

The State of South Carolina
In the Supreme Court

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JAN 09 2015

Appeal from Lancaster County
Court of Common Pleas

Brian M. Gibbons, Chief Administrative Judge, SC SUPREME COURT

Case No. 2012-CP-29-0879

Mi-Quavis Cunningham, Appellant

v.

State of South Carolina, Respondent

Notice of Appeal

Mi-Quavis Cunningham appeals the order of dismissal of the Honorable Brian M. Gibbons dated November 21, 2014. Appellant received written notice of entry of this order of dismissal on December 9, 2014.

December 12, 2014

Mi-Quavis J. Cunningham #342032

Mi-Quavis J. Cunningham #342032
EVANS Correctional Institution
610 Highway 9- West
Bennettsville S.C. 29512

The State of South Carolina
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S.C. SUPREME COURT

Appeal from Lancaster County
Court of Common Pleas

Brian M. Gibbons, Chief Administrative Judge, 6th Circuit

CASE No. 2012-CP-29-0879

1 Mi-Quavis Cunningham, Appellant

State of South Carolina, Respondent

Proof of Service

I certify that I have served the Notice of Appeal on South Carolina Supreme Court and Attorney General Alani Wilson by depositing a copy of it in the United States mail, postage prepaid on December 15, 2014 addressed to Daniel E. Shearouse P.O. Box 11330 Columbia S.C. 29211 on December 15, 2014. Also served on Attorney General Alani Wilson addressed to P.O. Box 11549, Columbia S.C. 29211.

Mi-Quavis Cunningham #342032
Mi-Quavis Cunningham #342032
Evans Correctional Institution
610 Highway 9 - West
Bennettsville S.C. 29512

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 COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
 MiQuavis Jamar Cunningham,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2012-CP-29-0879

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed July 2, 2012. Respondent made its Return and Motion to Dismiss.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the February 2009 term of the Lancaster County Grand Jury for burglary, second degree (violent) (2009-GS-29-0245), assault and battery with intent to kill (2009-GS-29-0247), and two (2) counts of unlawful carrying of a pistol (2009-GS-29-0248, -249). The Applicant was then indicted at the November 2009 term of the Lancaster County Grand Jury for receiving stolen goods (value \$1000-5000) (2009-GS-29-1652), malicious injury to personal property (\$1000-5000) (2009-GS-29-1653), and possession of cocaine base (2009-GS-29-1654). The Applicant was then indicted at the June 2010 term of the Lancaster County Grand Jury for assault and battery with intent to kill (2010-GS-29-0738), possession of a firearm or knife during the commission of a violent crime (2010-GS-29-0739), and possession of cocaine, first offense (2010-GS-29-0740). He was represented by William Frick, Esquire. On July 30, 2010, the Applicant pled guilty as indicted. The Honorable

Brooks P. Goldsmith sentenced the Applicant to confinement for concurrent periods of ten (10) years for burglary, second degree (violent) (2009-GS-29-0245), three (3) years for receiving stolen goods (value \$1000-5000) (2009-GS-29-1652), three (3) years for malicious injury to personal property (\$1000-5000) (2009-GS-29-1653), three (3) years for possession of cocaine base (2009-GS-29-1654), ten (10) years for assault and battery with intent to kill (2010-GS-29-0738), ten (10) years for possession of a firearm or knife during the commission of a violent crime (2010-GS-29-0739), and three (3) years for possession of cocaine, first offense (2010-GS-29-0740). The Applicant did not appeal his conviction or sentence.

Applicant's Current PCR Application

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

1. Ineffective Assistance of Counsel.
2. "The Court and/or the Department of Corrections has not given me (14 months) of count[y] jail time credits that I was suppose [sic] to be given."

LAMAR *OR*

Before this Court are the records of the ~~Spartanburg~~ County Clerk of Court regarding the subject convictions, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds 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 (2003). 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 June 1, 2007. The Applicant was therefore required to file his application before June 1, 2008. This Application was filed on April 26, 2012, well 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) (2003) 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.

Summary


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 Louise Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 17 day of Sept, 2013.



J. Ernest Kinard Jr.
Administrative Judge – Common Pleas
Sixth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
)
MiQuavis J. Cunningham, #342032,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No. 2012-CP-29-0879.

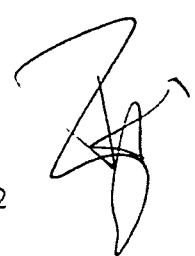
FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 2, 2012. The Respondent made its return on September 4, 2013, requesting the application be summarily dismissed based upon the statute of limitations.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable J. Ernest Kinard, Jr., issued a Conditional Order of Dismissal signed and filed September 17, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 10, 2013, serving the above mentioned Conditional Order of Dismissal on the Applicant.

The Applicant has failed to respond to either the Respondent's motion to Dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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CLERK OF COURT
LANCASTER, SC



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Dianne Stubbs (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF Marlboro)

On this 10 day of October, 2013, I served the signed Conditional Order of Dismissal on Inmate MiQuavis Jamar Cunningham, SCDC No. 342032, by delivering personally and leaving a copy of the same at Evans Correctional Institution, Bennettsville, South Carolina. Deponent is not a party to this action.

/s/ Dianne Stubbs
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

This 10 day of October, 2013

Bony Thomas (L.S.)
Notary Public for South Carolina
My commission expires September 22 2019

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LANCASTER SC

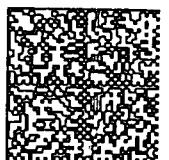
ADMISSION OF SERVICE

Service of a signed copy of the Conditional Order of Dismissal at the S.C. Department of Corrections, Evans Correctional Institution, Marlboro County, South Carolina, this 10 day of October, 2013.

MiQuavis Cunningham
Inmate Signature
SCDC No. 342032

McDavis Cunningham #342032
S.C.I FSB-271
610 Highway 9. West
BENNETTSVILLE S.C 29512

COLUMBIA
SC 290
07 JAN '15
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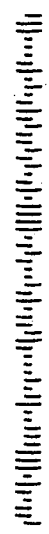
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Columbia S.C. 29211

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EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS
THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.