

DANIEL SHEAROUSE
CLERK OF COURT
SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
Columbia, S.C 29211

AUGUST 8, 2017

Re: NOTICE OF INTENT TO APPEAL FROM JOCASTARIUS
TIMPSON, #337120 v. STATE OF SOUTH CAROLINA IN CASE NO:
2014-CP-04-1016

DEAR MR. SHEAROUSE, I AM FILING A APPEAL IN THIS
MATTER.. CAN YOU PLEASE FILE THIS IN MY BEHALF.

THANK YOU FOR YOUR TIME AND ASSISTANCE IN THIS MATTER.

Sincerely,
JOCASTARIUS TIMPSON

RECEIVED

AUG 11 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON
COUNTY

COURT OF COMMON PLEAS

R. LAWTON MCINTOSH
CIRCUIT COURT JUDGE

CASE NO: 2014-CP-04-1016

RECEIVED

AUG 11 2017

S.C. SUPREME COURT

JOCASTARIUS TIMPSON APPELLANT,

v.

STATE OF SOUTH CAROLINA Respondent,

NOTICE OF APPEAL

Appellant Appeals THE HONORABLE R. LAWTON MCINTOSH ORDER OF DISMISSAL DISMISSING APPELLANT'S APPLICATION FOR POST-CONVICTION RELIEF. ON JUNE 23, 2017, THE HONORABLE R. LAWTON MCINTOSH SIGNED AN ORDER DISMISSING APPELLANT'S APPLICATION FOR POST-CONVICTION RELIEF WITH PREJUDICE. APPELLANT, WHILE ACTING PRO-SE, RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER ON JULY 14, 2017 BY U.S. POSTAL MAIL. A COPY OF THE HONORABLE MCINTOSH ORDER OF DISMISSAL IS ATTACHED.

JOCASTARIUS TIMPSON
JOCASTARIUS TIMPSON, #337120
LIEBER CORE INST
P.O. BOX 205,
RIDGEVILLE S.C. 29422

RIDGEVILLE S.C. AUGUST 8, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

JOCASTARIUS TIMPSON #337120

APPELLANT,

STATE OF SOUTH CAROLINA

RESPONDENT.

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT A TRUE COPY OF A NOTICE OF APPEAL HAS BEEN SERVED UPON THE SOUTH CAROLINA SUPREME COURT BY MAILING ONE (1) COPY IN THE UNITED STATE MAIL, POSTAGE PREPAID, ADDRESSED TO:

DANIEL SHEAROUSE, CLERK OF COURT, SOUTH CAROLINA SUPREME COURT POST OFFICE BOX 11330, COLUMBIA SOUTH CAROLINA 29211

JOCASTARIUS TIMPSON

HEBER CORE INST
P.O. Box 205
Ridseville S.C. 29472

THIS 8TH DAY OF AUGUST, 2017

RECEIVED

AUG 11 2017

S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

July 11, 2017

Mr. Jocastarius Timpson, #337120
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Jocastarius Timpson, #337120 v. State of South Carolina
2014-CP-04-1016

Dear Mr. Timpson:

Enclosed is a copy of the **Final Order of Dismissal** in the above-captioned case signed by The Honorable R. Lawton McIntosh and filed with the Anderson County Clerk of Court.

Sincerely,

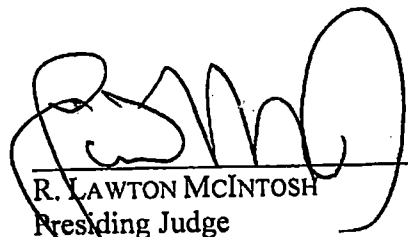
Lindsey A. McCallister
Assistant Attorney General

LAM/dgr
Enclosures

Applicant's response to the COD was procedural in nature only, and therefore, after reviewing the application and pleadings, this Court finds a sufficient reason has not been shown why the COD should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED this 23 day of June, 2017.



R. LAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit

Anderson South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUN 27 AM 11: 02
COMMON PLEAS AND
GENERAL SESSIONS

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

JOCASTARIUS TIMPSON, #337120

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

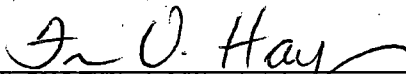
**Mr. Jocastarius Timpson, #337120
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472**

This 11th day of July, 2017.

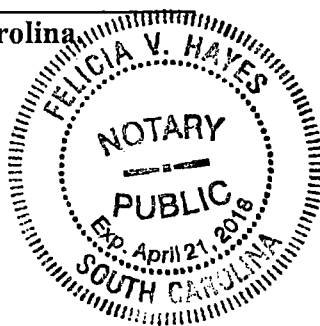


DEONNA ROGERS
Legal Assistant for the Respondent

SWORN to before me this 11th day of July, 2017



Notary Public for South Carolina
My Commission Expires:



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Jocastarius Timpson, #337120,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT
 Case No.: 2014-CP-04-1016

CONDITIONAL ORDER OF DISMISSAL

FILED - CLERK'S OFFICE
 ANDERSON SC
 2015 MAR 16 A 10:07
 COMMON PLEAS AND
 GENERAL SESSIONS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Jocastarius Timpson (Applicant) on May 14, 2014. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the November 18, 2008 term of the Anderson County Grand Jury for Armed Robbery (2008-GS-04-2669); indicted at the December 16, 2008 term of the Anderson County Grand Jury for three counts of Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (2008-GS-04-2988, -2989, -2990), four counts of Armed Robbery (2008-GS-04-2991, -2992, -2993, -2994), and two counts of Kidnapping (2008-GS-04-2995, -2996); and subsequently indicted at the June 23, 2009 term of the Anderson County Grand Jury for Assault and Battery with Intent to Kill (2009-GS-04-1563) and Armed Robbery and Possession of a Firearm During Commission of a Violent Crime (2009-GS-04-1345). Applicant was represented by Bruce A. Byrholdt, Esquire. On September 24, 2009, Applicant pled guilty before the Honorable J. Cordell Maddox in Anderson. Applicant was sentenced to confinement for a period

of ten (10) years for Assault and Battery with Intent to Kill, ten (10) years for each count of Possession of a Weapon During the Commission of a Violent Crime, twenty (20) years for each count of Armed Robbery, and twenty (20) years for each count of Kidnapping. All sentences are to run concurrently. Both charges on Indictment 2008-GS-04-2290 were nolle prossed. Applicant did not appeal his guilty plea or sentence.

2010-CP-04-2418

On July 9, 2010, Applicant filed an application seeking post-conviction relief alleging:

1. Ineffective assistance of counsel;
 - a. "Plea counsel failed to appeal despite my request"
2. "Due process violation rendering my guilty plea involuntary"
 - a. "I pled guilty to the relevant charges in ignorance of the direct consequence of the mandatory post-release supervision requirement; trial judge failed to inform me that I will be required to serve CSP after release."

In response, the State filed a Return on September 2, 2010. An evidentiary hearing was held in Anderson on March 5, 2012, before the Honorable R. Lawton McIntosh. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Kaelon E. May, Esquire, of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. On May 17, 2012, the PCR Court issued an Order of Dismissal, denying Applicant's application and dismissing with prejudice.

On June 4, 2012, Appellant, through his counsel, filed a Notice of Appeal appealing the Order of Dismissal denying his PCR application. In a letter dated December 31, 2012, the South Carolina Supreme Court sent a letter to Applicant notifying him that Applicant's appellate counsel, Wanda H. Carter, Esquire, filed a Johnson Petition. Applicant did not file a response. In a letter dated April 4, 2013, the Supreme Court denied Applicant's appeal and the Remittitur was issued April 24, 2013.

CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
2. "Involuntary Sexual Offender Registry"
3. Involuntary Guilty Plea

Before this Court are the records of the Anderson County Clerk of Court regarding Applicant's convictions, Applicant's prior PCR records, and the South Carolina Department of Corrections' records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (1985) states:

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, or 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that Applicant could have raised his current grounds in his prior post-conviction relief application, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; 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 v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

The Court further finds that this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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). Applicant pled guilty to the offenses he challenges on September 24, 2009. Applicant did not appeal his conviction, so he was therefore required to file his application on or before **September 24, 2010**. This Application was filed on May 14, 2014, which was over three (3) years after the statutory filing 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) (1985) authorizes the Court to "grant a

7

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, because Applicant failed to file within the time mandated by the Post-Conviction Procedure Act, Applicant's post-conviction relief application must be summarily dismissed.

Failure to State a Claim

This Court finds the PCR application must be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's contention that

he is improperly required to register as a sex-offender is not a ground for relief through PCR. Rather, the allegation raised by Applicant is an issue that is properly addressed through the filing of a declaratory judgment in the circuit court. Applicant's attention is directed to Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008). Therefore, the current application must be summarily dismissed for failing to state a cognizable ground for relief.

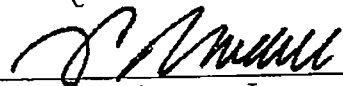
CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Justin J. Hunter, Esquire
PCR Division – 10th Circuit
P.O. Box 11549
Columbia, SC 29211

FILED-CLERK'S OFFICE
ANDERSON SC
MAR 16 A 10:07
COMMON PLEAS AND
GENERAL SESSIONS

AND IT IS SO ORDERED this 12 day of March, 2015.



J. CORDELL MADDOX, JR.
Chief Judge for Administrative Purposes
Tenth Judicial Circuit

Anderson, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 3, 2015

FILED - CLERK'S OFFICE
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GENERAL SESSIONS

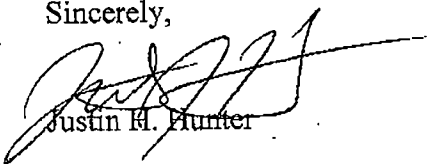
The Honorable J. Cordell Maddox, Jr.
PO Box 8002
Anderson, SC 29622

RE: Jocastarius Timpson, #337120 v. State of South Carolina
2014-CP-04-1016

Dear Judge Maddox:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. If this Order meets with your approval, please sign same and forward to the Anderson County Clerk of Court to be filed and served.

Sincerely,



Justin H. Hunter

Staff Attorney, PCR Division

JHH/arh

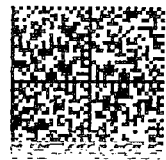
Enclosure(s)

cc: Jocastarius Timpson, #337120

JACASTARIUS TIMPSON #357120
LIEBER CORE INST
P.O. Box 205
Ridgeville S.C 29472

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MR. DANIEL SHEAROUSE, Clerk
SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
COLUMBIA, S.C. 29211

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