

15  
JT

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY ) IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Damien O. Johnson, #305511, )  
) Case No. 2014-CP-26-5195  
) )  
Applicant, )  
) )  
v. ) **CONDITIONAL ORDER**  
) **OF DISMISSAL**  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

HORRY COUNTY  
2015 JUL 27 PM 2:04  
MELANIE HIGDON-WARD  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 4, 2014. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of court. In August 2010, the Horry County Grand Jury indicted Applicant for trafficking cocaine, third offense (2010-GS-26-3559). In October 2010, the Grand Jury indicted Applicant for resisting arrest (2010-GS-26-4219). Barbara Wilson Pratt, Esquire, represented Applicant. Applicant pled guilty to resisting arrest and trafficking cocaine, second offense on March 5, 2012. The Honorable Steven H. John sentenced Applicant to concurrent terms of one year for resisting arrest and seven years for trafficking cocaine.

Applicant filed a timely notice of appeal, but the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, on September 25, 2012. The remittitur was returned to the circuit court on October 15, 2012.

**II. CURRENT APPLICATION**

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

**COPY**  
CLERK OF COURT

1. "Ineffective assistance of counsel"
2. "Rule 60(b)4"
3. "Subject Matter Jurisdiction.

In a September 22, 2014, amendment, Applicant raised the following grounds for relief:

1. Ineffective assistance of counsel for failure to allow Applicant to confront the witnesses.
2. Counsel coerced Applicant to enter a plea.
3. Ineffective assistance of counsel for failure to challenge subject matter jurisdiction.
4. Ineffective assistance of counsel for not requesting a preliminary hearing.

In a December 10, 2014, amendment, Applicant alleged newly discovered information from his previous counsel's file.

In a May 1, 2015, amendment, Applicant raised the following grounds for relief:

1. "Unintelligent plea."
2. "Denial of Preliminary"
3. "Subject Matter Jurisdiction"
4. "Failure to Investigate"
5. "Failure to investigate"
6. "Brady Violation"
7. "Failure to file timely Suppression hearing"
8. "Ineffective Assistance of Counsel"

Applicant also filed numerous motions relating to his request for relief. Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as untimely. Respondent also incorporated its return to Applicant's various motions in its responsive pleading

### **III. FINDINGS OF FACT AND CONCLUSION OF LAW**

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." See also Rule 56(c), SCRCP. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss and Applicant's other motions:

### **A. Untimely Application**

The Court finds this application should be dismissed because of Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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.”

This the statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals issued the remittitur in Applicant's direct appeal on October 15, 2012. Applicant was therefore required to file his application before October 15, 2013. This application was filed on August 4, 2014, over nine months after the expiration of the statute of limitations. Therefore, the Court finds summary dismissal is appropriate.

### **B. Applicant's Motions**

Applicant filed the following motions in this case:

1. “Motion for Recognizance or Minimal Bail” (September 15, 2014)
2. “Motion for Relief from the Judgment” (September 22, 2014)
3. “Summons for Procedure for Post Conviction Relief” (September 22, 2014)
4. “Motion in Arrest of Judgment” (September 22, 2014)
5. “Motion to Advance” (September 22, 2014)
6. “Motion of Judgment by Default Rule 55 SCRPC” (October 20, 2014)
7. “Motion Summary Judgment Rule 56(a) SCRPC” (November 17, 2014)
8. “Motion Rule 60 Relief from Judgment or order (b)(4) the judgment is void” (December 16, 2014)
9. “Motion of Appointment of Counsel Rule 71.1(d) S.C.R.C.P.” (February 19, 2015)
10. “Motion for New Trial Rule 59(a)(2)” (February 19, 2015)
11. “Motion of Disclosure in Criminal Cases Rule 5” (February 19, 2015)

The Court has reviewed each of these motions and Respondent's return and finds as follows:

Applicant's "Summons for Procedure for Post Conviction Relief," and "Motion to Advance" hereby **DENIED** as moot in light of the Court's decision to summarily dismiss the application.

Applicant's "Motion for Recognizance or Minimal Bail" and "Motion Summary Judgment Rule 56(a) SCRCR" are hereby **DENIED** as outside of the scope of this Court's authority.

Applicant's "Motion in Arrest of Judgement" is hereby **DENIED** as untimely under Rule 29(a), SCRCrimP.

Applicant's "Motion of Judgement by Default Rule 55 SCRCR" is hereby **DENIED** based on Applicant's failure to show prejudice from Respondent's delay. See Rule 55(e), SCRCR; Herring v. State, 262 S.C. 597, 598, 206 S.E.2d 885, 886 (1974).

Applicant's "Motion for Relief from the Judgement," "Motion Rule 60 Relief from Judgment or order (b)(4) the judgment is void," and "Motion for New Trial Rule 59(a)(2)" are hereby **DENIED** because Rules 59 & 60, SCRCR, are rules of civil procedure and are not applicable to Applicant's criminal conviction.

Applicant's "Motion of Disclosure in Criminal Cases Rule 5" is hereby **DENIED** because Rule 5, SCCrimP, does not apply in this civil action.

Applicant's "Motion of Appointment of Counsel Rule 71.1(d) S.C.R.C.P." is hereby **DENIED WITHOUT PREJUDICE** based on the Court's decision to summarily dismiss the application. Should the Court later determine a question of fact necessitates a hearing, counsel will be appointed for Applicant at that time.

#### **IV. CONCLUSION**

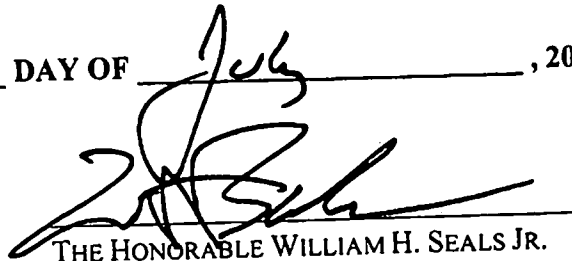
The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.


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 thirty (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court (PO Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Joshua L. Thomas, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 15 DAY OF July, 2015.

  
THE HONORABLE WILLIAM H. SEALS JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated A. T. Johnson (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

Damien Johnson # 305511

STATE OF SOUTH CAROLINA ) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF )

On this 13 day of August, 2015, I served the signed Conditional Order of Dismissal on Inmate Damien O. Johnson, #305511 by delivering personally and leaving a copy of the same at Livesay Correctional Institution, Una, South Carolina. Deponent is not a party to this action.

s/ A. T. Johnson  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 13<sup>th</sup> day of August, 2015  
Katherine Beatt (L.S.)

Notary Public for South Carolina

My Commission Expires 9/25/2022

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Una Correctional Institution, Livesay C.I., Spartanburg County, South Carolina, this 13 day of August, 2015.

s/ Damien Johnson  
Inmate Signature  
SCDC No. 305511