State of South Carolina — Court of Common Pleas
County of Fairfield — 6th Judicial Circuit

R. James Miller, Jr.,
Applicant, : Case No. 2015-CP-20-0078
:
v.
: NOTICE OF APPEAL
State of South Carolina,
Respondent. :

Notice is hereby given that R. James Miller, Jr., Applicant in the above named case, hereby appeals to the Supreme Court of South Carolina from the Final Order of Dismissal entered in this action and filed on October 26, 2015.

Dated: November 25, 2015

Respectfully Submitted,
R. James Miller Jr.
R. James Miller, Jr. #316047
Manning Corr. Inst.
502 Beckman Drive
Columbia, SC 29203

State of South Carolina
County of Fairfield

Court of Common Pleas
6th Judicial Circuit

R. James Miller, Jr.,
Applicant,

Case No. 2015-CP-20-0078

v.

State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I certify that a copy of Applicants Notice of Appeal was served on the Respondent by depositing a copy in the U.S. Mail, postage prepaid, on this 25th day of November 2015 addressed to:

Office of the Attorney General
Attn: J. Croom Hunter, Esq.
P.O. Box 11549
Columbia, SC 29211

Respectfully,
R. James Miller Jr.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2000078

2015 JUL 30 AM 10 58
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Robert James Miller #316047	State of South Carolina
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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:

THIS MATTER COMES BEFORE THE COURT ON PETITIONERS MOTION UNDER RULE 60(B). AFTER CONSIDERATION, THE COURT DENIES THE MOTION. THIS MATTER IS ENDED.

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.**

2168 7/27/2015

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 7/30/15 and a copy mailed first class or placed in the appropriate attorney's box on 7/30/15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert James Miller #316047 Manning Correctional Institution 502 Beckman Drive Columbia, SC 29203

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Croom Colvin Hunter PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty Jo Beckham

Court Reporter

Betty Jo Beckham - 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
The Circuit Court of the Sixth Judicial Circuit

BRIAN M. GIBBONS
JUDGE

POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706
TELEPHONE: (803) 581-4115
FAX: (803) 581-3253
EMAIL: bgibbonssc@sccourts.org

July 28, 2015

2015 JUL 30 AM 10 58
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Mr. James Miller, Jr. #316047
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29203

RE: R. James Miller, Jr.
15-CP-20-078
14-CP-20-332 & 333

Dear Mr. Miller:

I received your letter of July 20, 2015. Your PCR case in 15-CP-20-78 has been dismissed by order filed May 18, 2015. I have also denied your Rule 60(b) motion, by Order just recently signed. You may request a copy of that order through the Clerk's office.

Very Truly Yours,

Brian M. Gibbons
Circuit Court Judge
Cc: Fairfield Clerk of Court

mailed to AG's + Miller 7/30/15

State of South Carolina
The Circuit Court of the Sixth Judicial Circuit

BRIAN M. GIBBONS
JUDGE

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July 28, 2015

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Circuit Court Judge
Cc: Fairfield Clerk of Court

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Robert J. Miller, Jr., #316047, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2015-CP-20-0078 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed March 5, 2015. Respondent made a timely Return and Motion to Dismiss on or about April 24, 2015, requesting the Application be summarily dismissed as untimely and successive. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Court issued a Conditional Order of Dismissal, filed on May 18, 2015, provisionally denying and dismissing this action, while giving Applicant thirty days from the date of service of said order to show why the dismissal should not become final. Applicant subsequently filed a Notice of Appeal from the Conditional Order. By Order dated August 19, 2015, the South Carolina Supreme Court dismissed the Notice of Appeal because the Conditional Order was not an appealable order. The Remittitur was returned to the circuit court on September 4, 2015. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated June 1, 2015, of the above-mentioned conditional order on Applicant, the Supreme Court order dismissing the Notice of Appeal, and the Remittitur.

Applicant filed a document titled "Motion for Relief from Judgment under Rule 60(b)" on June 10, 2015. This Court denied the motion as improper by Order filed July 30, 2015.

Applicant also filed a document titled "SECOND Response to Motion to dismiss" on June 10, 2015. In that pleading, Applicant claims the Application is neither successive nor untimely, and he argues the dismissal of his prior application should be set aside as void, for lack of jurisdiction, denial of due process, fraud, and mistakes.

The Court has reviewed the original pleadings, Applicant's submissions, and all relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not untimely and successive. Applicant's responses to the conditional order fail to set forth any explanation for why his application should not be dismissed. Applicant's arguments regarding lack of jurisdiction are without merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). The Court has reviewed the conditional order and finds it contains no errors of fact or law that would entitle Applicant to a hearing on this matter. Overall, Applicant's responses wholly fail to demonstrate specific reasons, factual or legal, why the conditional order should not become final.

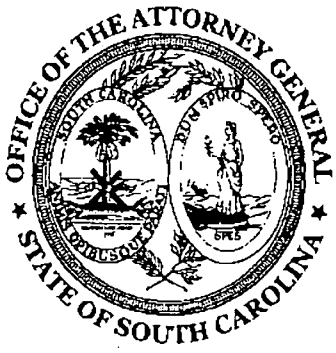
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice.**

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. Applicant's attention is directed to Rules 203 and 243, SCACR, for appropriate procedures for appeal.

IT IS SO ORDERED THIS 10/19 **DAY OF** _____, **2015.**

THE HONORABLE BRIAN M. GIBBONS
Chief Judge for Administrative Purposes
Sixth Judicial Circuit

Chester, South Carolina



ALAN WILSON
ATTORNEY GENERAL

October 22, 2015

The Honorable Betty Jo Beckham
Clerk of Court, Fairfield County
PO Drawer 299
Winnsboro, SC 29180-0299

Re: **Robert J. Miller, Jr., #316047 v. State of South Carolina**
2015-CP-20-0078

Dear Ms. Beckham:

Enclosed please find the original **Finall Order of Dismissal**, signed by The Honorable Brian M. Gibbons, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,

J. Croom Hunter
Assistant Attorney General

CH/ah
Enclosure(s)

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Robert J. Miller, Jr., #316047, Applicant,	)	2015-CP-20-0078
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief filed March 5, 2015. The Respondent made its return and motion to dismiss on or about April 24, 2015.

Procedural History

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning.[1] Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge, Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of three (3) years, the balance would be suspended with probation. Restitution of $30,000.00 was also ordered. The Applicant did not appeal.

2012-CP-20-0352

1 As a result of his plea, approximately eight other charges were dismissed. (Tr. p. 3, lines 6-9.)

The Applicant filed his first application for post-conviction relief on August 30, 2012. The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel.
   a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
   b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
   a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
   a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

An evidentiary hearing was convened on July 28, 2014 at the Lancaster County Courthouse. The Applicant was present and represented by W. Michael Hemlepp, Jr., Esquire. The State was represented by J. Croom Hunter, Esquire, of the South Carolina Office of the Attorney General. By Order signed August 28, 2014 and filed September 10, 2014, the Honorable W. Jeffrey Young denied and dismissed the application.

A timely Notice of Appeal was filed and an appeal was filed pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) by Wanda H. Carter, Esquire, of the Office of Appellate Defense. By Order dated April 23, 2015 The Supreme Court of South Carolina denied the petition. As of this writing, the remittitur has not been returned to the circuit court.

In his current application, Applicant raises the following issues:

1. Ineffective assistance of counsel.
2. Lack of jurisdiction.
3. Denial of Due Process.

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 his prior application 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 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 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 –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 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). The Applicant was convicted of the offense(s) he challenges in this Application on April 3, 2012. This Application was filed on March 5, 2015, which was well after the statutory filing period had expired.

This Court summarily dismisses the current Application because the circuit court had jurisdiction to decide the Applicant's case. In his Application, the Applicant has claimed subject matter jurisdiction violations.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, *supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

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 the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

CONCLUSION

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

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of 5/5, 20 15

BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit

Clinton, South Carolina