

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

James Nelson Bogan, #288111,  
Applicant,  
v.  
State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1677

**CONDITIONAL  
ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post conviction relief filed April 10, 2013.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the June 2011 term of the Spartanburg County Grand Jury for Second Degree Burglary (2011-GS-42-4268) and for Petit Larceny (2011-GS-42-4267). He was represented on the charges by James A. Cheeks, Esquire. On June 22, 2011, the Applicant pleaded guilty to the charges as indicted. He was sentenced by the Honorable Roger L. Couch to fifteen (15) years for Second Degree Burglary and ten (10) years for Petit Larceny. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2014 JUL 18 PM 2:08  
M. HOPE BLAKELY

**CURRENT APPLICATION**

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

1. Ineffective assistance of trial counsel, in that
  - a. "Counsel was ineffective for improperly advising him that he would be parole eligible."

2. Newly discovered evidence, in that

“On March 27, 2013, Applicant actual discovery of facts came about of the unit classification caseworker, Mr. Norman, of South Carolina Department of Corrections that I was not eligible for parole. Immediately following this material facts of discovery not previously presented and heard that requires vacation of the conviction and sentence(s) on April 5, 2013, prepared the application for P.C.R. in accordance to S.C. Code of Laws § 17-27-45(c) and Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (S.C. 2003).”

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant’s PCR application and Respondent’s Return and Motion to Dismiss.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Statute of Limitations**

This Court finds this Application for post conviction relief must 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, et. seq. 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.

FILED  
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SPARTANBURG COUNTY  
2015 JUL 18 PM 12:00  
M HOPE BLACKLEY

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 pleaded guilty to the offense he challenges in this application on June 22, 2011. The Applicant was therefore required to file his application before June 22, 2012. This application was filed on April 10, 2013 which was 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) (2003) 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 dismisses the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

### Newly Discovered Evidence

This Court finds the Applicant's claims of newly or after discovered evidence must be dismissed. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Applicant has been deemed a subsequent violent offender, and is therefore not eligible for parole. Therefore, this Court finds that this allegation, and this application, must be dismissed.

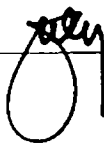
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CLERK OF COURT  
SPARTANBURG COUNTY  
2008 JUN 18 3 PM 02:00  
M. HOPE BEAUCHEY


### III. 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division - 7<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 18 day of July, 2014.



  
\_\_\_\_\_  
J. Derham Cole  
Chief Judge for Administrative Purposes  
Seventh Judicial Circuit

\_\_\_\_\_, South Carolina

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2014 JUL 18 PM 12:00  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

James Nelson Bogan )  
 Plaintiff )

CASE NO.  
2013-CP-42-1677

v. )

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

State of South Carolina )  
 Defendant. )

~~Plaintiff's Attorney:~~  
James Nelson Bogan, Bar No: SCDC No. 288111  
Address:  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
J. Clayton Mitchell, Bar No.  
Address:  
P.O. Box 11549  
Columbia, SC 29211-11549  
phone: (803) 734-3737 fax: (803) 734-4113  
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Conditional Order Dismissal

  
Signature of Attorney for  Plaintiff /  Defendant

April 9, 2014

Date submitted

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2014 JUL 18 PM 2:00  
M. HOPE BLAKEY

**SECTION III: Motion Fee**

- PAID - AMOUNT:
- EXEMPT:
  - Rule to Show Cause in Child or Spousal Support
  - (check reason)  Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCPP)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:  Other:

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: Date:

**CLERK'S VERIFICATION**

Date Filed:

Collected by: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304-3483



Phone (864) 596-2591  
Fax (864) 596-2239

**M. Hope Blackley**  
Clerk of Court

*July 23, 2014*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

*James Nelson Bogan*  
Applicant # *288111*

CASE # *2013CA4216M7*

*Site*  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Checklist of Ad. Dismissals*  
In this action dated *4-18*, 2014 on *7-23-14*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*James Nelson*  
*Stacy White*  
*James Bogan*

*7-23-14*  
(Date)

*Comie Seay*  
(Signature)