

The State of South Carolina  
In the Supreme Court

Appeal from Dorchester County  
Court of Common Pleas

Case no 2011-CP 1800603

The State - - - - - respondent  
vs.  
Donald J. Mauldin - - - - - Appellant

Notice of Appeal

Donald J. Mauldin appeals the order of the Honorable  
Maite Murphy dated August 27, 2014 which denied  
his Post Conviction application. The appellant received  
written notice of the order September 15 2014

9-23-14

Donald J. Mauldin

JCR

Certification of Service

The undersigned hereby certifies the notice of Appeal  
has been filed this 23<sup>rd</sup> day of September by  
depositing the same by U.S. Mail First Class to:

S.C. Supreme Court P.O. Box 11549 Columbia S.C.  
29211

S. D. [Signature]

**RECEIVED**

SEP 26 2014

**S.C. SUPREME COURT**

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP1800603

RECEIVED

CERTIFIED COPY

Donald J Mauldin, 297627

2014 SEP 11 10:54 AM South Carolina State Of

SEP 26 2014

*Cheryl Graham*  
CLERK OF COURT  
DORCHESTER COUNTY

S.C. SUPREME COURT

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.**

Maité Murphy  
Circuit Court Judge

2166  
Judge Code

9/11/2014  
Date

**For Clerk of Court Office Use Only**

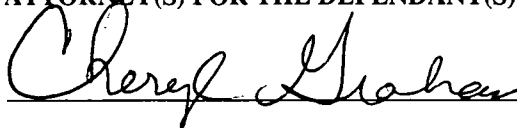
This judgment was entered on 9/11/2014, and a copy mailed first class or placed in the appropriate attorney's box on 9/11/2014, to attorneys of record or to parties (when appearing pro se) as follows:

**Donald J Mauldin** Lci P.O.Box 205 Ridgeville, SC 29472  
**Scott Innes McNeish** 125 Crosscreek Dr., Ste. 106  
Summerville, SC 29485

**Megan E. Harrigan** PO Box 11549 Columbia, SC 29211

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**



**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 )  
) )  
Donald J. Mauldin, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-18-0603

**ORDER OF DISMISSAL**

*Chief Clerk*  
CLERK OF COURT  
DORCHESTER COUNTY  
2014 SEP 11 AM 10:54  
CERTIFIED COPY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 18, 2011. In its Return and Motion to Dismiss, filed on or about July 8, 2011, Respondent requested that the application be summarily dismissed as untimely pursuant to S.C. Code Ann. § 17-27-45. On September 26, 2011, the Honorable Edgar W. Dickson, acting in his capacity as Chief Administrative Judge of the First Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. Applicant responded on July 27, 2011, alleging that mental health concerns prevented him from timely filing his application. Based on his response and in light of Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) (requiring the tolling of the statute of limitations if Applicant can establish that mental incompetence prevented the timely filing of his or her application), the court granted a hearing on the State’s motion to dismiss.

A hearing on the State’s motion to dismiss was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Scott McNeish, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence

presented at the hearing, along with a review of all records provided to the Court, this Court finds that this application must be dismissed as untimely filed pursuant to S.C. Code Ann. § 17-27-45.

### 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, and appellate records. The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted at the May 2007 term of the Dorchester County Grand Jury for Homicide by Child Abuse (2007-GS-18-0377). Brian Burke, Esquire, represented him. On December 10, 2007, Applicant appeared before the Honorable Diane S. Goodstein and pled guilty as indicted. Pursuant to a negotiated cap between Applicant and the State, Judge Goodstein sentenced Applicant to fifty years imprisonment.

A timely Notice of Appeal was filed and an Anders<sup>1</sup> brief was submitted on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Mauldin, Op. No. 2010-UP-070 (S.C. Ct. App. filed February 1, 2010). The Remittitur was sent on February 17, 2010.

In his application for post conviction relief Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel.
  - a. "Counsel fail to request an competency evaluation where a history of mental disorder exist."

---

<sup>1</sup> 378 S.C. 738 (1967).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter must be summarily dismissed because Applicant has failed 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 offense he challenges on December 10, 2007. Applicant's appeal was resolved February 17, 2010. Therefore, Applicant was required to file his application on or before February 18, 2011. This Application was filed on March 18, 2011, a month beyond the time that the statutory filing period had expired.

At the hearing, Applicant testified that prolonged mental health issues, including depression and schizophrenic episodes, along with consistent drug use while incarcerated, prevented him from filing his application within one year of the conclusion of his appeal. In support of this, Applicant submitted: a letter from the Department of Mental Health stating that he was treated for ADHD as a child (Applicant's Ex. No 1); learning disability placement forms from ages 11 and 14 (Applicant's Ex. No 2 and 3); and SCDC Medication Administration Record (Applicant's Ex. No 4). However,

Applicant testified that he filed his application when another inmate gave him a blank application and told him that he was beyond the statutory time limit. He testified that he discussed his case with this inmate and provided him the necessary information to complete his application.

This Court finds that Applicant has failed to establish that mental incapacity prevented him from timely filing his application as required by Ferguson. This Court notes that Applicant testified that he was able to discuss his case and provide the pertinent information required to complete his application with another inmate. This Court finds that Applicant has failed to establish that mental incompetency prevented timely filing within a year of his direct appeal, and therefore, finds that the statute of limitations should not be tolled.

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) (2003) authorizes the post-conviction relief 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."

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant failed to file this application within the time constraints required by S.C. Code Ann. § 17-27-45. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

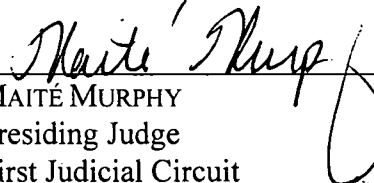
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a

right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief shall be dismissed with prejudice for failure to file within the time constraints required by S.C. Code Ann. § 17-27-45.; and
2. Applicant shall remain remanded to the custody of the State.

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

  
MAITÉ MURPHY  
Presiding Judge  
First Judicial Circuit

Columbia, South Carolina.

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2011CP1800603

Donald J Mauldin, 297627 vs. South Carolina State Of

**CHECK ONE:**

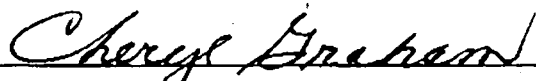
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a),  
SCRCP (Vol. Nonsuit);  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 St. George, South Carolina, this 26th day of Sept. 2011.

Court Reporter:

  
- Cheryl Graham, Clerk of Court, By: Carolyn Ayer, Deputy

This judgment was entered on the 26th day of Sept. 2011, and a copy mailed first class this 26th day of Sept. 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Donald J Mauldin Lci P.O.Box 205 Ridgeville, SC  
29472

Mary S Williams Assistant Attorney General P O  
Box 11549 Columbia, SC 292111549

FILED-RECORDED  
2011 SEP 26 11:31 AM  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Donald J. Mauldin

Plaintiff

v.

State Of South Carolina

Defendant.

FILED - REC'D

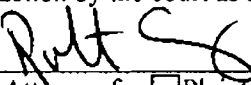
2011 SEP 26 P 2:11

CHERYL  
CLERK  
DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO.  
2011-CP-18-0603

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Donald J. Mauldin, Bar No. Address: LCI Post Office Box 205 Ridgeville SC 29472 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 8, 2011 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCPP) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	



In his application for post conviction relief Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel.
  - a. "Counsel fail to request an competency evaluation where a history of mental disorder exist."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed 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 offense(s) he challenges in this Application on December 10, 2007. Applicant's appeal was resolved February 17, 2010. The Applicant was therefore required to file his application on or before February 18, 2011. This Application was filed on March 18, 2011, a month beyond the time that 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) (2003) authorizes the PCR 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."

### CONCLUSION

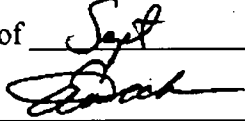
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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 with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

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

AND IT IS SO ORDERED this 8<sup>th</sup> day of Sept, 20 11.

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

Changmy, South Carolina.

FILED - RECORD  
2011 SEP 26 PM 2:12  
CHERYL  
CLERK  
DORCHESTER

Donald J. Melvin 29700-  
P.O. Box 205 44 45-  
Ridgeway S.C. 29472

**RECEIVED**

SEP 23 2014

MALROOM  
LIEBER CI

**FEDERAL USE ONLY**  
MAIL ROOM

Suprem Court of South Carolina  
P.O. Box 11330  
Columbia, S.C. 29211