

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Case No. 2013-CP-40-07760

Marshall Ray Miller,

Plaintiff,

vs.

Kim Varner, Esquire,  
South Carolina Office of Appellate  
Defense, State of South Carolina, and  
State Grand Jury of South Carolina,

Defendants.

**ORDER**

RICHLAND COUNTY  
FILED  
2014 MAY 23 PM 2:45  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

This matter comes before the Court upon Defendant State of South Carolina's Motion to Dismiss, which was heard April 10, 2014. Present at the hearing were the pro-se Plaintiff; Kristin M. Simons of the South Carolina Attorney General's Office on behalf of the State of South Carolina; and Defendant Kim Varner, Esquire. After considering the pleadings filed in this action, the oral arguments of the parties, and applicable law, the Court grants Defendant's Motion to Dismiss for the reasons set forth below.

On September 10, 2002, Plaintiff was indicted by the State Grand Jury of South Carolina for Trafficking Methamphetamine. He was tried in his absence, and was convicted by the jury as indicted on January 30, 2004. On August 24, 2004, Plaintiff was sentenced to confinement for a period of twenty-five (25) years. Plaintiff appealed, and The South Carolina Court of Appeals upheld the conviction and sentence on October 19, 2007. *State v. Miller*, 375 S.C. 370, 652 S.E.2d 444 (Ct.App. 2007).

Plaintiff then filed an Application for Post-Conviction Relief on April 20, 2009, which was dismissed by Order dated March 25, 2013.

Plaintiff filed this action for Declaratory Judgment on or December 27, 2013, seeking a declaration that he is entitled to review materials state grand jury materials used in his indictment and prosecution for exculpatory purposes; to rebut evidence; or for impeachment of witnesses and his case files in possession of trial and appellate counsel.

### LEGAL ANALYSIS

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6) SCRPC; *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App.2007); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Dismissal of a complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

As a threshold matter, the "State Grand Jury" is a prosecutorial body and a division of the Office of the Attorney General of the State of South Carolina. It is not an entity amenable to suit, and is therefore dismissed with prejudice.


As to the State of South Carolina, Plaintiff failed to serve the Summons and Complaint in the manner required by Rule 4(d)(4)(A) of the South Carolina Rule of Civil Procedure, requiring dismissal for insufficiency of service of process pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure. Moreover, the action fails to state facts sufficient to constitute a cause of action, requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Section 14-7-1700 of the South Carolina Code of Laws provides a defendant the right to review and reproduce the record of testimony and other proceedings of the grand jury, and requires that all other documents produced before a state grand jury must remain in the custody and control of the Attorney General... "unless otherwise ordered by the court *in a particular case*." (emphasis added). Here, there is no pending case to which the grand jury materials are relevant. Plaintiff admits that he had access to the State Grand Jury materials both prior to his criminal trial, and prior to the hearing of his application for post-conviction relief. Accordingly, Plaintiff is not entitled to access to State Grand Jury materials, and this action is dismissed with prejudice as to Defendant State of South Carolina.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that this action is dismissed with prejudice as to the State of South Carolina and the State Grand Jury of South Carolina.

AND IT IS SO ORDERED

May 22, 2014

  
\_\_\_\_\_  
The Honorable DeAndrea G. Benjamin  
Presiding Judge, Fifth Judicial Circuit

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4007760

Marshall R #249557 Miller

Kim Varner

PLAINTIFF(S)

South Carolina Appellate Defense  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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;  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  
 2013 MAY 27 PM 2:21  
 JEANETTE W. BRIDE  
 CLERK OF COURT  
 Vol. No. Suit;

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

Marshall R #249557 Miller

Kristin M. Simons

Robert Michael Dudek

Marshall R #249557 Miller

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W. Bride*