

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2013CP4002226

Kevin #308569 Davis

State of South Carolina

PLAINTIFF(S)

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 (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 _____

RICHLAND COUNTY
FILED
AUG 14 PM 4:38
JENNETTE W. BRIDE
C.C.P. & G.S.

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 14 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Kevin #308569 Davis

Megan E. Harrigan

Kevin #308569 Davis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. Bride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Kevin Davis, #308569,)
Applicant,)

Case No. 2013-CP-40-02226

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

2013 AUG -9 AM 11:11
JEANETTE W. JOHNSON
CLERK OF COURT
RICHLAND COUNTY
S.C.P.S. OS.

This matter comes before this Court by way of an Application for post-conviction relief filed April 12, 2013. In its return, Respondent requested the Application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and prior post-conviction relief records. Applicant was indicted during the June 2004 term of the Richland County Grand Jury for Burglary in the First Degree (2004-GS-40-4451) and Possession of Burglary Tools (2004-GS-40-3218). Hans Pauling, Esquire, represented Applicant. On April 7, 2005, Applicant appeared before the Honorable Alison Renee Lee, where he pled guilty as indicted to Burglary in the First Degree. Judge Lee sentenced Applicant to twenty-one years imprisonment. The State *nolle prossed* Applicant's remaining charge pursuant to plea negotiations. Applicant did not appeal his guilty plea or sentence.

Applicant filed an initial application for post-conviction relief October 10, 2005 (2005-CP-40-5183). In that application, Applicant alleged he was being held in custody unlawfully based on claims of:

1. Ineffective assistance of counsel:
 - a. Counsel failed to explain to Applicant the modification of the indictment to include possession of a deadly weapon to which he was pleading guilty
 - b. Counsel failed to challenge the jurisdiction of the court when the indictment had been altered.

An evidentiary hearing into the matter was held on February 28, 2006 at the Richland County Courthouse before the Honorable James R. Barber, III. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Judge Barber denied and dismissed Applicant's application for post-conviction relief by Order on April 10, 2007.

Applicant subsequently filed a Petition for Writ of Certiorari, appealing Judge Barber's Order. The South Carolina Supreme Court denied Applicant's Petition on May 7, 2008. The Remittitur was issued on May 27, 2008.

Applicant filed his second application for post-conviction on June 7, 2011 (2011-CP-40-03665). Judge Barber dismissed Applicant's second application for post-conviction relief by Order on July 12, 2012.

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

1. "Subject Matter Jurisdiction."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior applications 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 Applicant's current allegations were raised in his previous post-conviction relief actions and thus his current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his first 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 (1991).

Further, 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. 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).

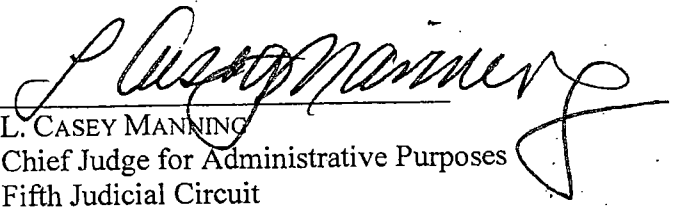
Applicant pled guilty to the offense he challenges in this Application on April 7, 2005. This Application was filed on April 12, 2013, which was filed almost seven years after the statutory filing period had expired.

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) (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 this Application for post-conviction relief must be summarily dismissed for failure to file within the time mandated by statute.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 5 day of Aug, 2013.


L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Cole, South Carolina.