

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2018CP1100268**

Irven L. Myers, #201410	State Of South Carolina	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	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), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - 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:

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC  
2020 AUG -4 AM 10:23  
BRANDY W. MCBEE

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)
N/A		

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.**

S/ J. Mark Hayes, II  
Circuit Court Judge

2132  
Judge Code

8/4/2020  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 8/4/20 and a copy mailed first class or placed in the appropriate attorney's box on 8/4/20 to attorneys of record or to parties (when appearing pro se) as follows:

**Irven L. Myers, #201410**  
Lieber Ci, Wando D #279  
Po Box 205  
Ridgeville, SC 29472

**Alan McCrory Wilson**  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Brandy W. McBee*

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**Court Reporter**

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**Brandy W. McBee - 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), SCRCP.

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**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.

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CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2020 AUG -4 AM 10: 23

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

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

Irven Myers,  
S.C.D.C. No. 201410,

) Case No.: 2018-CP-11-00268  
)  
)  
)  
)

Applicant,

**FINAL ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

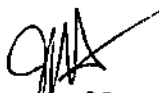
FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2020 JUL 31 AM 10:56  
BRANDY W. MCBEE

This matter comes before the Court pursuant to a post-conviction relief application filed by Irven Myers (hereafter "Applicant") on April 25, 2018. Respondent submitted their Return and Motion to Dismiss on August 23, 2019, requesting that the Application be summarily dismissed because it is without merit as a matter of law, and because it is untimely, successive, and barred by the equitable doctrine of laches.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, the Court issued a Conditional Order of Dismissal dated August 23, 2019. Attached to this Final Order and incorporated herein by reference is an Affidavit of Personal Service, serving the above-mentioned Conditional Order of Dismissal on Applicant.

The Court finds that Applicant filed a pro se "Return to State's Conditional Order of Dismissal." In this document, Applicant stated that the only valid issue in his application is regarding the pre-trial jail time served while awaiting trial, requesting he receive credit for time served so he can get out on parole sooner. Applicant also alleged that at the time of trial he was seventeen years old, had little to no formal education, and exhibited signs of "border-line mental retardation" based on his IQ score and lack of understanding of his present situation.

This Court has reviewed Applicant's responses in full and finds it is insufficient to

  
Page 1 of 3

warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

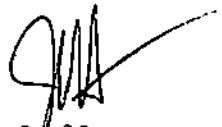
Applicant's response to the Conditional Order of Dismissal is interpreted as a waiver of all allegations except for the allegation concerning a request for time served. This allegation could have been raised earlier and, in fact, was rejected already in Applicant's first and third PCR actions.

This Court finds that the application is untimely. Applicant was convicted on September 10, 1993, and the remittitur from his direct appeal issued on July 19, 1995. The current application was not filed until April 25, 2018— well after the one-year statutory filing period expired. Thus, because there was an almost thirteen year delay between the remittitur from the Applicant's direct appeal and the current PCR application, this application is barred by the statute of limitations.

Additionally, Applicant failed to show why the doctrine of laches is inapplicable to his case. Nearly twenty-seven years have passed between when the Applicant was convicted and when he brought forth this PCR action. Applicant has offered no justification for the delay. Thus, the Court shall summarily dismiss the application as barred by the equitable doctrine of laches.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response,



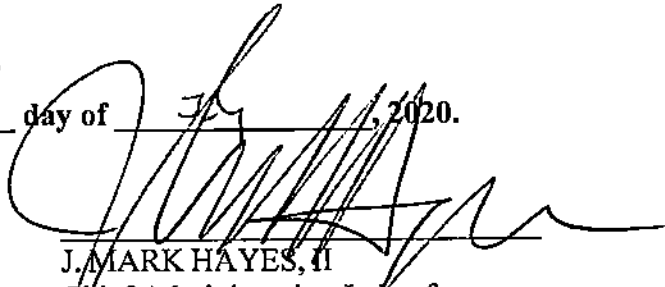
Page 2 of 3

and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts it's finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is without merit as a matter of law, and because it is untimely, successive, and barred by the equitable doctrine of laches. Accordingly, this Court finds no reason why the Conditional Order of Dismissal 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.\*

This court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 7<sup>th</sup> day of July, 2020.

  
J. MARK HAYES, II  
Chief Administrative Judge for  
Common Pleas  
Seventh Judicial Circuit

Spartanburg, South Carolina

 This Court notes to applicant that his request for credit for pre-sentencing credit for time served is not addressed at the merits. The issue of credit is not properly asserted through this post-conviction relief application.





ALAN WILSON  
ATTORNEY GENERAL

July 29, 2020

The Honorable Brandy W. McBee  
Cherokee County Clerk of Court  
Post Office Drawer 2289  
Gaffney, South Carolina 29342

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2020 JUL 31 AM 10:56  
BRANDY W. MCBEE

Re: Iryen Myers, #201410 v. State of South Carolina  
2018-CP-11-00268

Dear Ms. McBee:

Enclosed please find the original **Final Order of Dismissal** signed by the Honorable J. Mark Hayes, II, in the above-captioned case, for filing in your office.

Should you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

/s Chelsey F. Marto  
Chelsey F. Marto  
Assistant Attorney General

CFM/ec

Enclosures



After 5 Days Return To:  
 Mrs. Brandy W. McBee  
 Clerk Of Court, Cherokee County  
 Post Office Drawer 2289  
 Gaffney, S.C. 29342

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 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.

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\$00.50<sup>00</sup>



ZIP 29340  
 041L11245001

2020 AUG -4 AM 10: 31

BRANDY W. MCBEE  
 SC Attorney General's Office  
 ATTN: PCR Division-7<sup>th</sup> Circuit  
 PO Box 11549  
 Columbia, SC 29211-1549

18/208



After 5 Days Return To:  
 Mrs. Brandy W. McBee  
 Clerk Of Court, Cherokee County  
 Post Office Drawer 2289  
 Gaffney, S.C. 29342

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ZIP 29340  
 041L11245001

Irven L. Myers, #201410  
 Ridgeland CI, SB-0045-A  
 PO Box 2039  
 Ridgeland, SC 29936

18/208