

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Demetrius Jarod Smalls, 2868061 Plaintiff,

Plaintiff,

vs.

J.C. Nicholson, Linda S. Lombard, Alan
Wilson, Ira Grossman, David Michel,
Ronald Perry, D. Peters Rebecca Thomas,
Frank Riccio, Christopher Morrell, J. Al
Canon, Jr. Defendants,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-5409

ORDER DISMISSING CASE

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AUG 28 2017

SC Court of Appeals

FILED
2017 SEP 11 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants' motions to dismiss came before me on August 25, 2015. The Plaintiff, Mr. Demetrius Smalls, was in attendance at the hearing and argued on his own behalf.

The Defendants note that no Defendant has been served with a Summons and Complaint as required by Rule 4 of the South Carolina Rules of Civil Procedure. This would normally result in a dismissal of the case without prejudice. However, it is clear that Plaintiff's case should be dismissed with prejudice.

Plaintiff's Complaint seeks "declaratory" relief which is essentially a collateral attack on various criminal matters dating to his arrest in January 2005. Plaintiff pled guilty June 27, 2007 to two counts of armed robbery, kidnapping and assault and battery with intent to kill for which he is serving a sentence of 25 years imprisonment. In addition, Plaintiff contests convictions in Mount Pleasant Municipal Court in 2005 for driving without a license and for hindering a police officer. He was tried in abstentia in February 2005. However, a civil action seeking "declaratory" relief against various

parties associated with the criminal justice system including judges, prosecutors, police officers and the South Carolina Attorney General is not a proper device to collaterally attack criminal matters.

The method of attacking criminal convictions is generally through direct appeal and also through post-conviction relief procedures. Plaintiff has availed himself of post-conviction relief procedures in Smalls v. State of South Carolina, 2013-CP-10-719.

Any civil claim arising out of the Plaintiff's 2005 arrest or related to criminal investigations, prosecutions or convictions in 2005-2007 would be barred by the statute of limitations which is two years under the South Carolina Tort Claims Act, S.C. Code § 15-78-110 and three years under any possible federal claim. Hoffman v. Tuten, 446 F.Supp. 455 (D.S. C. 2006).


The Court rejects Plaintiff's claim that his incarceration is a disability which tolls the statute of limitations. The 1996 Act 243 § 1 eliminated tolling of the statute of limitations for inmates previously found in S.C. Code § 15-3-40. Tolling of the statute for up to five years exists for the insane. Id. Plaintiff claims he is suffering mentally from his arrest and incarceration. But that is not the same as insanity.

Plaintiff's arguments have been repeatedly rejected in lawsuits involving the same parties or those in privity with them. His lawsuit Smalls v. Mount Pleasant Municipal Court, 2013-CP-10-4356 raised essentially these same allegations relating to alleged improper arrest and improper conviction. Small's paperwork was treated as an appeal by Judge Nicholson and was dismissed by the Court on April 14, 2014. Smalls v. Cannon, et al., 2013-CP-10-3144 was dismissed March 2, 2015 for lack of service. In Smalls v. Owens, 12-3347 RMG; Smalls v. Michel et al., 14-958 RMG and Smalls v.

A handwritten signature or set of initials, possibly 'R', written in black ink.

McFadden, et al., 2:13-2651 RMG, the federal courts considered and rejected Plaintiff's allegations relating to this same arrest.

For the reasons stated above, this action is dismissed with prejudice.



Roger M. Young
Presiding Judge

JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134

Charleston, South Carolina

September 10, 2015



Timothy A. Domin
Licensed in SC
tdomin@clawsonandstaubes.com

September 03, 2015

File No.: 20146036.000

VIA US MAIL

The Honorable Roger M. Young
Charleston County Judicial Center
100 Broad St Ste 368
Charleston, SC 29401

Re: Demetrius Jarod Smalls, 2868061 vs. J.C. Nicholson, Linda S. Lombard, Alan Wilson, Ira Grossman, David Michel, Ronald Perry, D. Peters Rebecca Thomas, Frank Riccio, Christopher Morrell, J. Al Canon, Jr. Defendants
Case No.: 2014-CP-10-5409

Dear Judge Young:

Enclosed please find a proposed Order of Dismissal for your consideration. If this Order meets with your approval, please sign the same and return to me in the self-addressed stamped envelope enclosed herewith.

Thank you for your consideration of this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

CLAWSON and STAUBES, LLC

A handwritten signature in black ink, appearing to be "TAD", written over a light blue horizontal line.

Timothy A. Domin

TAD/paa

Enclosure

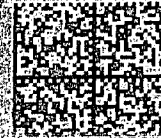
cc: G. Wade Cooper, Esq.
Demetrius Jarod Smalls
(Both via US Mail & w/enclosure)

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LIEBER C.I.

Chief Justice Donald Beale
S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

