THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable J. Cordell Maddox, Circuit Court Judge

Appellate Case No.: 2016-001124

Dan Temple, Appellant,

v.

Oconee County Sheriff's Department, Respondent.

BRIEF OF RESPONDENT

Dan Temple
P.O. Box 901
Fultondale, AL 35068
Pro Se Appellant

J. Victor McDade
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
Attorney for Respondent

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ISSUE ON APPEAL

I. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT'S ACTION IS BARRED BY THE STATUTE OF LIMITATIONS?

STATEMENT OF THE CASE

In 1997, Respondent made use of a confidential informant to purchase crack cocaine in a specific portion of Oconee County. (Washington Aff. ¶ 2.) The deputy sheriff in charge of the operation was familiar with Appellant from previous drug investigations, and identified Appellant's voice from the audio recording made at the time of the informant's transaction. (Id. at ¶ 5). Appellant was arrested in 1997, and went to trial in 1998. (Id. at ¶ 7.) He was convicted of manufacturing/distributing crack 2nd offense, and distributing crack within proximity of a school. (Id.) Appellant was sentenced to 20 years of imprisonment, and 15 years of imprisonment, respectively. (Id.; *see also* Tr. of SJ Hr'g, at 6:6-7.)

Following his conviction in 1998, Appellant filed an appeal with the assistance of the South Carolina Office of Appellate Defense. (Pachak Lttrs. of 1/28/00 and 6/5/00). He thereafter unsuccessfully pursued a post-conviction relief claim, case number 2001-CP-37-290 (Nicholson Lttr. of 11/2/03). It appears that an additional post-conviction relief claim, case number 2010-CP-37-00005, was filed and unsuccessfully pursued by Appellant. (*See* S.C. Order of Dismissal, 3/30/12).

Appellant thereafter filed, among other documents, a pro se Complaint on November 10, 2014, against Respondent. He explicitly asserted a claim for negligence, with additional assertions implicating potential claims for malicious prosecution and civil conspiracy. (Comp. at 1.) Respondent filed a timely Answer on January 5, 2015, asserting all the defenses provided by

the South Carolina Tort Claims Act, and explicitly asserting the statute of limitations provided therein as a complete defense to Appellant's claims. (Ans. at 2).

Respondent thereafter filed a Motion for Summary Judgment on July 28, 2015. (Motion for SJ). A hearing for the same was held on April 12, 2016, before Judge Maddox. (Tr. of SJ Hr'g.) On April 28, 2016, the court issued its Order granting summary judgment to Respondent. The court found that the two-year limitations period provided by section 15-78-110 was applicable, and the filing of the Complaint in 2014 was well outside the two-year period. (Order of 4/22/16, at 2). This appeal followed.

ARGUMENT

I. BECAUSE APPELLANT'S ALLEGED CAUSES OF ACTION ARE CLEARLY BARRED BY THE STATUTE OF LIMITATIONS, THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENT.

As noted by our Supreme Court:

> Statutes of limitation are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another . . . is to protect potential defendants from protracted fear of litigation. Statutes of limitations are, indeed, fundamental to our judicial system.

Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 526, 787 S.E.2d 485 (2016) (internal citations omitted).

It is clear the State has "sovereign authority to establish the extent to which its political subdivisions are subject to suit." Jinks v. Richland County, 349 S.C. 298, 304, 563 S.E.2d 104 (2002). The South Carolina Tort Claims Act requires that actions be brought "within two years after the loss was or should have been discovered." S.C. Code §§ 15-78-100(a); 15-78-110; *see*

also Jinks, 349 S.C. at 306. "The courts of South Carolina apply the 'discovery rule' to determine when a cause of action accrues under the Tort Claims Act." Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 698 S.E.2d 879, 883 (Ct. App. 2010).

"In other words, whether the particular plaintiff actually knew he had a claim is not the test." Hackworth v. Greenville County, 371 S.C. 99, 637 S.E.2d 320, 322 (Ct. App. 2006). Rather, "the statute of limitations begins to run from the date the injury resulting from the wrongful conduct either is discovered or may have been discovered by the exercise of reasonable diligence." Logan, 698 S.E.2d at 884. Reasonable diligence means "'simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded.'" Kimmer v. Wright, 396 S.C. 53, 719 S.E.2d 265, 268 (Ct. App. 2011) (quoting Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005)).

The date on which "discovery of the cause of action should have been made is an objective, rather than subjective, question." Hackworth, 637 S.E.2d at 322. Notably, the discovery rule has traditionally been viewed not as a test of whether a plaintiff has a viable claim. Rather, it is a test of whether "'some claim against another party *might exist*.'" Barr v. City of Rock Hill, 330 S.C. 640, 645, 500 S.E.2d 157 (Ct. App. 1998) (emphasis in original) (quoting Graniteville Co. v. IH Servs., Inc., 316 S.C. 146, 148, 447 S.E.2d 226, 228 (Ct. App. 1994)); *see also* Kimmer, 719 S.E.2d at 268 (same); Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169 (1994) (same). "Failure of the injured party to comprehend the full extent of damages is, however, immaterial." Barr, 330 S.C. at 645.

Appellant alleged in his Complaint that Respondent gathered and fabricated evidence "which was illegally used in the gaining of an unlawful conviction of" Appellant. (Comp. at 1).

Appellant was convicted of manufacturing/distributing crack cocaine 2nd offense, and distributing crack within proximity of a school, in 1998. (Washington Aff. at ¶ 7.) Since Appellant has contended this conviction was unlawful, it is the date of that conviction which provides the date on which the statute of limitations began to run. This is because, as Logan instructs, the date of the allegedly wrongful conviction is "the date the injury resulting from the [allegedly] wrongful conduct" occurred. 698 S.E.2d at 884. Because Appellant was experiencing it, the date on which the conviction occurred should have been "discovered" by him. Id.

The burden was upon Appellant to "act with some promptness" because "the facts and circumstances of [his incarceration] would put a person of common knowledge and experience on notice that some right of his ha[d] been invaded." Kimmer, 719 S.E.2d at 268 (internal citation omitted). Accordingly, Appellant was required to bring his claim "within two years" of the date of his conviction to avoid the effect of the statute of limitations. *See* S.C. Code §§ 15-78-100(a); 15-78-110; *see also* Jinks, at 306. He did not, and the trial court therefore properly granted summary judgment to Respondent.

Even if one were to reject the notion that Appellant's conviction should be used as the trigger point for the running of the limitations period, it is clear that as far back as 1999, Appellant contended that the videotape used to prosecute him was altered in some way and that words were missing from the recorded conversation captured by the surveillance. (*See* Schull Lttr. of 6/30/99). This shows that as of June 1999, Appellant was clearly aware that "'some claim against another party *might exist.*'" Barr, 330 S.C. at 645 (emphasis in original) (internal citation omitted); *see also* Kimmer, 719 S.E.2d at 268; Wiggins, 314 S.C. at 128. Not only did Appellant have "'notice that some right of his ha[d] been invaded,'" the letter shows he had

actual knowledge. Kimmer, 719 S.C. at 268 (internal citation omitted); (Schull Lttr. of 6/30/99). Accordingly, under this view Appellant was required to file his action by June 30, 2001. *See* S.C. Code §§ 15-78-100(a); 15-78-110; *see also* Jinks, at 306. Because he failed to do so, the trial court properly granted summary judgment to Respondent.

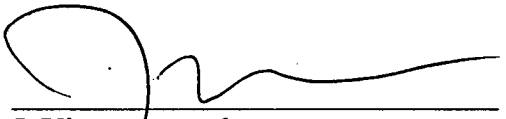
Additionally, in 2003, Appellant contended in a letter to his post-conviction relief counsel that the video used by the State in his prosecution was "defective for transcription," that the deputy sheriff in charge of the case offered inaccurate testimony, and that Appellant was entrapped. (Robinson Lttr. of 2/6/03). Similarly to the analysis above, the letter is clear evidence of a belief by Appellant in "facts and circumstances [that] would put a person of common knowledge and experience on notice that some right of his ha[d] been invaded." Kimmer, 719 S.E.2d at 268 (internal citation omitted). He was therefore required to "act with some promptness" and pursue his claims, but did not. Id. Instead, Appellant waited until November 10, 2014, to file his Complaint. Accordingly, the trial court correctly found that Appellant's action was barred by the two-year statute of limitations and granted summary judgment to Respondent on that basis.

CONCLUSION

Throughout his brief, indeed throughout the case, Appellant has intermingled various principles of criminal and civil law, as well as relevant and irrelevant material. However, the only truly relevant issue before this Honorable Court is whether Appellant's action is barred by the two-year statute of limitations provided by the Tort Claims Act. Because the trial court properly found that Appellant's claim was filed outside that limitations period, the grant of summary judgment to Respondent should be AFFIRMED.

(Signature page follows.)

Respectfully submitted,



J. Victor McDade
Doyle, Tate & McDade, P.A.
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
ATTORNEY FOR RESPONDENT

This 9th day of February, 2017.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable J. Cordell Maddox, Circuit Court Judge

Appellate Case No.: 2016-001124

Dan Temple, Appellant,

v.

Oconee County Sheriff's Department, Respondent.

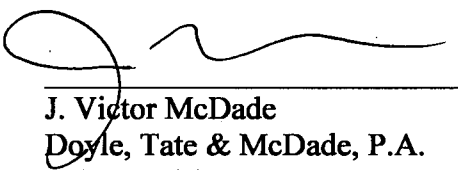
PROOF OF SERVICE

Dan Temple
P.O. Box 901
Fultondale, AL 35068
Pro Se Appellant

J. Victor McDade
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
Attorney for Respondent

Pursuant to Rule 208(2) of the South Carolina Appellate Court Rules, I hereby certify that on the 9th day of February, 2017, I deposited into the United States Mail, first-class postage paid, an original of the Brief of Respondent, addressed to the pro se Appellant at his address of record, as set forth on the cover sheet hereto.

Respectfully submitted,



J. Victor McDade
Doyle, Tate & McDade, P.A.
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
ATTORNEY FOR RESPONDENT

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RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Dan Temple
P.O. Box 901
Fultondale, AL 35068
Pro Se Appellant

J. Victor McDade
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
Attorney for Respondent

Pursuant to Rule 209 of the South Carolina Appellate Court Rules, Respondent hereby designates the following documents be included in the Record on Appeal, in addition to the materials already designated by Appellant:

1. Answer;

2. Motion for Summary Judgment.

Respectfully submitted,

J. Victor McDade
Doyle, Tate & McDade, P.A.
P.O. Box 2125
Anderson, SC 29622
(864) 224-7111
ATTORNEY FOR RESPONDENT

This 9th day of February, 2017.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)	
Dan Temple, Jr. # 254316,)	
)	ANSWER TO COMPLAINT
Plaintiff,)	
)	
vs.)	
)	2014-CP-37-0675
Oconee County Sheriff's Department,)	
)	Jury Trial Demanded
Defendant.)	
)	

The Defendant, Oconee County Sheriff's Department, responding to the Complaint of the Plaintiff, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

I.

The Defendant would deny each and every allegation of the Plaintiff's Complaint not herein specifically admitted, modified or explained.

II.

That the Complaint fails to state a cause of action against the Defendant.

FOR A SECOND DEFENSE

III.

The preceding allegations are incorporated herein and made a part of this defense.

IV.

That the Plaintiff did not file and serve this action within the applicable statute of limitations.

FOR A THIRD DEFENSE

V.

The preceding allegations are incorporated herein and made a part of this defense.

VI.

The Defendant would admit that the South Carolina Tort Claims Act (SCTCA) applies to this case and that the Defendant is a governmental entity under SCTCA.

VII.

The Defendant would admit that the Plaintiff was convicted of distribution of crack cocaine in proximity to a school and the manufacture/distribution of crack cocaine-2nd offense and is presently serving his sentence within the South Carolina Department of Corrections. The Defendant would further admit that an informant bought drugs from the Plaintiff which was a part of the basis for Plaintiff's conviction.

VIII.

The Defendant would admit that it provided the Plaintiff with all of the information required under the law. The Defendant has no knowledge of any recent efforts of the Plaintiff and would, therefore, deny the same and demand strict proof thereof.

IX.

The Defendant would deny the remaining allegations of the Plaintiff's Complaint

FOR A FOURTH DEFENSE

X.

The preceding allegations are incorporated herein and made a part of this defense.

XI.

The Defendant would plead the provisions of the South Carolina Tort Claims Act (SCTCA) including, but not limited to:

(a) The immunities under § 15-78-60(1), (2), (4), (5) and (25);

(b) Punitive damages are not available against this Defendant pursuant to S. C. Code Ann. §15-78-120; and

(c) Plaintiff failed to file and serve this action within the two year statute of limitations as set forth in S.C. Code Ann. §15-78-110.

Wherefore, having fully answered, the Defendant prays that the Complaint of the Plaintiff be dismissed, for costs, and for such other and further relief as the Court may deem just and proper.

DOYLE, TATE & MCDADE, P. A.

By: _____

J. Victor McDade
Attorney for the Defendant
Post Office Box 2125
Anderson, SC 29622
(864) 224-7111

Dated: January 2, 2015

STATE OF SOUTH CAROLINA	)
	) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)
Dan Temple, Jr. # 254316,	)
	) MOTION FOR SUMMARY JUDGMENT
Plaintiff,	)
	)
vs.	)
	) 2014-CP-37-0675
Oconee County Sheriff's Department,	)
	)
Defendant.	)

TO: **DAN TEMPLE, JR., #254316, PLAINTIFF PRO SE**

PLEASE TAKE NOTICE that the Defendant, Oconee County Sheriff's Department , by and through its undersigned attorney, will move, pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, before the Presiding Judge of the Common Pleas Court for Anderson County at such time as the Court may direct, for an Order entering Summary Judgment in favor of this Defendant, thus dismissing with prejudice, the Plaintiff's Complaint as to the Defendant.

DOYLE, TATE & MCDADE, P.A.

By:_____
J. Victor McDade
Attorney for the Defendant
Post Office Box 2125
Anderson, SC 29622
(864) 224-7111

Dated: 7/24, 2015.