

STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 13 2017

Appeal FROM BARBERG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry M. Buckner, Circuit Court Judge

Case No 2017-CP-05-57

Jerome A. Owens Sr. Appellant
V.

State of South Carolina Respondent
General Assembly, Attorney
General Alan Wilson, Senator
Gerald Malloy

NOTICE OF APPEAL

Jerome A. Owens Sr. Appeals the order and dismissal of
the Honorable Perry M. Buckner dated September 14, 2017.
The Appellant received written notice of entry of this
order of dismissal on October 2, 2017.

October 10 2017

Other Counsel of Record
Kevin Maroney
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

✓ Jerome A. Owens Sr.
Allendale C.I.
Barnwell B-64
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Fairfax, S.C. 29827

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APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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Jerome A. Owens Sr. Appellant
v.

State of South Carolina
General Assembly, Attorney
General Alan Wilson, Senator
Gerald Malloy

PROOF OF SERVICE

I certify that I have served Notice of Appeal on
Alan Wilson by depositing a copy of it in the United
States Mail, postage prepaid, on October 2017
addressed to his attorney of record, Kevin Maroney
P.O. Box 11549, Columbia, S.C. 29211.

October 10 2017

J Jerome A. Owens Sr.
Allendale C. I.
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P.O. Box 1151
Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

Jerome A. Owens, Sr. #00299108,
Plaintiff,

v.

State of South Carolina
General Assembly, Attorney
General Alan Wilson, Senator Gerald
Malloy
Defendants.

) IN THE COURT OF COMMON PLEAS
) IN THE SECOND JUDICIAL CIRCUIT

Civil Action No. 2017-CP-05-00057

ORDER

FILED
BAMBERG COUNTY
2017 SEP 18 AM 10:00
JAMES C. HINES
CLERK OF COURT
BAMBERG, SC

#1
PMB

This matter came before this Court on August 28, 2017, at the Bamberg County Courthouse. Mr. Owens, plaintiff, was present and proceeded *pro se*. Kevin Maroney, who was also present, represented the Defendants. At the conclusion of the hearing, the Court requested proposed orders from both parties. Having considered oral arguments by both parties, Mr. Owen's *pro se* filings, the Defendant's Motion to Dismiss, both parties proposed orders, and the pleadings in this matter. The Court grants the Defendants dismissal under Rule 12(b)(6), SCRPC.

By order of the South Carolina Supreme Court, Mr. Owens is barred from filing collateral actions in circuit court. *See Appellate Case No. 2015-002263.* (The Court may take judicial notice of the Supreme Court's order). *See e.g.* Rule 201, South Carolina Rules of Evidence. Mr. Owens asks the Court to declare that his criminal sentence violates the United States Constitution. (Plaintiff's Complaint, p. 6). That type of challenge to a criminal sentence, however, can only occur through a Post-Conviction Relief action. *See S.C. Code Ann. §17-27-20(A)(1).* This action for Declaratory Judgment is a collateral attack on the validity of Mr. Owens' criminal sentence. The Uniform Post-Conviction Procedure Act is the exclusive remedy for a person who has been

A TRUE COPY

Attest. J. B. Hines
CLERK OF COURT
BAMBERG COUNTY, SC

convicted of, or sentenced for, a crime and who claims that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State. See S.C. Code Ann. § 17-27-20(a). "Section 17-27-20(b) states that the Act 'comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence,' and provides that the Act 'shall be used exclusively in place of them.'" Simpson v. State, 495 S.E.2d 429 at 431 (S.C. 1998). Mr. Owens may only challenge the validity of a criminal sentence through a PCR action. By order of the Supreme Court of South Carolina, Mr. Owens is barred from challenging the validity of his criminal sentence in an action for Declaratory Judgment; he has failed to state facts sufficient to constitute a cause of action for declaratory judgment in this case. Because Mr. Owens cannot bring constitutional challenges to his conviction or sentence in an action for Declaratory Judgment, he has failed to state facts sufficient to constitute a cause of action.

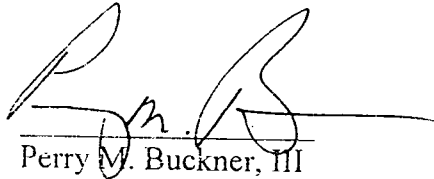
#2
2/B

Furthermore, Rule 4 of the South Carolina Rules of Civil Procedure provides that when the Attorney General's office is a party, service is only proper "by delivering a copy of the summons and complaint to that official and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia." Mr. Owens' failed to properly serve an officer of the State of South Carolina under Rule 4 of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(5), the Court finds that Mr. Owens' failed to properly serve the Attorney General and the case is dismissed for insufficiency of process.

THEREFORE, this case is **DISMISSED** under Rule 12(b)(6) and Rule 12(b)(5), SCRPC.

[SIGNATURE ON FOLLOWING PAGE]

FILED
2017 SEP 18 AM 10:08
CLERK OF COURT
COLUMBIA, SC



Perry M. Buckner, III
Presiding Judge
2nd Judicial Circuit

Sept 14, 2017
Walterboro, South Carolina

FILED
CLERK OF COURT
WALTERBORO, SC
2017 SEP 19 AM 10:00