

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
)
)
Michael Braxton,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2021-CP-04-0320

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Michael Braxton (Applicant) on February 17, 2021. The State made its return on September 10, 2021, requesting the action be summarily dismissed because it was filed after the statute of limitations had expired and Applicant's claim regarding SCDC's application of his credit for time served is moot.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a conditional order of dismissal signed and filed September 15, 2021, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said order in which to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is a certificate of service dated September 20, 2021, indicating the State served the above-mentioned conditional order of dismissal on Applicant at the Anderson County Judicial Center¹ via U.S. mail.

¹ Applicant is currently in the custody of the Anderson County Sheriff's Office awaiting trial pursuant to a petition filed by the State under the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10 to -170, a civil commitment procedure for the long-term care and treatment of

On September 29, 2021, Applicant filed a response, again alleging he is being unlawfully detained as a result of an expired sentence. However, Applicant later claims that his “release from the custody of the South Carolina Department of Corrections should not moot consideration by this honorable Court in determining whether or not his earned good time and earned work credits were properly applied before or after the revocation of his parole.”

This Court disagrees. As an initial matter, the issue regarding SCDC’s calculation of Applicant’s credits was ruled on by the Court of Appeals, which remanded that “issue to the ALC to recalculate Braxton’s sentences such that he receives credit for the time he served while on parole.” *Braxton v. South Carolina Department of Corrections*, 430 S.C. 637, 642, 846 S.E.2d 383, 386 (Ct. App. 2020). On August 26, 2020, the ALC issued an amended order on remand, finding Applicant was entitled to credit for time spent on parole from March 31, 1994 through April 16, 1996—a total of two years and sixteen days. Thereafter, SCDC sent a final decision letter to Applicant explaining that he had already received credit for that precise period of time. Applicant did not appeal from that second agency determination. Applicant has since been released from SCDC custody.

Moreover, the provision of the Post-Conviction Relief Procedure Act under which Applicant’s claim falls provides that “[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise *unlawfully held in custody or other restraint*” may seek post-conviction relief.” S.C. Code Ann. § 17-27-20(5) (emphasis added). Because Applicant is no longer in SCDC custody and therefore no longer serving the sentence he claims expired, this

sexually violent predators. He is detained pursuant to an Order for Evaluation issued November 12, 2020, by the Honorable R. Scott Sprouse.

action is moot. Applicant's reliance on *Nelson v. Ozmint*, 390 S.C. 432, 433, 702 S.E.2d 369, 369 (2010) is additionally misplaced. *Nelson* filed a petition the Supreme Court's original jurisdiction seeking a writ of mandamus directing SCDC to apply good time and earned work credits to reduce the actual time Nelson must serve, and related to the statutory interpretation of the criminal domestic violence statute. *Nelson* was not a PCR action. Further, the *Nelson* Court found the issue was not moot because the "issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed." *Id.* at 434-35, 702 S.E.2d at 370. The Court nonetheless denied Applicant's writ of mandamus.

Before the 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); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, therefore he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

This Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired and Applicant's claim regarding SCDC's application of his credit for time served is moot.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant 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 22nd day of November, 2021.



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

Anderson, South Carolina

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Anderson, SC COC, CP/GS



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Anderson, SC COC, CP/68

ALAN WILSON
ATTORNEY GENERAL

November 10, 2021

The Honorable J. Cordell Maddox Jr.
10th Circuit Chief Administrative Judge
P.O. Box 8002
Anderson, SC 29622

Re: **Michael Braxton v. State of South Carolina**
2021-CP-04-0320

Dear Judge Maddox:

Enclosed please find the proposed Final Order of Dismissal in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the Anderson County Clerk of Court for filing.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LLM/geh
Enclosure(s)

cc: Michael Braxton