

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4002099

Albert #136701 Scruggs

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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 _____ Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 August 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Albert #136701 Scruggs

Jessica Elizabeth Kinard

Albert #136701 Scruggs

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter _____

Clerk of Court _____

citing State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (holding that presentment of an indictment is not needed to confer subject matter jurisdiction, but an indictment is needed to give notice to the defendant of the charge against him). State v. Scruggs, Op. No. 2005-UP-537 (S.C. Ct. App. filed Oct. 3, 2005). Remittitur was issued to the circuit court October 19, 2005.

First PCR Application (2004-CP-40-4395)

In his first PCR Application, which was filed on September 20, 2004, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Subject Matter Jurisdiction
 - a. The service of the LWOP notice was faulty and therefore conviction and sentencing is invalid.
2. Failure to investigate
3. Failure to request mental evaluation prior to trial
4. Improper jury instructions

However, this application was filed prior to the resolution of his direct appeal and was dismissed without prejudice by the Administrative Judge on September 21, 2005. Subsequently, the Applicant filed another PCR Application (Case No.: 2005-CP-40-5306, dated October 14, 2005) that was merged with the original application by the Administrative Judge on November 23, 2005.¹ In January 2009, Respondent filed a return. An evidentiary hearing was held on February 25, 2009 before the Honorable Casey L. Manning. In a written order signed June 23, 2009, Judge Manning denied relief and dismissed the application.

Applicant filed a timely notice of appeal on July 17, 2009. The appeal was perfected with the filing of a petition for writ of certiorari by Kathrine H. Hudgins, Esquire of the Division of Appellate Defense on April 30, 2010. The State filed a return on June 25, 2010. The petition was

¹ In essence, the Applicant's original PCR was dismissed without prejudice pending his direct appeal and, when his appeal was unsuccessful, he filed another application that was, unfortunately, merged with a dismissed file. Because the dismissal was without prejudice the Respondent, upon notice, reset the application to the active roster on or about February 2008.

granted by the South Carolina Supreme Court via an order dated August 18, 2011. Briefs were filed, but the case was ultimately dismissed as improvidently granted via an order filed June 13, 2012. The remittitur was sent June 29, 2012.

Federal Habeas Corpus Petition (5:12-2940-TLW-KDW)

Applicant filed a *pro se* petition for federal habeas corpus relief on October 8, 2012 seeking relief on the following grounds:

1. Subject Matter Jurisdiction
 - a. "There was no evidence that indictment was taken back to the grand jury. See Paperwork No proof of letter from Ms. Scott or affidavit from Mr. Pascoe. My appeal lawyer dropped my appeal without proof that indictment went back before grand jury."
2. Ineffective trial counsel
 - a. "Failure to move for a mistrial based on state's closing argument."

Respondent filed a return and motion for summary judgment on January 17, 2013. Applicant filed a motion to stay on April 8, 2013. The United State Magistrate Judge, Kaymani D. West, in a report and recommendation dated May 23, 2013, recommended that the motion to stay be construed in part as a motion to amend the petition, which should be granted as delineated; remainder of the motion to stay be denied; and Respondent's motion for summary judgment be denied with leave to refile as described in the report. Respondent filed objections to the report and recommendation on June 10, 2013. In a written order dated June 13, 2013, the Honorable G. Ross Anderson, Jr. ultimately adopted Judge West's recommendation in light of the Respondent's objections, except for the portion that incorrectly calculated the date that the statute of limitations for filing a habeas corpus petition began running. Therefore, the Petitioner's motion to stay was granted insofar as the court construed it as a motion to amend the petition.

The Respondent filed a second motion for summary judgment dated July 15, 2013, to which Applicant responded on August 8, 2013. The Magistrate issued another report and

recommendation that recommended the Court grant Respondent's motion and dismiss Applicant's petition. Applicant again filed objections, but the Honorable R. Bryan Harwell ultimately granted the motion for summary judgment and dismissed Applicant's petition with prejudice in an order dated March 11, 2014.

Current Application

In his current PCR application, filed March 31, 2014, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel
2. Ineffective assistance of trial counsel

Respondent made a timely return and motion to dismiss, asking this Court to dismiss the application as successive and untimely.

FINDINGS OF FACT AND CONCLUSIONS 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), SCRPC. 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:

Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the 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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*. The grounds he alleges were known at the time of prior application. Therefore, this application must be dismissed as impermissibly successive.

Failure to Timely File

Further, this application must be dismissed for 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.”

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, 470, 469 S.E.2d 606, 607 (1996).

The remittitur from Applicant’s appeal was issued on October 19, 2005. Applicant was, therefore, required to file his application before October 20, 2006. This application was filed on March 31, 2014, which was well beyond the time that 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) 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 must be summarily dismissed for the reasons discussed above.

signature page follows

CONCLUSION


The Court finds that 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 twenty (20) 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 Richland County Clerk of Court (P.O. Box 2766, Columbia, SC 29202-2766) and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Jessica E. Kinard, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

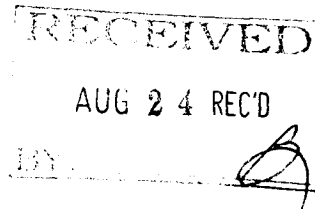
Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 27th DAY OF August, 2015.



THE HONORABLE ALISON RENEE LEE
Chief Administrative Judge for Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 19, 2015

The Honorable Alison Renee Lee
Chief Administrative Judge-CP, 5th Circuit
P O Box 192
Columbia, SC 29202-0192

Re: Albert Scruggs, #136701 v. State of South Carolina
2014-CP-40-02099

Dear Judge Lee:

Enclosed please find a proposed original **Conditional Order of Dismissal** in the above-captioned case. If this Order meets with your approval, please sign it and return it to our office so that I can file it with the Richland County Clerk of Court.

Sincerely,

Jessica E. Kinard
Staff Attorney

JEK/ah
Enclosure

cc: Albert Scruggs, #136701

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 ALBERT SCRUGGS, #136701)
 _____)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-40-02099

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Albert Scruggs, #136701, Bar No. _____ Address: Broad River CI 4460 Broad River Rd Columbia SC 29210 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Jessica E. Kinard, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211-1549 Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

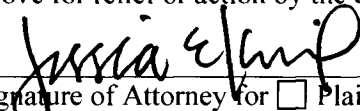
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

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 order.


 Signature of Attorney for Plaintiff / Defendant

August 19, 2015
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - 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, SCRPC)
 - 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

- Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____