2002-CP-18-1066). In that application, Applicant alleged he was being held in custody unlawfully for ineffective assistance of counsel. Respondent filed a timely Return and an evidentiary hearing into the matter was convened on August 2nd and 4th, 2004 at the Orangeburg County Courthouse before the Honorable James C. Williams, Jr. Applicant was present at the hearing and represented by Kenneth Gary Cooper, Esquire. Judge Williams denied Applicant's application for post-conviction relief by Order on December 21, 2004.

Applicant subsequently filed a Petition for Writ of Certiorari, appealing Judge Williams' Order. Wanda Carter, Esquire, represented Applicant and filed a Johnson Petition. On April 4, 2007, the Court of Appeals denied Applicant's Petition and the matter was remitted to the lower court.

Thereafter, Applicant filed a federal Habeas Corpus Petition on August 2, 2007. This action was dismissed by written Order dated May 27, 2008.

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

1. Ex post facto violation.
2. Applicant plea was not freely and voluntarily given.

3. Material facts not previously discovered require reversal (after discovered evidence).
4. Therefore as a practical matter allegations that Applicant represented by counsel did not enter a guilty plea the plea is involuntary.
5. The court found that a plea cannot be considered knowing and voluntary if a defendant lacks knowledge of guilty plea.
6. The Due Process clause requires that guilty pleas are entered into voluntarily knowingly and intelligently.
7. The South Carolina Supreme Court requires that a Defendant entering a guilty plea be made aware of the nature and crucial elements of the offense.
8. Allegations that raise questions of fact not conclusively refuted by the record require an evidentiary hearing be convened.
9. Rarest of exceptions when the system has simply failed a defendant and where to continue the Defendant's imprisonment without review would amount to a gross miscarriage of justice.

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 Applicant's prior application for post-conviction relief filed on July 11, 2002. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an applicant 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 a sufficient reason why he could not have raised his current allegations in his first 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, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds, further, 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). Applicant was convicted of the offenses he challenges in this Application on September 1, 1998. The Supreme Court issued their decision on May 20, 2002. This Application was filed on March 4, 2013, which was well beyond 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 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 because it is successive.


Further, this Court finds that Applicant's Motion for Declaratory Judgment is denied. Judgment by default against the State of South Carolina is improper. Rule 55 of the South Carolina Rules of Civil Procedure precludes judgment by default against the State of South Carolina. SCRCP 55(e) states: "No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof...unless the claimant establishes his claim of relief by evidence satisfactory to the Court." Applicant has failed to make more than conclusory allegations to support his claims for relief. Further, Applicant has in no way shown how he was affected by the State's delay in filing a Return, since it was through inadvertent filing by the Orangeburg County Clerk of Court that his post-conviction relief action was not timely adjudicated. Therefore, Applicant's request for judgment by default against the State of South Carolina is denied.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall

file any reasons he may have, factual or legal, with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 23rd day of Sept, 2013.



EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina.

James Anthony Primus 282315
MacDougall Correctional Institution
Magnolia unit 2 DSA
1516 Old Gilliard Road
Ridgeville S.C. 29472

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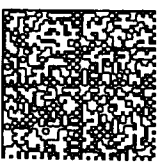
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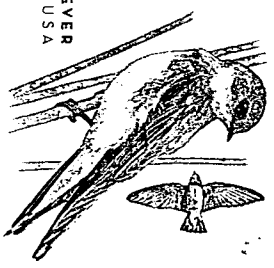
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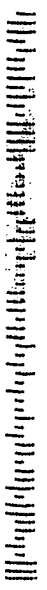
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