

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 William Chesser, #348724, )  
 )  
 Applicant, )  
 )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-08-0349

CONDITIONAL ORDER OF DISMISSAL

2012 JUN -6 AM 10:09  
 FILED  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 6, 2012. In its Return, Respondent requested that the application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Berkeley County Clerk of Court and Applicant's records from the South Carolina Department of Corrections. The Applicant was indicted at the November 2010 term of the Berkeley County Grand Jury for second degree burglary (2010-GS-08-1837). Debra K. Littlejohn, Esquire represented him. On December 1, 2010 the Applicant pled guilty as indicted before the Honorable Kristi Lea Harrington and was sentenced under the Youthful Offender Act to six (6) years imprisonment suspended to two (2) years probation. On November 17, 2011 Applicant's probation was revoked. Applicant did not file an appeal.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel.
  - a. "Kirkland changed my 10 months on a Y.O.A. sentence to a mandatory Y.O.A. sentence due to the fact that June 2, 2010 the law changed for Burglary 2<sup>nd</sup> degree, That I did not know about and my lawyer did not inform me about."

10/3  
 [Signature]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads 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 upon an appeal, whichever is later.

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). The Applicant was convicted of the offense(s) he challenges in this Application on December 1, 2010. Therefore Applicant would have to file his application on or before December 1, 2011. This Application was filed on February 6, 2012, which was well after the statutory filing period had expired.

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, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the PCR 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."

**CONCLUSION**

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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

Office of the Attorney General  
Attn: Ashleigh Wilson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 14<sup>th</sup> day of June, 2012.

DR Jefferson  
DEADRA L. JEFFERSON  
Chief Judge for Administrative Purposes  
Ninth Judicial Circuit Court

Charleston, South Carolina.

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**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Wanda Pugh (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Clarendon )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 7 day of January, <sup>2013</sup>~~2012~~, I served the Conditional Order of Dismissal, on Inmate William Chesser, SCDC Inmate #348724, by delivering personally and leaving a copy of the same at Turbeville Correctional Institution. Deponent is not a party to this action.

s/ Wanda Pugh  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME  
this 7th day of January, 2013  
Shirley Ann (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2017

**ADMISSION OF SERVICE**

Service of a copy of the within Conditional Order of Dismissal is admitted at the S.C. Department of Corrections (Turbeville Correctional Institution), Turbeville, Clarendon County, SC this 7 day of January, <sup>2013</sup>~~2012~~.

s/ William Chesser  
Inmate

SCDC Inmate # 348724