

120V

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Carmichael T. Flowers, )  
 S.C.D.C. No. 335945, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
OF THE TWELFTH JUDICIAL CIRCUIT

2015-CP-21-3071

**CONDITIONAL ORDER OF DISMISSAL**

2016 JUN 16 PM 3:33  
 CONNIE REE-SHEARIN  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.  
**FILED**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed November 5, 2015.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2009 term of the Florence County Grand Jury for Malicious Injury to Real Property, Malicious Injury to Personal Property, Criminal Domestic Violence of a High and Aggravated Nature, and Kidnapping (2009-GS-21-0126). Scott Floyd, Esquire represented the Applicant. On July 22, 2009, the Applicant was tried and found not guilty of Kidnapping, guilty of Criminal Domestic Violence (CDV), not guilty of Criminal Domestic Violence of a High and Aggravated Nature, and guilty of both malicious injury charges. The Honorable Ralph K. Anderson sentenced the Applicant to ten (10) years imprisonment for Malicious Injury to Real Property, ten (10) years for Malicious Injury to Personal Property, and thirty (30) days for CDV. The sentences were to run consecutively.

CERTIFIED: A TRUE COPY  
*Connie Ree Shearin*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

The Applicant filed a timely Notice of Appeal on July 31, 2009. The South Carolina Court of Appeals dismissed Applicant's case by written Order dated August 25, 2011. The Remittitur was issued on September 12, 2011.

**First PCR Application: 2012-CP-21-2215**

The Applicant filed his first application for post-conviction relief on August 22, 2012, in which he raised the following grounds:

1. Ineffective Assistance of Counsel
2. Ineffective Assistance of Appellate Counsel

The State filed its Return and Motion to Dismiss on or around December 17, 2012. An evidentiary hearing was convened on February 10, 2014, before the Honorable Michael G. Nettles at the Florence County Courthouse. Applicant was present and represented by Tristan M. Shaffer, Esquire. On March 10, 2014, Judge Nettles filed an Order dismissing the application with prejudice.

The Applicant subsequently filed a Notice of Appeal on or around April 23, 2014. Applicant was represented on appeal by Lanelle C. Durant, Esquire of the South Carolina Office of Appellate Defense. By Order dated March 4, 2015, the South Carolina Supreme Court denied the Applicant's petition for a writ of certiorari and granted Applicant's counsel's request to withdraw. The Remittitur was issued on March 20, 2015.

**Federal Habeas Corpus: 8:15-cv-01309-TMC**

On March 27, 2015, the Applicant filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina. On March 7, 2016, the Honorable Timothy M. Cain denied the Applicant's petition with prejudice and granted summary judgment for the Respondent.

## Current PCR Application

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

1. Lack of Subject Matter Jurisdiction

Before this Court are the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the Applicant's current and previous PCR applications.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the Applicant's previous PCR application. 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, 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). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous PCR application; 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,

305 S.C. 448. Accordingly, this Court summarily dismisses this application for post-conviction relief.

### Statute of Limitations

This Court finds that 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 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 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, 469 S.E.2d 606 (1996). The Applicant was convicted for the aforementioned offenses on July 22, 2009. The Remittitur was issued on September 12, 2011. Therefore, the Applicant was required to file his application by September 13, 2012. This application was filed on November 5, 2015, which was *over three years* after the statutory period had expired.

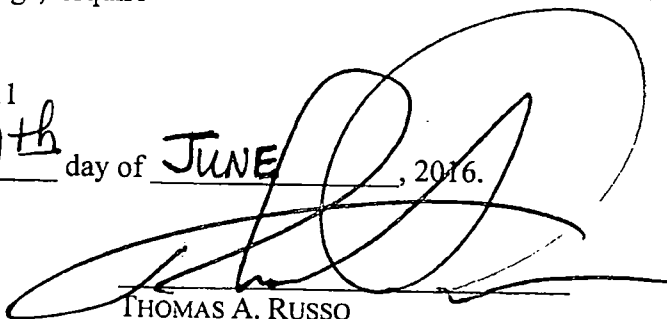
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary 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 summarily dismisses this application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

**CONCLUSION**

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 Order should not become final. Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Caitlin Bazan Hastings, Esquire  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 7<sup>th</sup> day of JUNE, 2016.



THOMAS A. RUSSO  
Chief Judge for Administrative Purposes  
Twelfth Judicial Circuit

Florence, South Carolina

2016 JUN 16 PM 3:33  
CONNOR REEL-SHEARIN  
COP & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

*Connie Reel Shearin*

CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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

FILED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP2103071

Carmichael T Flowers

2016 JUN 20 AM 8:54 South Carolina State Of

PLAINTIFF(S) JONNIE REEL-SHEARIN DEFENDANT(S)

Submitted by:

C.C.P. & G.S. FLORENCE COUNTY, SC 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), 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 the Court:

ORDER INFORMATION

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)
		<i>CERTIFIED TRUE COPY</i>
		<i>Jonnie Reel-Shearin</i>
		CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

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

6/20/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on June 20, 2016, and a copy mailed first class or placed in the appropriate attorney's box on June 20, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

CARMICHAEL TREVON FLOWERS  
#00335945  
Ridgeland Correctional Institution  
5 Correctional Road  
Ridgeland, SC 29936

John Croom Colvin Hunter  
PO Box 11549  
Columbia, SC 29211

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ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*Connie Reel-Shearin*

---

Court Reporter

---

Connie Reel-Shearin - Clerk of Court

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**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.

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF FLORENCE )  
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 Carmichael T. Flowers, )  
 S.C.D.C. No. 335945, )  
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 Applicant, )  
 v. )  
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 State of South Carolina, )  
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 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

2015-CP-21-3071

**FINAL ORDER OF DISMISSAL**

2016 SEP - 1 PM 4: 04  
 JONNIE REEL-SHEARIN  
 C.C.P. & G.S.  
 FLORENCE COUNTY, SC

**FILED**

This matter comes before the Court by way of an application for post-conviction relief filed November 5, 2015 (“the Application”). Respondent made its return, requesting the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed June 7, 2016, and filed June 16, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated July 21, 2016, serving the above-mentioned Conditional Order of Dismissal on Applicant.

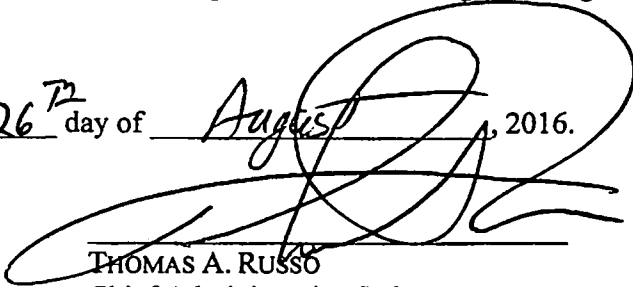
Applicant has failed to respond to either Respondent’s motion to dismiss or this Court’s Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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*Cynthia Spivey*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

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 hereby advises Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal

AND IT IS SO ORDERED this 26<sup>th</sup> day of August, 2016.



THOMAS A. RUSSO  
Chief Administrative Judge  
Twelfth Judicial Circuit Court

Florence, South Carolina.

FILED  
2016 SEP - 1 PM 4:04  
CONNIE REEL-SHEARIN  
C.C.P. & G.S.  
FLORENCE COUNTY, SC

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*Connie Reel Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP-21-3071

Carmichael T. Flowers  
SCDC No. 335945

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.
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IT IS ORDERED AND ADJUDGED:  See attached order, (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

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Additional Information for the Clerk: \_\_\_\_\_

2016 SEP 21 AM 9:42  
 FILED  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

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Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY  
*Cornelia Spivey*  
 CLERK OF COURT C.P. & G.  
 FLORENCE COUNTY, S.C.