

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP4602938**

Michael Donovan	338574	South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	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:

CONDITIONAL ORDER OF DISMISSAL

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.

S/Daniel D. Hall

Circuit Court Judge

2753

Judge Code

12/21/2020

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 4, 2021**, and a copy mailed first class or placed in the appropriate attorney's box on **January 4, 2021**, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Donovan Broad River Correctional Inst Murray 133
4460 Broad River Road Columbia, SC 29210

Brianna Lynn Schill PO Box 11549 SC Office Of The
Attorney General Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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), SCRCF.

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.

FILED-RECEIVED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK 2021 JAN -4) IN THE SIXTEENTH JUDICIAL CIRCUIT
AM 11:16

Michael Donovan, #338574)
G.C.C.P. #23) 2020-CP-46-02938
YORK COUNTY, SC)

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Michael Donovan on October 5, 2020. 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 York County Clerk of Court. In July 2018, the York County Grand Jury indicted Applicant for murder (2018-GS-46-03902), attempted murder (2018-GS-46-03903), and two counts of possession of a weapon during the commission of a violent crime (2018-GS-46-03902a, 2018-GS-46-03903a). Montrio Belton, Esquire represented Applicant. Deputy Solicitor William Thompson, and Assistant Solicitor Hannah Woods, prosecuted the case.

On May 9, 2019, Kathy Terry and Jesse Mercile arrived at Farlow Street in Rock Hill for a drug deal. Tr. p. 17-18. During the deal, Michael Donovan approached the car and stuck a handgun into the vehicle. Tr. p. 20. Ms. Terry grabbed Applicants gun and a struggle ensued. Tr. p. 20. Ms. Terry let go of the gun, and grabbed her own gun for safety. Tr. p. 20. Ms. Terry then attempted to exit the vehicle. Tr. p. 20. As Ms. Terry exited the vehicle, Applicant fired the weapon, hitting Ms. Terry in the head, and Mr. Mercile in the chest. Tr. p. 17, 20. Police began a

search for Applicant on May 10, 2019, and Applicant was arrested later that day. Tr. p. 21.

On March 29, 2019, Applicant entered into a negotiated plea for voluntary manslaughter and assault and battery of a high and aggravated nature (ABHAN) before the Honorable Daniel D. Hall. Pursuant to the negotiation, Judge Hall sentenced Applicant to imprisonment for concurrent terms of seventeen years for voluntary manslaughter, and fifteen years for assault and battery of high and aggravated nature. As part of the plea negotiation, the charge of possession of a firearm during the commission of a violent crime was dismissed. Applicant filed a Motion to Reconsider Sentence on March 28, 2019. On, July 19, 2019, Judge Hall denied Applicants Motion to Reconsider Sentence. Applicant did not appeal his conviction or sentence.

II. Current Action before this Court

In his *pro se* PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Violation Sixth Amendment."
2. "Violation Fourteenth Amendment."
3. "Due Process of Law."
4. "Ineffective Assistance of Counsel."
 - a. "Counsel failed to adequately do investigations, and advise him that the evidence against him could be charged with the lesser included offenses."
5. "Involuntary Guilty Plea."
 - a. "A plea of guilty based on incorrect advice from counsel concerning sentencing is not knowingly and voluntarily made. Applicant contends that he plead guilty based on an erroneous belief, not corrected by counsel before he entered his plea."

As requested relief, Applicant states he is seeking to have his sentence reconsidered.

Before this Court are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript and the records for this PCR action.

III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the

applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

The Court finds that this application must 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. 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).

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). 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, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a 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.”

Applicant pled guilty to all charges on March 28, 2019. Applicant’s Motion to Reconsider Sentence was denied on July 19, 2019. The application was therefore due on July 20, 2020. This application was filed on October 5, 2020, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

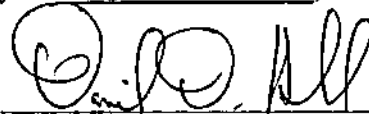
IV. Conclusion

Pursuant to South Carolina Code Annotated Section 17-27-70(b), the 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 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 with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Michael J. Neubauer, Esquire
PCR Division – Sixteenth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the York County Clerk of Court and opposing counsel within twenty days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 21st day of December, 2020.



DANIEL DEWITT HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina