

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

---

**RECEIVED**

OCT - 7 2015

**S.C. Supreme Court**

MICHAEL T. BARNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001355

---

APPENDIX

---

ROBERT M. PACHAK  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

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Assistant Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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mf

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

County of Charlestown )

2011-CP-10-146

Michael T. Barnes #318499 )

Full name and prison number, if any, of applicant )

v. )

State of South Carolina )

Name of Respondent )

APPLICATION FOR  
POST-CONVICTION RELIEF

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 JAN -7 PM 4:59

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee County Correctional Institution  
(990 Wisacky Hwy Bishopville, SC 29010)
2. Name and location of Court which imposed sentence Charlestown County; Charlestown  
South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2006 GS 102169 : Murder
  - (b) 2006 GS 102170 : Attempted Armed Robbery
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 11/3/06 30 years for Murder
  - (b) 11/3/06 15 years for Attempted Armed Robbery
  - (c) \_\_\_\_\_

- 5. Check whether a finding of guilty was made
  - (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty   ✓
  - (c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence?   yes  

- 7. If you answered "yes" to (6), list
  - (a) the name of each Court to which you appealed:
    - i.   South Carolina Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i.   Appeal Dismissed
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i.   Nov. 12, 2009
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i.   None
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- 8. If you answered "no" to (6), state your reasons for not so appealing:
  - (a)   ( )
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
  - (a)   Ineffective Assistance of Counsel
  - (b)   Prosecutorial Misconduct
  - (c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See (~~Attachment~~) (~~Attachment~~) (~~See~~) back of page of #1 and #2 of this Application.

(b) See (~~Attachment~~) (~~See~~) back of page of #3

(c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

no

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no

(d) any other petitions, motions or applications in this or any other Court?

no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel (lack of knowledge and understanding of law)
- (b) Prosecutorial Misconduct (lack of knowledge and understanding of the law)
- (c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? no

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Martha Kent Jenkins - 101 Meeting St. Charleston, SC 29401
- ii. Robert M. Dudek - P.O. Box 11589 Columbia, SC 29211
- iii. Bettie Butler - 101 Meeting St. Charleston, SC 29401

(b) the proceedings at which each such attorney represented you:

- i. Trial - Martha Kent Jenkins
- ii. Direct Appeal - Robert M. Dudek
- iii. Trial - Bettie Butler

18. State clearly the relief you seek in filing this application.

Resentenced under a lesser included offense, New Trial,  
or sentence vacated in whole

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Charleston ) VERIFICATION

I, Michael T. Barnes #318499, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Barnes

Sworn to and subscribed before me  
This 17 day of Jan., 2010.

Brady Snow L.S.  
Notary Public for South Carolina  
My Commission Expires 5/16/11

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Michael T. Barnes #318499, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Michael Barnes  
Applicant

Sworn to and subscribed before me  
This 17 day of Jan., 2010.

Brady Snow L.S.  
Notary Public for South Carolina  
My Commission Expires: 5/16/11

FORM 5

STATE OF SOUTH CAROLINA )

County of Charleston )

2011-CP-10-146  
IN THE COURT OF COMMON PLEAS

Michael T. Barnes #318499 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

BY  
JULIE LARSEN STRONG  
CLERK OF COURT  
2011 JAN -7 PM 4:59

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County Correctional Institution
2. Name and location of Court which imposed sentence Charleston County;  
Charleston, South Carolina
3. Name(s) of co-defendant(s) (if any) Oliver Nelson and Curtin Summers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2006-GS102169: Murder

(b) 2006GS102170: Attempted Armed Robbery

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 11/3/06 30 years For Murder

(b) 11/3/06 15 years For Attempted Armed Robbery

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty  \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. November 12<sup>th</sup>, 2009

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) Prosecutorial Misconduct

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See back of page #3 and #4

(b) See back of page #5

(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel (lack of knowledge and understanding of law)
- (b) Prosecutorial Misconduct (lack of knowledge and understanding of law)
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Martha Kent Jenkinson - 101 Meeting St. Charleston, SC 29401
  - ii. Robert M. Dudek - P.O. Box 11589 Columbia, SC 29211
  - iii. Bentlie Butler - 101 Meeting St. Charleston, SC 29401
- (b) the proceedings at which each such attorney represented you:
  - i. Trial
  - ii. Direct Appeal
  - iii. Trial

19. State clearly the relief you seek in filing this application:

Resentenced under a lesser included offense, New Trial,  
or Sentence to be vacated in whole

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of Charleston )

VERIFICATION

I, Michael T. Barnes #318499, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Barnes #318499

SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Michael T. Barnes #318499, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Barnes #318499  
Applicant

SWORN or affirmed to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

01/07/2011 16:20

CHARLESTON CRIMINAL SYSTEM  
\*\*\* CRIMINAL DISPOSITION INQUIRY \*\*\*

BLC MA1V R1PIQ01

FUNCTION \_

CASE ID: YEAR: 2006 COURT: GS LOC: 10 NUMBER: 002169 DEF ID: A COUNT: 01  
WARRANT/CITATION: H975989 OF: A OF: 01

DEFENDANT BARNES, MICHAEL T

ALIAS FLAG:

EVENT CODE: HEA EVENT DATE: 11 03 2006 EVENT TIME: 08 00 EVENT JUDGE: 2060

-----TRIAL DATA-----

TYPE: 2 DATE: 11 03 2006

STATUTE CONVICTED 16-03-0010

REPT GRP: 0116 GOC: G FINES/COSTS:

SENTENCE

30 YRS/CREDIT GIVEN BY SCDC TIME SERVED

SENTENCE - CONT

-----DISPOSITION DATA-----

CODE: 2000 DATE: 11 03 2006 JUDGE: 2060

ISHMEI

DESCR: MURDER

DISPOSITION ENTRY DAT 11 09 2006

DISP DKTS/CHGS:

ADDTL DKT/CHG

LAST UPDATE 11 09 2006 OPERATOR: JSB

ENTER FS,PS,DK,PD,EV,SS OR PF1

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2011-CP-10-146
	)	
Michael T. Barnes, #318499.	)	
	)	
Applicant.	)	
	)	
v.	)	<b>RETURN AND MOTION TO DISMISS</b>
	)	
State of South Carolina.	)	
	)	
Respondent.	)	
	)	

---

The Respondent, making its Return and Motion to Dismiss to the application for post-conviction relief (PCR) filed January 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2006 term of the Charleston County Grand Jury for murder (2006-GS-10-2169) and attempted armed robbery (2006-GS-10-2170). Martha Kent Runey (formerly Martha Kent Jenkinson), Esquire, and Beattie Butler, Esquire, represented the Applicant. On November 1-3, 2006, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for thirty (30) years for murder and fifteen (15) years consecutive for attempted armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed

Applicant's appeal. State v. Barnes, Op. No. 2009-UP-516 (S.C. Ct. App. filed November 12, 2009). The Remittitur was issued on December 1, 2009.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion, and the Remittitur dated December 1, 2009.

## II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.

## III.

Respondent submits that this PCR application 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). Here, the Applicant was convicted of these offenses on November 3, 2006. The Remittitur from the direct appeal was issued on December 1, 2009. Therefore, Applicant was required to file a PCR application by December 1, 2010. This application was filed on January 7, 2011, which was thirty-seven (37) days 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) 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, Respondent requests that this Court summarily dismiss the application for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Court summarily dismiss the application based on filing outside of the statute of limitations.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3737

March 24, 2011.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
 MICHAEL T. BARNES, #318499 )  
 )  
 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

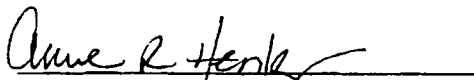
2011-CP-10-146

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** and the **Proposed Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Michael T. Barnes, #318499**  
**Lee Correctional Institution**  
**990 Wisacky Highway**  
**Bishopville, SC 29010**

DATED this 24th day of March, 2011

  
 Anne Henley, Legal Assistant  
 For Respondent

C2  
AB  
AT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 Michael T. Barnes, #318499. )  
 )  
 ) Applicant. )  
 )  
 ) v. )  
 )  
 State of South Carolina, )  
 )  
 ) Respondent. )

IN THE COURT OF COMMON PLEAS  
 2011-CP-10-146

**CONDITIONAL ORDER  
 OF DISMISSAL**

BY \_\_\_\_\_  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 2011 APR -4 PM 4:49

**FILED**

This matter comes before this Court by way of an application for post-conviction relief filed January 7, 2011. The Respondent made its Return and Motion to Dismiss on March 22, 2011, requesting that the application be summarily denied and dismissed.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2006 term of the Charleston County Grand Jury for murder (2006-GS-10-2169) and attempted armed robbery (2006-GS-10-2170). Martha Kent Runey (formerly Martha Kent Jenkinson), Esquire, and Beattie Butler, Esquire, represented the Applicant. On November 1-3, 2006, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for thirty (30) years for murder and fifteen (15) years consecutive for attempted armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed

KCH  
 3/31/11

Applicant's appeal. State v. Barnes, Op. No. 2009-UP-516 (S.C. Ct. App. filed November 12, 2009). The Remittitur was issued on December 1, 2009.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion, the Remittitur dated December 1, 2009, the current PCR application, and the State's Return and Motion to Dismiss thereto.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.

This Court finds that this PCR application 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). Here, the Applicant was convicted of these offenses on November 3, 2006. The Remittitur from the direct appeal was issued on December 1, 2009. Therefore, Applicant was required to file a PCR application by December 1, 2010. This application was filed on January 7, 2011, which was thirty-seven (37) days after the statutory filing period had expired.

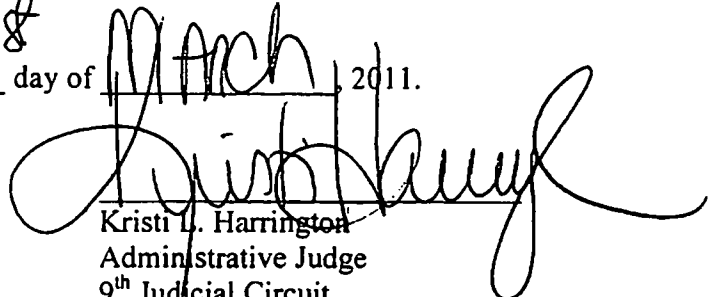
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

AKH  
3/31/11

(1994). In addition, S.C. Code Ann. § 17-27-70(c) 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 summarily dismisses the application for failure to file within the time mandated by the Post Conviction Procedure Act.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Charleston County, South Carolina. Applicant must also serve a copy of his response to opposing counsel Matthew J. Friedman of the Attorney General’s Office at P.O. Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this 31<sup>st</sup> day of March, 2011.

  
Kristi L. Harrington  
Administrative Judge  
9<sup>th</sup> Judicial Circuit

Charleston, South Carolina.

2011-CP-10-146

April 11<sup>th</sup>, 2011

Clerk of Court  
Charleston County  
Charleston, SC 29401

**FILED**

APR 13 2011

Dear Clerk of Court:

**JULIE J. ARMSTRONG**  
CLERK, C.P. & C.S.

This letter reaches you at utmost urgency and importance. My name is Michael Barnes SCDC#318499 and I am currently incarcerated within the Department of Corrections at Lee Correctional Institution. I am writing in regards of my twenty day deadline I am subjected to for reason to show that my PCR application was submitted within the proper time frame that statutes allow. To start off I would like to address the first issue at hand why I feel that a conditional order of dismissal should not be filed against me. First I would like to state that according to 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.

My remittitur for Direct Appeal was issued on December 1, 2009. Therefore I was required to file my PCR application by December 1, 2010. My PCR application was sent through institutional

Mail on November 9<sup>th</sup> 2010. Furthermore, on November 8<sup>th</sup> 2010 Lee Correctional were subjected to an institutional lockdown do to a serious incident involving ~~an~~ an inmate stabbing a Correctional officer. On November 10<sup>th</sup> 2010 I received the envelope back containing the application and was not able to send it back out do to the fact it was sent back from the institutional Mailroom because the envelope was heavier than the usual Mailroom standards and there was an extra 17¢ postage to be paid before the letter could be sent back out. Do to my inability to take the envelope containing the application to the Mailroom on the proper Day Lee Correctional implicated as being the Dartington Unit assigned Mailroom day which is Thursdays I was not able to take it to the Mailroom do to the institutional lockdown and also it being a federal holiday the Mailroom was closed. On November 16<sup>th</sup> 2010 the Dartington Unit came off of locked down which is my living quarters and my application was taken to the Mailroom on November 18<sup>th</sup> 2010 and respectfully submitted well before the December 1<sup>st</sup> 2010 Deadline. Also on November 29<sup>th</sup>, 2010 I received an envelope from your office containing the PCR Application I submitted along with another Application and a letter stating that the first application that been sent off was the wrong application form and went on to say for me to please fill out the attached application form & return for ~~it~~ <sup>filing</sup>. This new application I received was completed and submitted within a few days after the notice.

Right along with the first application I submitted.  
So I ask the courts and your mercy and  
take into consideration these claims i've stated  
within this letter should be known within  
institutional records as far as the lockdown  
status of the Darlington unit. I also have some  
documentation myself on file if its needed to  
bring truthfulness to these claims. I thank  
you for your time and patience and I ask  
that you check into everything I mentioned and  
I assure you that it is the truth and  
nothing but.

Sincerely,  
Michael Barnes #318499  
Lee Ct Dar. South/1257  
990 Wisacky Hwy  
Bishopville, SC 29010



Cc 26  
AT  
SA  
GJ  
RB

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Michael T. Barnes, #318499 )

2011-CP-10-0146

Applicant, )

v. )

**FINAL ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

FILED  
2015 JUN -2 11:14  
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 7, 2011. The Respondent (the State) made its Return and Motion to Dismiss on March 22, 2011, 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 March 31, 2011, 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 July 27, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant. The Applicant made a timely response dated April 11, 2011.

In the letter to the Clerk of Court and construed by Respondent as a response to the Conditional Order of Dismissal, the Applicant states that he placed his application for PCR in the mail on November 9, 2010, but was sent back to him due to postage. Additionally, due to an

*rmofl.*

institutional lock-down, he was not able to mail it the application until November 16, 2010. On November 29, 2010, Applicant claims he received a letter from the Clerk Office that he submitted the wrong form for his PCR application. 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.

The Applicant has also presented no legitimate reasons why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a).

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 November 3, 2006. The Remittitur after the Applicant's unsuccessful appeal was issued on December 1, 2009. The Applicant was therefore required to file his application to challenge the revocation before December 2, 2010. This Application was filed on January 7, 2011 which was well beyond the time that the statutory filing period had expired.

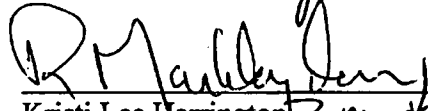
Under South Carolina law, mailing does not constitute filing. S.C. Code Ann. §17-27-40 provides that a proceeding is "commenced" by **filing** an application with the clerk of court. (emphasis added). Mailing of a petition for post-conviction relief does not constitute filing, for

statute of limitations purposes. Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001); Fox v. Union-  
Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955). This Court find that even though Applicant may  
have mailed his PCR application prior to his filing deadline, of which he has provided no credible  
proof, his application was not filed as per § 17-27-40 until more than a month after the filing  
deadline.

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 20<sup>th</sup> day of May, 2015.

  
~~Kristi Lea Harrington~~ R. Markley Dennis, Jr.  
Presiding Judge<sup>1</sup>  
Ninth Judicial Circuit

Throckmover, South Carolina.

<sup>1</sup> The Honorable R. Markley Dennis, Jr. presided over Applicant's trial.

SAW 2006-01-00076

WITNESSES

KEITH HAIR AND/OR

MATT CASEY

WCPD, SPEARS

JCA#: 2005047702

ARREST WARRANT NUMBER

H975989

December 23, 2005

ACTION OF GRAND JURY

APR 11 2006

*[Signature]*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-10-2169

05-6995 (S)

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

v.

MICHAEL T. BARNES

Indictment for

MURDER

FILED

2006 APR 11 PM 1:03

JULIE J. ARMSTRONG  
CLERK OF COURT



DOCKET NO. 2006-GS-10-2170  
The State of South Carolina  
County of Charleston

05-6885(CA)

FILED *MD*

2006 APR 11 PM 1:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

COURT OF GENERAL SESSIONS  
APRIL TERM 2006

THE STATE  
v.  
MICHAEL T. BARNES

Indictment for  
ATTEMPTED ARMED ROBBERY

SAW 2006-01-00076  
WITNESSES

EITH HAIR AND/OR  
LATT CASEY

CPD, SPEARS

CA#: 2005047702

ARREST WARRANT NUMBER  
H975990

December 23, 2005

ACTION OF GRAND JURY

April 11, 2006

*[Signature]*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

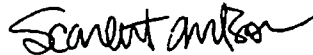
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

INDICTMENT FOR  
 ATTEMPTED ARMED ROBBERY

At a Court of General Sessions, convened on April 3, 2006, the Grand Jurors of Charleston County present upon their oath:

That in Charleston County on or about December 23, 2005, while acting in concert with another, at \_\_\_\_\_, North Charleston, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, Michael T. Barnes did attempt to take and carry away goods and/or monies from the person or immediate presence of Dobry Viera with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.




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SCARLETT WILSON  
 CHIEF DEPUTY SOLICITOR