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November 11, 2020

VIA EMAIL TO ADMIN RIDGELAND
CORRECTIONAL INSTITUTION & HAND DELIVERED

Mr. John F. Green, #278705
Ridgeland Correctional Institution
5 Correctional Road
Ridgeland, SC 29936

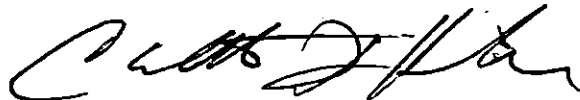
Re: John F. Green, #278705 v. South Carolina Department of Corrections
C/A No.: 2018-CP-27-00439
Our File No.: 18-134

Dear Mr. Green:

Enclosed herewith and served upon you is the Order of Dismissal sent to the Honorable Judge Jefferson and Affidavit of Service with regards to this matter. Once the order is signed and filed you can find a copy on the Jasper County Courts docket, under the above C/A number.

Sincerely,

LAW OFFICES OF CHRISTY L. SCOTT, LLC



Christy L. Scott

CLS/cdh
Enclosures

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 John F. Green, #278705,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of)
 Corrections,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS

C/A. NO.: 2018-CP-27-0043

RECEIVED
 JUN 03 2021
 SC Court of Appeals

ORDER OF DISMISSAL

This matter came before the Court on November 5, 2020 for a hearing on Defendant South Carolina Department of Corrections' Motion to Dismiss under South Carolina Rule of Civil Procedure 12(b)(1-8) seeking an order dismissing this action in its entirety in that this Court lacks jurisdiction over the entities and matter as the applicable statute of limitations has expired prior to Plaintiff's filing of suit. Present via Webex at the hearing was Charlotte D. Hickman on behalf of the Defendant. Plaintiff John F. Green appeared *pro se*. The Motion to Dismiss Plaintiff's Complaint is hereby **GRANTED**.

I. FINDINGS OF FACT

From the record before the Court, this Court makes the following findings of fact. Plaintiff filed his *pro se* suit on August 22, 2018 against the South Carolina Department of Corrections. Plaintiff alleges that on July 22, 2009, he met with Dr. Gary Kocher for an eye exam and was negligently diagnosed with glaucoma and additionally met with Dr. Blake on August 24, 2009, where the Plaintiff claims that Dr. Blake could not save the vision in his right eye and that

without the Plaintiff's "knowledge or consent", Dr. Blake performed surgery on him placing an eye implant in his left eye. Plaintiff also alleges the Wardens and Administrators at McCormick Correctional Institution and Ridgeland Correctional Institution failed to provide the adequate medical care and correct diagnosis.

The moving Defendant filed its Answer and Motion for Dismissal on June 15, 2020 under South Carolina Rules of Civil Procedure 12(b)(6) on grounds that from a reading of the four corners of the Plaintiff's Complaint, this Court lacks jurisdiction over the entities and matter as the Plaintiff has failed to state a claim for which relief can be granted, failed to state sufficient facts and on the grounds that the Complaint was filed outside the applicable Statute of Limitations.

II. LAW

The Tort Claims Act has a general two-year Statute of Limitations; however, where a plaintiff files a statutorily defined claim within one year of the loss or injury, the statute of limitations is extended to three years. South Carolina Tort Claims Act §15-78-80 governs the filing, handling, and disposition of a verified claim. Inmate Green filed no verified claim. Under §15-78-120, where there is no valid Verified Claim, a two-year statute of limitations applies. Here, under either the applicable two-year statute or the general three year statute, the time for filing a claim has expired and the complaint is time barred.

In the Complaint inmate Owens sets forth the date of occurrence as July 22, 2009. Under the "discovery rule," a statute of limitations begins to run on the date when the underlying cause of action reasonably ought to have been discovered, or when a "party knows or should have known by the exercise of

reasonable diligence that a cause of action arises from the wrongful conduct.” Bayle v. S.C. Dep’t of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). Inmate Green sets forth no alternate date of discovery in his Complaint. While the inmate may argue that he did not know and could not have known through the exercise of due diligence that he had a cause of action against the Defendants until a later date, viewing the allegations in the Claim objectively, the inmate should have discovered the cause of action on August 24, 2009 upon his visit with Dr. Blake.

Additionally, there is no tolling by virtue of his incarceration or, alternately, by virtue of any alleged mental illness. Addressing first his incarceration, his action arose post-1996 versions of the tolling statute removing to incarceration. Applying the law in place when Inmate Green filed his Claim, no tolling provision existed for inmates and the three-year statute of limitations would have expired on July 22, 2012. Inmate Green has not been declared legally insane. The fact that he acts on his own behalf in litigation cases he has filed supports that proposition. Further, even assuming he met that criteria for tolling, at most it would extend the Statute of Limitations by five years. Under the law in place at the time the cause of action accrued in 2009, the three-year statute of limitations for Owens’ action would have been tolled for at most five additional years. S.C. Code Ann. §15-3-40 (2005). Under that statute, he would have had at most a total of eight years after the accrual date in which to file his lawsuit. Thus, the statute of limitations would have expired no later than July 22, 2017.

The party claiming that the statute of limitations should bar the claim bears the burden of establishing sufficient facts to establish expiration of the applicable limitations period. Hooper v. Ebenezer Sr. Services and Rehabilitation Center, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). This burden is met by the Defendant in this case.

In sum, in viewing the claim and reasonable inferences from the facts on the face of the Complaint, it is clear that the statute of limitations expired before John F. Green served his Complaint and the facts alleged in his claim do not support relief under any theory of tolling of the statute. As such, the factual merits of the underlying complaints are not addressed. Based upon the foregoing analysis, the complaint should be dismissed based upon expiration of the limitations period.

IT IS HEREBY ORDERED.

The Honorable Deadra L. Jefferson
Judge, Ninth Judicial Circuit

_____, South Carolina

_____, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
John F. Green, #278705,)
)
Plaintiff,)
)
v.)
)
South Carolina Department of)
Corrections,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A. NO.: 2018-CP-27-00439

RECEIVED

JUN 03 2021

SC Court of Appeals

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

1. That she is an employee in the Law Offices of Christy L. Scott, LLC, attorney for the Defendant herein;

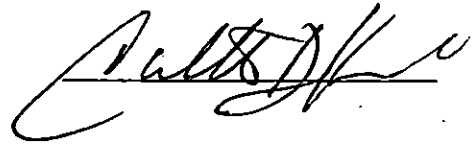
2. That there is between Walterboro, South Carolina, and Ridgeland, South Carolina a regular communication by email;

3. That on 11th day of November 2020, she emailed a true and correct copy of the foregoing memorandum in support of Defendant's Motion to Dismiss and Affidavit of Service to *Pro Se* Plaintiff herein by emailing it to Ridgeland Correctional Institution Admin and having it hand delivered to:

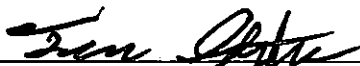
Mr. John F. Green, #278705
Ridgeland Correctional Institution
5 Correctional Road
Ridgeland, SC 29936

and depositing the same in the post office at Walterboro, South Carolina; and

4. That she is not a party to this action.

A handwritten signature in black ink, appearing to be "Caitlin D. H...", written over a horizontal line.

SWORN to before me this
11 day of November 2020



Notary Public for South Carolina (L.S.)
My Commission Expires: 9/19/2030