

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Michael Wayne Jeffcoat,
Plaintiff,

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Civil Action No. 2014-CP-32-02372

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

ORDER

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SC Court of Appeals

State of South Carolina and
The Honorable Donald V. Myers
Defendants.

This matter comes before the Court upon Defendants State of South Carolina and the Honorable Donald V. Myers Motion to Dismiss, which was heard Friday, December 19, 2014. Present at the hearing was the pro-se Plaintiff and Assistant Attorney General Courtney E. Lowell appearing on behalf of the Defendants.

On June 30, 2014, Plaintiff filed this Complaint for declaratory judgment and injunctive relief asserting that he pled guilty in 1992 to criminal sexual conduct, second degree and understood this to be a "non-violent" offense. However, he did not understand that this was also a statutory "most serious" offense, nor did he understand the consequences of this conviction.

In 1992, Plaintiff was indicted for assault with intent to commit criminal sexual conduct in the first degree in violation of Sections 16-3-656 and 16-3-652 of the South Carolina Code of Laws. Plaintiff pled guilty to criminal sexual conduct in the second degree and was sentenced to ten (10) years, upon serving three (3) years; the balance was suspended upon five years' probation. Plaintiff did not appeal his sentence or file a Post-Conviction Relief ("PCR") Application.

In 1999, a jury found Plaintiff guilty of two "most serious" offenses, criminal sexual conduct in the first degree (Case No. 98-GS-32-521) and kidnapping (Case No. 1998-GS-32-522). He was sentenced to life in prison without parole.

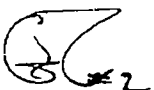
As discussed below, after full consideration of the pleadings filed in this action, the oral arguments of the parties, applicable law and for the reasons set forth below, the Court grants Defendants' Motion to Dismiss.

ANALYSIS

Plaintiff's action is dismissed because this is not a declaratory judgment action, but a collateral attack and correction of sentencing. Plaintiff has also failed to state facts sufficient to constitute a cause of action.

"PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17-27-20(a)." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original). A PCR application filed pursuant to S.C. Code Ann. § 17-27-45(A) (2013), must be filed within one (1) year after the entry of a judgment of conviction or within one (1) 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 character of an action is not necessarily determined by such recitation in the pleadings. Rather, it is the nature of the issues and the remedies which are sought that is determinative." *South Carolina v. Yelsen Land Co.*, 257 S.C. 401, 403, 185 S.E.2d 897, 898 (1972).

Plaintiff seeks correction of his 1992 conviction, and for injunctive relief to remand this case to Lexington County for resentencing. Therefore, the nature of this action is not declaratory judgment action, but a collateral attack and correction of sentencing under § 17-27-20(A). Moreover, the Plaintiff failed to appeal or file a PCR Application within the specified time



pursuant to S.C. Code Ann. § 17-27-45(A) (2013), with regard to his 1992 conviction; therefore, any PCR Application would be barred by the statute of limitations.

Second, Plaintiff failed to state facts sufficient to constitute a cause of action for declaratory judgment requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRCPP; *see Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

Plaintiff alleged that he only pled guilty in 1992 to the criminal sexual conduct, second degree because he was told it was a “non-violent” offense. After reviewing the 1992 Sentencing Sheet, Plaintiff is correct that the Court indicated “[t]his is not a violent crime under Section 16-1-60 of the Code.” However, Section 16-1-60 only lists crimes that are deemed “violent” which affect parole and early release.¹

Title 17 Chapter 25 Article 1 refers to Conviction and Sentence including the “serious offense” and “most serious offense” characterizations which are used to determine a sentence of

¹ Assault with intent to commit criminal sexual conduct is defined in S.C. Code Ann. § 16-1-60 as a “violent” offense despite the notation on the sentencing sheet.

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life without parole. Section 17-25-45 states "a person must be sentenced to a term of imprisonment for life without parole if that person has . . . *one or more convictions* for . . . a most serious [offense]. . . ." S.C. Code Ann. § 17-25-45 (Supp. 2013) (emphasis added). This was Plaintiff's second conviction for committing a "most serious" offense.

The Court of Appeals held that under South Carolina Code § 17-25-45(A), a recidivist may be sentenced to a mandatory life sentence without parole when that person has one or more prior convictions for a "most serious" offense. *Michael W. Jeffcoat v. Warden of Broad River Correctional Instit.*, Order, Case No. 8:13-cv-00124, Dkt.#32 (D.S.C. January 13, 2014) (approving *Michael W. Jeffcoat v. Warden of Broad River Correctional Instit.*, Report and Recommendation, Case No. 8:13-cv-00124, Dkt.#27 at 2 (D.S.C. December 18, 2013)). Section 17-25-45 was upheld in *State v. Jones*, where the South Carolina Supreme Court found that given the "most serious" nature of armed robbery, when coupled with a prior most serious offense, the gravity of the offense is not disproportionate to a sentence of life without parole. *Id.* citing *Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001). Since Plaintiff's 1992 conviction of criminal sexual conduct, second degree (16-3-653) and the 1999 convictions of criminal sexual conduct, first degree (16-3-652) and kidnapping (16-3-910) are defined as "most serious" offenses, he was correctly sentenced to life without parole.


Additionally, Plaintiff submitted a Motion for Default Judgment at the hearing on Friday, December 19, 2014, alleging the Defendants did not file a timely return to this action. The Plaintiff's Motion for Default Judgment is denied pursuant to Rule 55(c), SCRCPP, "for good cause shown the court may set aside an entry of default..." and Rule 55(e), SCRCPP, "no judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court."

Moreover, an action for declaratory judgment is not the appropriate mechanism to address this alleged issue which should have been filed as a PCR or appeal. Plaintiff would not be entitled to any such relief, as in order to be granted a default judgment in a PCR, he must show prejudice from the State's delay in filing a Return. *Kneece v. State*, 269 S.C. 177, 178 236 S.E.2d 745, 747 (1977); *Herring v. State*, 262 S.C. 597, 206 S.E.2d 885, 886 (1974). Plaintiff was not prejudiced by any delay in the filing of the Motion to Dismiss beyond the authorized time limits.

Accordingly, it is hereby,

ORDERED for the reasons set forth above, the Defendant's Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.



Judge G. Thomas Cooper, Jr.
Eleventh Judicial Circuit

January 8, 2015
COLUMBIA, South Carolina