

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4603485

John P Cousar II

South Carolina State Of

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: **AMENDED FINAL ORDER OF DISMISSAL**

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/ *R. Keith Kelly*

2165

8/28/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **September 24, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **September 24, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

John P Cousar II Perry Correctional Inst. 430 Oaklawn Rd
Pelzer, SC 29669

Justin J. Hunter 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)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

John P Cousar III, #316748,)

2014-CP-46-3485

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2015 SEP 24 AM 11:10
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

AMENDED FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 21, 2014. Respondent made its Return and Motion to Dismiss on December 30, 2015, 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, the Honorable R. Keith Kelly issued a Conditional Order of Dismissal dated January 7, 2015, 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. Applicant replied timely to the Conditional Order of Dismissal on January 15, 2015.

In a document titled "Post Conviction Relief Motion" and construed as a Response to the Conditional Order of Dismissal, Applicant argues he is entitled to an evidentiary hearing based upon "The Discovery Rule" of S.C. Code Ann. § 17-27-45(c) because he alleges he diligently found information that the Circuit Court lacked both personal and subject matter jurisdiction over Applicant due to a defective indictment by the grand jury issuing a 'true-bill' indictment when there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006."

This Court has reviewed 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 claims this information that there was no term of General Sessions on March 16, 2006 is "newly discovered evidence" under S.C. Code Ann. § 17-27-45(c). S.C. §17-27-45(c) states: "If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or **after the date when the facts could have been ascertained by the exercise of reasonable diligence.**" (emphasis added). Applicant pled guilty on July 27, 2006. Clearly, this information would have been available at that time. Applicant could have, by the exercise of reasonable diligence, ascertained that there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006." Thus, he had until March 17, 2007 to properly assert this claim. He cannot now claim this as "newly discovered evidence." This Court denies and dismissed this claim.

This Court finds that Applicant's allegation that there was a defective indictment issued in this case because there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006" is without merit. This Court takes judicial notice of the fact that our Supreme Court from time to time issues administrative type orders that explain that the grand jury may be convened when the public interest may necessitate.¹ Thus, Applicant's contention fails.

¹ For example, S.C. Sup. Ct. Order dated July 17, 2009.
<http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-07-17-01>

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous 2008 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 v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally 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 -16. S.C. Code Ann. §17-27-45(a) reads as follows:

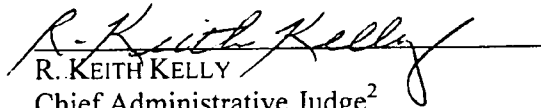
An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

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 was convicted of the offenses he challenges in this Application on July 27, 2006. Therefore, Applicant was required to file his application by July 28, 2007. This Application was filed on October 21, 2014, which was well after the statutory filing period had expired.

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 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. 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 28 day of August, 2015.


R. KEITH KELLY
Chief Administrative Judge²
Seventh Judicial Circuit

Gaffney, South Carolina.

² In accordance with the South Carolina Supreme Court's Order issued April 12, 2012, if a conflict prevents a Chief Administrative Judge from signing a final order in a post-conviction relief matter, it may be signed by a resident circuit judge of the corresponding circuit. If a resident circuit judge is unable to sign the order due to a conflict, any circuit judge residing in or assigned to an adjoining judicial circuit may sign the final order.

The Honorable John C. Hayes, III, presided over Applicant's guilty plea. The Honorable Dan Hall prosecuted Applicant's guilty plea as the assistant solicitor. As such, it is appropriate for the Honorable R. Keith Kelly, Chief Administrative Judge of the Seventh Judicial Circuit, to sign this Amended Final Order.



ALAN WILSON
ATTORNEY GENERAL

September 15, 2015

FILED-RECEIVED
2015 SEP 24 AM 11:10
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: John P. Cousar v. State of South Carolina
2014-CP-46-3485

Dear Mr. Hamilton:

Enclosed please find an original and a copy of an Amended Final Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Justin J. Hunter
Assistant Attorney General

JJH:cey
Enclosures

2013-04-12-02

The Supreme Court of South Carolina

ORDER

I find that in the event of a conflict that prevents a circuit court chief judge for administrative purposes from signing a Conditional Order of Dismissal or a Final Order in a Post-Conviction Relief Matter, judicial efficiency requires a procedure unique to these matters. Now, therefore,

Pursuant to the provisions of S. C. CONST. Art. V, §4,

IT IS ORDERED that Conditional Orders of Dismissal and Final Orders in Post-Conviction Relief Matters are subject to the following procedures:

- a. If the circuit court chief judge for administrative purposes has a conflict and is unable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge that is a resident of the judicial circuit may sign the Conditional Order of Dismissal or Final Order.
- b. If the resident circuit judges of the judicial circuit are unable or unavailable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge assigned to the judicial circuit may sign the Conditional Order of Dismissal or Final Order.
- c. If the circuit judges assigned to the judicial circuit are unable or unavailable to sign a Conditional Order of Dismissal or Final Order in a Post-Conviction Relief Matter, any circuit judge residing in or assigned to an adjoining judicial circuit may sign the Conditional Order of Dismissal or Final Order.

s/Jean Hofer Toal
Chief Justice

April 12, 2013
Columbia, South Carolina