

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

RECEIVED

OCT 27 2016

APPEAL FROM LEXINGTON COUNTY
Frank R. Addy, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2016-001931

Raymond Carter, Petitioner,

v.

Donnie Myers, Solicitor, Lexington County; Tracey Carroll,
Assistant Solicitor, Lexington County; Brian Buck, Irmo
Police Department; Scott Franklin, Irmo Police Department;
Timothy E. Stephenson, South Carolina Law Enforcement Division;
the Estate of George White, Ex father-in-law, Tammy Scrogam,
Barbara Keadle, (AKA: Diane Hinkle), Investigator Lexington County DSS;
Francis Ross, Lexington County DSS; and Paulette Jolly, Guardian ad Litem,
in their official and individual capacities,

..... Defendants,

Of whom, Donnie Myers, Solicitor, Lexington County, Tracey Carroll,
Assistant Solicitor Lexington County, Brian Buck, Irmo Police Department,
Scott Franklin, Irmo Police Department, Timothy E. Stephenson, SC Law
Enforcement Division (SLED),..... Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

David L. Morrison, (Fed. #3581)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

*Counsel for Respondents Brian Buck,
Irmo Police Dept. and Scott Franklin*

STATEMENT OF THE CASE

This civil action for money damages was filed in 2012. Petitioner alleges claims against these the Town of Irmo, former police chief Brian Buck and former police officer Scott Franklin, among others, growing out of their participation in the investigation and arrest of the Petitioner in 1999 and his conviction following a guilty plea to a lesser charge of lewd act upon a child in 2002.

Petitioner completed his sentence and was released from the South Carolina Department of Corrections in 2007. He alleges that following his release he was determined to be a “sexually violent predator” and was civilly committed to the South Carolina Department of Mental Health for treatment. The Complaint does not allege any act by these Respondents during that civil commitment proceeding. Instead, the only acts allegedly undertaken by these respondents occurred prior to his original incarceration. He was released from the Sexually Violent Predator Program on June 30, 2011.

This action was filed August 22, 2012. The claims asserted against these Respondents were (1) false imprisonment; (2) wrongful conviction; (3) wrongful commitment pursuant to the Sexually Violent Predator Act; and (4) false imprisonment resulting from his civil commitment under the Sexually Violent Predator Act.

These Respondents, Irmo, Buck and Franklin, filed an motion to dismiss pursuant to SCRCP 12(c) and 12(b)(6). That motion was heard by Circuit Judge Frank R. Addy, Jr, on February 7, 2013. Although the Petitioner received notice of the hearing, he did not appear when the case was called. Judge Addy heard arguments and granted the motion to dismiss as to all moving parties. He ruled that the statute of limitations had expired prior to the filing of this action and further ruled that prosecutorial immunity barred suit against the Solicitor Donnie

Myers. Petitioner Carter did appear some time after the case had been heard and was informed by Judge Addy about the proceeding.

Petitioner Carter did not file any further motions in the trial court. He filed an appeal to the South Carolina Court of Appeals.

The Court of Appeals issued an unpublished opinion affirming the dismissal of the Complaint based upon the expiration of the statute of limitations. The Court found that Petitioner Carter abandoned his tolling argument and did not reach the prosecutorial immunity argument of Solicitor Myers. *Carter v. Myers*, Op. No. 2016-UP-158 (S.C. Ct. App. filed April 6, 2016).

Petitioner Carter filed a petition for rehearing that was denied on August 18, 2016. Thereafter, he filed and then re-filed this Petition for a Writ of Cert on September 28, 2016.

LEGAL ARGUMENTS

1. The writ should not issue as Petitioner has not demonstrated special and important reasons for the issuance.

Pursuant to Rule 242(b), SCACR, a writ will be granted only where there are special and important reasons. The Rule sets out general considerations, none of which are applicable here.

The first enumerated consideration is whether there are novel questions of law. This case was decided by both the trial court and the Court of Appeals upon the well established two year statute of limitations pursuant to the South Carolina Tort Claims Act. There are no novel questions of law.

The second enumerated consideration is whether there was any dissent in the Court of Appeals opinion. There was none as the opinion was unanimous.

The third enumerated consideration is whether the Court of Appeals opinion is in conflict with any prior decision of the South Carolina Supreme Court. There is no such conflict and Petitioner does not claim any such conflict.

And, the fourth enumerated consideration is whether there is any substantial constitutional question directly involved. As this case was decided on the state law statute of limitations, no such consideration exists.

None of the enumerated considerations warrants the granting of the writ.

2. The Court of Appeals correctly found that the statute of limitations had expired prior to the filing of Petitioner's Complaint thereby barring all claims.

The Circuit Court granted the motions to dismiss, finding that the statute of limitations had expired prior to the filing of the Complaint. The filing stamp on the Complaint reveals that it was filed on August 22, 2012. The Petitioner attempted to assert claims against governmental employees and entities. The South Carolina Tort Claims Act governs that action. The statute of limitations under the Tort Claims Act is two years. S.C. Ann. Section 15-78-100(a).

The first claim asserted against these law enforcement Respondents in the Complaint is a claim for false imprisonment. (R. 19-27). According to the supporting allegations stated in the Complaint, the first false imprisonment claim is based solely on the alleged five-hour encounter between the Petitioner and the Respondents on October 27, 1999 during which time the Respondents allegedly forced a confession out of the Petitioner after interrogating him for four hours. (R. 19-27). That encounter certainly does not constitute a false imprisonment. However, even if it did, the Petitioner clearly knew or should have known he was being falsely imprisoned at the moment he was imprisoned. The Complaint was filed on August 22, 2012, two months shy of *thirteen* years after the encounter. Accordingly, the Court of Appeals properly found that the statute of limitations had expired.

The second cause of action asserted in the Complaint against these Respondents is a claim for “wrongful conviction.” (R. 27). The allegations set forth in support of that cause of action make no mention of any further involvement by these Respondents in his conviction. (R. 27-30). The Complaint simply reiterates certain aspects of the encounter between the Petitioner and these Respondents that took place on October 27, 1999. It further alleges that the Petitioner’s wrongful conviction was based on the false and coerced confession that these Respondents obtained on October 27, 1999. (R. 27-30). The Plaintiff pled guilty to one count of attempting or committing a lewd or lascivious act against a minor on May 13, 2003. The Complaint does not state any facts that constitute a cause of action against these Defendants. Even if it did, the Plaintiff pled guilty or was otherwise “wrongfully convicted” on May 13, 2003, *nine* years before the Petitioner filed his Complaint. Additionally, the conviction has not been overturned. Instead, the Petitioner has now completed his sentence. The Court of Appeals properly found that the statute of limitations had expired.

The third claim alleged in the Complaint against these Respondents is a claim entitled “wrongful adjudication to commit to the South Carolina Department of Mental Health and continuing consequences.” (R. 38). Assuming there is such a claim, the Complaint alleges absolutely no facts against these Respondents. (R. 38-41). The only allegation alleged in the Complaint that remotely implicates these Respondents is the allegation that “the actions of all of the Defendant’s, the false accusations, the false polygraph, the false coerced statement and the ultimate conviction for an act or acts that never occurred placed the Plaintiff in grave danger.” (R. 40). He implies that these things lead to the jury’s determination that he met the criteria of a sexually violent predator under the Sexually Violent Predator Act, which caused him to be committed to the South Carolina Department of Mental Health for long-term care. (R. 38-41). However, the Petitioner alleges no new allegations against these Respondents about their participation in the trial and instead relies on events that occurred and evidence that was discovered in 1999. The Complaint does not state facts sufficient to constitute a cause of action against these Respondents. Even if it did, the Petitioner was determined to meet the criteria for a sexually violent predator on November 4, 2008. Even if the statute of limitations began then, he had until on November 4, 2010 to file a complaint. It is clear from the Complaint that the statute of limitations had expired when the Complaint was filed on August 22, 2012. The Court of Appeals again properly ruled that the statute of limitations had expired.

The last cause of action alleged in the Complaint against these Respondents is a second claim for false imprisonment, which is based on the time the Petitioner was committed to the South Carolina Department of Mental Health after being determined to have met the criteria under the Sexually Violent predator Act. (R. 41-44). Again, the allegations asserted in support of that cause of action do not mention these Respondents whatsoever. He simply states that the Defendants were notified that a trial was going to take place to determine if he was a sexually

violent predator and they refused to intervene. (R. 44). He further alleges that the Defendants were notified that the Petitioner had been civilly committed but did not object to the use of their evidence to stop the trial, which resulted in his commitment. (R. 44). He alleges no actions by these Respondent's after 1999. Thus, the Court of Appeals correctly found his claims barred by the two year statute of limitations contained in the South Carolina Tort Claims Act.

As illustrated above, the statute of limitations had run long before Petitioner filed his action. The Court of Appeals was correct in its ruling. There is no basis for granting the writ.

3. The Petitioner is not entitled to any tolling of the statute of limitations.

The Petitioner argues that the statute of limitations for his claims was tolled until a judgment or order is issued from the Court and that an Order was issued on June 30, 2011 by the Honorable William P. Keesley directing a verdict in his favor as to the issue of his continued commitment by the South Carolina Department of Mental Health. He appears to cite Rule 60(b) of the South Carolina Rules of Civil Procedure as authority for his proposition that he had one year after a judgment, order or proceeding was entered in which to bring his claims. He further maintains that he should be allowed three years in which to file an action pursuant to S.C. Code Ann. § 15-3-530 after Judge Keesley issued the Order granting his motion for directed verdict. Either way, the Petitioner argues that the statute of limitations did not begin to run until Judge Keesley issued the order granting his motion for directed verdict on June 30, 2011.

The Petitioner has not cited any proper authority for the proposition that the statute of limitations was tolled until his release and/or until Judge Keesley issued the Order granting his motion for directed verdict.

S.C. Code Ann. § 15-3-40 sets forth the circumstances under which the statute of limitations is tolled and provides a tolling of the time period in which to bring an action for people considered to be under a disability, which is defined by the statute as those people who

are either under the age of eighteen years or insane. S.C. Code Ann. § 15-3-40 (2005). Furthermore, the disability has to exist at the time of the right of action accrued. S.C. Code Ann. § 15-3-50 (2005). Neither of these disabilities applies to the Petitioner. The Petitioner was not under eighteen years of age when his causes of action accrued, and he has never provided any documentation evidencing that a determination by a professional that he was insane at the time his claims accrued.

The Petitioner's causes of action for false imprisonment accrued at the time he was allegedly falsely imprisoned. The first time he was allegedly falsely imprisoned was on October 27, 1999; the second time was on or about November 4, 2008. There was no circumstance allowing the statute of limitations to be tolled at those points. The statute of limitations for the Petitioner's wrongful conviction claim, if any, began to run when he was convicted on May 13, 2003. No circumstance existed to toll the statute of limitations for that claim. Lastly, if there is a claim for wrongful adjudication to commit to the South Carolina Department of Mental Health and continuing circumstances, that claim began to run when the jury determined he met the criteria under the Sexually Violent Predators Act. No circumstances existed to toll the statute of limitations for that claim, either.

The Petitioner has offered no authority for his argument that the statute of limitations was tolled until he was released and/or until he received Judge Keesley's order granting his motion for directed verdict. The Petitioner cites to Rule 60, SCRCF apparently for the proposition that he had one year from the date of Judge Keesley's Order in which to bring his claims against the respondents. However, Rule 60, SCRCF does not govern the time period in which to file a Complaint. It states the circumstances under which and the time period for filing a motion to seek relief from a final judgment, order or proceeding. Additionally, the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530 does not apply to lawsuits, like the current

lawsuit, that are brought against governmental entities. The period of time in which to bring a lawsuit against a governmental entity is governed by the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-110 (2005). None of the authority cited by the Petitioner supports his argument that the statute of limitations was tolled until he was released and/or received Judge Keesley's Order.

The Petitioner also argues that there was a continuing consequence of his agreeing to plead guilty to the charge of attempting or committing a lewd or lascivious act against a minor, which ultimately resulted in his being committed to the South Carolina Department of Mental Health. (R. 81). He claims that he was committed to the Mental Health Department solely because of the Respondents' actions. However, the only actions taken by these Respondents as alleged in the Petitioner's Complaint were done in October, 1999. Accordingly, the statute of limitations as to any claim arising out of those actions had long since expired when he filed his Complaint in 2012. The Court of Appeals properly found that the statute of limitations had expired. The writ should not issue.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison, (Fed. #3581)

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

*Attorney for Respondents Brian Buck,
Irmo Police Dept. and Scott Franklin*

Columbia, South Carolina

October 27, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

RECEIVED

OCT 27 2016

APPEAL FROM LEXINGTON COUNTY
Frank R. Addy, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 2016-UP-158
(S.C. Ct. App. filed April 6, 2016)

Raymond Carter, Petitioner,

v.

Donnie Myers, Solicitor, Lexington County; Tracey Carroll,
Assistant Solicitor, Lexington County; Brian Buck, Irmo
Police Department; Scott Franklin, Irmo Police Department;
Timothy E. Stephenson, South Carolina Law Enforcement Division;
the Estate of George White, Ex father-in-law, Tammy Scrogam,
Barbara Keadle, (AKA: Diane Hinkle), Investigator Lexington County DSS;
Francis Ross, Lexington County DSS; and Paulette Jolly, Guardian ad Litem,
in their official and individual capacities,
..... Defendants,

Of whom, Donnie Myers, Solicitor, Lexington County, Tracey Carroll,
Assistant Solicitor Lexington County, Brian Buck, Irmo Police Department,
Scott Franklin, Irmo Police Department, Timothy E. Stephenson, SC Law
Enforcement Division (SLED),..... Respondents.

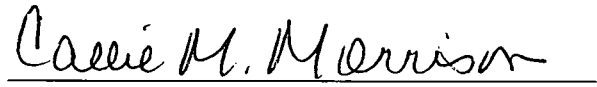
CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorneys for the Respondents
Brian Buck, Irmo Police Department and Scott Franklin, does hereby certify that service of the
Return to Petition for Write of Certiorari was made upon the *pro se* Petitioner and all other

counsel of record by placing copies in the United States Mail, first class postage prepared, at the below listed addresses clearly indicated on said envelope this the 27th day of October 2016.

Mr. Raymond Carter
2219 Leesburg Road
Columbia, South Carolina 29209

Andrew F. Lindemann, Esquire
Post Office Box 8568
Columbia, South Carolina 29202



Callie M. Morrison

Columbia, South Carolina