

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Lavar P. Sanders, #259354

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

RECORDED

2013 OCT 25 PM 2:34

CASE NO.

2013-CP-43-1451

S.C. Supreme Court

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

NOTATION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Lavar P. Sanders, #259354, Bar No.
Address:
Lieber Correctional Institution
Ridgeville, SC 29472
phone: fax:
e-mail: other:

Defendant's Attorney:
Daniel Gourley, Bar No.
Address:
P.O. Box 11549
Columbia, SC 29211
phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

May Williams
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

October 17, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 OCT 25 PM 2:34
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Lavar P. Sanders, #259354,

Applicant,

v.

State of South Carolina,

Respondent.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. 2013-CP-43-1451

**CONDITIONAL ORDER
OF DISMISSAL**

CERTIFIED TRUE
OF ORIGINAL

DEPUTY CLERK
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before this Court by way of an application for post-conviction relief filed July 11, 2013. In its Return, Respondent requests that the action be summarily dismissed.

PROCEDURAL HISTORY

Before this Court are the records of the Sumter County Clerk of court regarding the subject convictions, Applicants records from the South Carolina Department of Corrections, Appellate records and records from Applicants previous application for post-conviction relief. The records before this Court reflect that the Applicant was true bill indicted during the November 2006 term of the Sumter County Grand Jury for Unlawful Drugs with specific counts of Trafficking in Cocaine, Possession of Cocaine with Intent to Distribute Within Proximity of a Public Park, Possession of Marijuana with Intent to Distribute, Possession of Cocaine with Intent to Distribute within Proximity of Public Park (2006-GS-43-1054). Arthur Wilder, Esquire, represented him. On March 5, 2009, the Applicant was convicted by a jury of possession with intent to distribute cocaine within one half mile of park and trafficking cocaine ten grams or more but less than twenty eight grams. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to twenty five years imprisonment for trafficking cocaine and eight years

imprisonment for PWID cocaine with one half mile of park, with the sentences to run concurrently.

A timely notice of appeal was filed for the PWID cocaine within one half mile conviction. The South Carolina Court of Appeals Dismissed the appeal. State v. Sanders, Op. No 2011-UP-217 (S.C. Ct. App. filed May 17, 2011). The Remittitur was sent on June 2, 2011.

Applicant filed a timely post-conviction relief application (2012-CP-43-180) on January 30, 2012. In his post-conviction relief application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance counsel.
 - a. Failure to Investigate, failure to provide effective representation
2. Denial Due Process

Respondent made its Return on June 4, 2012. An evidentiary hearing was convened into the matter on March 18, 2013 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Megan E. Harrigan of the South Carolina Attorney General's Office. By Order dated April 11, 2013, and filed April 17, 2013, Judge Young denied and dismissed the application with prejudice. A timely notice of appeal was filed on April 22, 2013. The Appeal is still currently pending.

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

1. Ineffective assistance of counsel
2. Ineffective Assistance of PCR Counsel
3. Violation of Due Process
 - a. "6th and 14th Amendment violation."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the Applicant's allegations are without merit. 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, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

This Court finds further, that this Application for Post-Conviction Relief should also 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 was convicted of the offenses he challenges in this Application on March 5, 2009. This application was filed on August 14, 2013; well beyond the one year 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 for being successive.

Additionally, this Court finds this application is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a

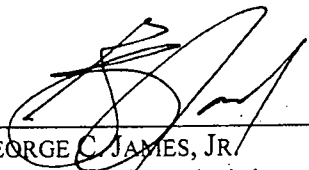
prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel and subject matter jurisdiction in prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court intends to summarily dismiss these claims as barred by *res judicata*.

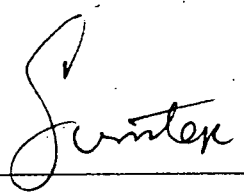
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this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

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 22 day of Oct., 2013.



GEORGE C. JAMES, JR.
Chief Judge for Administrative Purposes
Third Judicial Circuit


_____, South Carolina.

FORM 4

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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4301451

Lavar P Sanders

2013 OCT 25 PM 3:31

South Carolina State of

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

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.

Circuit Court Judge

2143

Judge Code

10/25/2013

Date

For Clerk of Court Office Use Only

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

Lavar P #259354 Sanders Lieber Correctional Inst/Ea-51
P.O Box 205 Ridgeville, SC 29472

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - 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.

See attached Oder.
