

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

James R. Smith, #197390

) Case No.: 2018-CP-32-03662

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by James Smith on October 22, 2018. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the July 2006 term of the Lexington Grand Jury for three counts of armed robbery (2006-GS-32-2455). William Y. Rast, Jr., Esquire represented the Applicant. On August 18, 2007, Applicant pleaded guilty for armed robbery as indicted before the Honorable Howard P. King. Judge King accepted Applicant's plea and sentenced him to eighteen years and credit for time served. Applicant did not appeal his conviction or sentence.

Applicant commenced his first PCR action on July 14, 2008. A hearing was scheduled before the Honorable R. Lawton McIntosh on February 4, 2010. However, prior to the hearing, Applicant and his attorney informed the PCR court Applicant wished to withdraw his PCR application. On April 23, 2019, Judge McIntosh issued an order denying Applicant's PCR action and dismissing with prejudice.

applicant's probation, parole, or conditional release has been unlawfully revoked. *Id.* Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. *Cooper v. State*, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000). Such non-collateral or administrative matters must be reviewed through the Administrative Procedures Act. *Al-Shabazz*, 338 S.C. at 378-79, 527 S.E.2d at 754-55. Furthermore, *ex post facto* claims must also be brought through the Administrative Procedures Act, not post-conviction relief. *Jernigan v. State*, 340 S.C. 256, 531 S.E.2d 507 (2000).

Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds, and only relate to his recent discovery that he is required to complete a Community Supervision Program (CSP) upon release. Specifically, Applicant alleges the South Carolina Department of Corrections imposed the CSP requirement in violation of his Due Process. However, participation in a community supervision program is a collateral consequence of sentencing. *See, e.g., State v. McGrier*, 378 S.C. 320, 331, 663 S.E.2d 15, 21 (2008) (stating that community supervision is a collateral consequence of a conviction for a "no-parole offense"); *Jackson v. State*, 349 S.C. 62, 64, 562 S.E.2d 475, 475-76 (2002) (holding that counsel was not ineffective for failing to inform his client about mandatory CSP participation in advising him whether to plead guilty because participation in a CSP is a collateral consequence of sentencing). Applicant offers no attack upon the conviction itself, but instead seeks its enforcement. Thus, Applicant may only challenge the CSP requirement through the Administrative Procedures Act.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismisses this application failing to state a cognizable claim for which relief can be granted under the PCR Act.

Statute of Limitations

The Court further finds this application shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann § 17-27-10 to -160 (2014). Specifically, the Act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

Our 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). 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). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pleaded guilty on August 18, 2007, and did not appeal his plea or sentence. Therefore, the PCR application should have been filed on or before August 18, 2008. This application was filed on October 28, 2018—over *ten years* after the requisite filing period had expired. Therefore, the Court summarily dismisses this application for failure to file within the time mandated by the Act, particularly in light of the fact Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively


pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

IV. CONCLUSION

Pursuant to subsection 17-27-70(b) of the South Carolina Code (2014), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Lexington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lillian Meadows, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 4th day of December, 2019.



THE HONORABLE ALISON R. LEE
Chief Administrative Judge
Eleventh Judicial Circuit

Columbia, South Carolina.

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP3203662**

James R Smith 197390		South Carolina State of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	12/10/2019 Date
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For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James R Smith #197390

Taylor Zane Smith PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.