

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4600929

Charles Johnson	South Carolina State Of
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: J. Rutledge Johnson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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.**

s/Lee S. Alford
 Circuit Court Judge

2113
 Judge Code

12/5/2014
 Date

For Clerk of Court Office Use Only

This judgment was entered on **January 9, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **January 9, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Johnson Evans Correctional Institute F3B-141 610
Highway 9 West Bennettsville, SC 29512

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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 YORK)
)
 Charles Johnson, #243842,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-0929

FINAL ORDER OF DISMISSAL

FILED-RECEIVED
 2015 JAN -9 AM 10:16
 DAVID BRADY
 C.C.P. & SS
 YORK COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 26, 2014. The Respondent (the State) made its Return and Motion to Dismiss on September 10, 2014, 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 dated September 12, 2014, 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. The Applicant responded to the Conditional Order of Dismissal on September 23, 2014. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 22, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Response to the Conditional Order of Dismissal," the Applicant argues he could not have alleged his claims in his prior PCR actions because SCDC did not update their Westlaw website until March of 2014. He also claims Clark v. S. Carolina Dep't of Pub. Safety, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002) aff'd, 362 S.C. 377, 608 S.E.2d 573 (2005) "could and

would have changed the probability that, but for counsels error, and outcome, of knowing that all blame wasn't on me, I wouldn't have pled guilty, but would've gone to a trial." Additionally, Applicant claims he was within the statute of limitations and should not be subject to Double Jeopardy. Further, Applicant argues that if all of the facts would have been brought forth in a trial, "there would've been a change in the harsh sentence."

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

First, Applicant's claim as to "newly discovered evidence" fails under the Lanier test. A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005).

This Court finds this "newly discovered evidence" would not change the result if a new trial is granted. First, Applicant pled guilty so this would not change the result at trial. Additionally, the case Applicant cites is Clark v. S. Carolina Dep't of Pub. Safety, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002) aff'd, 362 S.C. 377, 608 S.E.2d 573 (2005), which is a 2005 case, and this information could have been discovered with due diligence by the end of 2006 as this case would have been published in a public forum and thus, discoverable. It is irrelevant that Evans Correctional Institute updated their prison law library because this information was still available to the public through

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other means. Moreover, this civil case is not material to the issue of his guilt or innocence. He was found liable for his actions in this case.

Second, the Applicant claims this case would have changed the outcome of his case. This Court disagrees. This case was the resulting civil case of his criminal case to which he pled guilty. This Court finds the result from the civil case is wholly separate and apart from his guilt in his criminal case. The Applicant pled guilty in 1997 and this civil case was not decided until 2002 and affirmed in 2005. Obviously, the Applicant would have been aware of this case as he was a party to it and thus, he had to bring this claim within one year of its disposition under §17-27-45(c). However, this Court simply finds Applicant failed to do and that this case has no bearing on his guilty plea.

Third, the Applicant asserts he was subject to Double Jeopardy for the same offense. This Court can only surmise the Applicant is claiming that he was subject to both criminal and civil punishment and believes this is in violation of the Double Jeopardy Clause. This Court disagrees. "The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense." State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 622 (1997). "However, the Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that could, "in common parlance," be described as punishment." "The Clause protects only against the imposition of multiple *criminal* punishments for the same offense.'" State v. Cuccia, 353 S.C. 430, 435, 578 S.E.2d 45, 48 (Ct. App. 2003) (quoting Hudson v. United States, 522 U.S. 93, 98-99, 118 S.Ct. 488, 493 (1997)). Where a civil sanction is remedial in nature and not merely punitive, it does not run afoul of double jeopardy to pursue the civil sanction. State v. Blick, 325 S.C. 636, 642, 481 S.E.2d 452, 455 (Ct. App. 1997). In Applicant's subsequent civil case, the sanction against Applicant was a monetary one and not meant

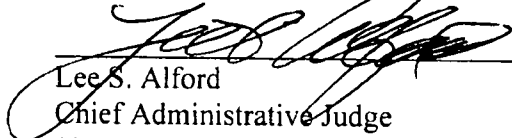
to punish Applicant, but to compensate the victim's estate. Therefore, this Court finds the Double Jeopardy Clause was not violated in this case. Nevertheless, Applicant would have had to bring this claim within a year of the decision to be properly pled in PCR.

Lastly, Applicant argues "[I]f all the facts would or could have been brought out in a trial, there would've been a change in the harsh sentence." This Court finds the Applicant had an opportunity to pursue a trial but chose to plead guilty instead. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant has failed to show any partiality, prejudice, oppression or corrupt motive by the sentencing court.

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 notifies 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 5th day of December, 2014.



Lee S. Alford
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

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