

Dated: 9-14-21

The Honorable Jeanette W. McBride
Clerk of Court, for Richland County
P.O. Box 2766
Columbia, S.C. 29202-2766

RE: To file with the Court of Common Pleas.
Mr. Marlon Levon Miller, #339382, -vs- Mr. Alan Wilson, State of South Carolina,
Mr. Mark Keel, Chief (SLED) South Carolina Law Enforcement Division.

Dear Mrs. McBride:

Enclosed you will find the Plaintiff's Application for Post-Conviction Relief, to be filed with the Court of Common Pleas. Please file and assign a case number and send back a date stamped copy for my records.

Appellate Case No: 2022-000278

Sincerely,
/s/ Marlon J Miller 339382
Mr. Marlon Levon Miller, #339382
ACI. Hampton Unit F-3 A#31
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

Enclosures:
Mr. Alan Wilson ATTY. Gen.
Mr. Mark Keel, Chief (SLED)

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382

Plaintiff(s)

vs.

Mr. Alan M. Wilson, Attorney General,
State of South Carolina, Mr. Mark Keel, Chief
(SLED) Law Enforcement Division

Defendant(s)

Submitted By: Mr. Marlon Levon Miller

Address: ACI. Hampton Unit F-3 A#31
P.O. Box 1151
Fairfax, S.C. 29827

CIVIL ACTION COVERSHEET
2021-CP-40-04999
Appellate No: 2022-000278

SC Bar #: N/A

Telephone #: N/A

Fax #: N/A

Other: N/A

E-mail: N/A

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NON-JURY TRIAL demanded in complaint.

NATURE OF ACTION (Check One Box Below)

Contracts

- Constructions (100)
- Debt Collection (110)
- General (130)
- Breach of Contract (140)
- Fraud Bad Faith (150)
- Failure to Deliver Warranty (160)
- Employment Discrim (170)
- Employment (180)
- Other (199)

Torts - Professional Malpractice

- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Previous Notice of Intent Case # 20-NI-
- Notice File Med Mal (230)
- Other (299)

Torts - Personal Injury

- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Assault Battery (370)
- Slander Libel (380)
- Other (399)

Real Property

- Claim & Delivery (400)
- Condemnation (410)
- Foreclosure (420)
- Mechanic's Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (499)

Inmate Petitions

- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
- Other (599)

Administrative Law/Relief

- Reinstate Drv. License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture-Petition (840)
- Forfeiture-Consent Order (850)
- Other (899)

Judgments/Settlements

- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Transfer of Structured Settlement Payment Rights Application (760)
- Confession of Judgment (770)
- Petition for Workers Compensation Settlement Approval (780)
- Other (799)

Appeals

- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SC DOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Public Service Comm. (990)
- Employment Security Comm (991)
- Other (999)

Special/Complex /Other

- Environmental (600)
- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Sexual Predator (510)
- Permanent Restraining Order (680)
- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of-State Depositions (650)
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Pre-Suit Discovery (670)

Submitting Party Signature:

Marlon L Miller 339382

Date:

9-14-21

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Mr. Marlon Levon Miller, #339382,)
Full name and prison number (if any) of Applicant.)

v.)

Mr. Alan M. Wilson, Attorney General,)
State of South Carolina, Mr. Mark Keel, Chief)
(SLED) South Carolina Law Enforcement)
Division,)

Defendants,

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Appellate No. 2022000278

AFTER DISCOVERED EVIDENCE

APPLICATION FOR

POST-CONVICTION RELIEF

2021 OCT -5 PM 3:00
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Allendale Correctional Institution in Fairfax, S.C.
2. Name and location of Court which imposed sentence Richland County Courthouse
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #2011-GS-40-01700 CSC 1st degree with a minor.
 - (b) #2011-GS-40-01699 Lewd Act upon a child
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 25th, 2009.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty XX
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. ~~N/A~~
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not aware that I could have appealed.
 - (b) N/A
 - (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE ATTACHMENTS
- (b) SEE ATTACHMENTS
- (c) SEE ATTACHMENTS

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHMENTS
- (b) SEE ATTACHMENTS
- (c) SEE ATTACHMENTS

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO.
- (d) any other petitions, motions or applications in this or any other Court? NO.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) AFTER DISCOVERED EVIDENCE.

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes.
- (b) your trial, if any? N/A
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Mr. James D. Cooper, III Public Defender
Richland County Public Defender's Office
- ii. P.O. Box 192
Columbia, S.C. 29202
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Plea & Sentencing
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application: Plaintiff seeks a Declaratory Judgment, Permanent Injunction and immediate removal from the lifetime Sexual Registry with an judicial review to assess the risk of re-offending.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)
)
County of RICHLAND)

VERIFICATION

I, M.L.M being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marlon Miller 339382
Mr. Marlon Levon Miller, #339382

SWORN to and subscribed before me this 14th
day of September, 2021.

Debbie Phillips (L.S.)
Notary Public

My Commission Expires: 7/10/2024

2021 OCT -5 PM 3:00

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, M.L.M. hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Madon J. Miller 339382
Applicant

SWORN or affirmed to and subscribed before me this
14th day of September, 2021.

Dobbin Phillips
Notary Public

My Commission Expires: 7-10-2024

RECEIVED
2021 OCT -5 PM 3:00
J. AM... W. M. C. ...
... ..

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

ATTACHMENT

(10). State concisely the grounds on which you base your allegations that you are being held in custody unlawfully.

(a). Plaintiff alleges that he is being held captive unlawfully under the statute of §23-3-460(A) and §23-3-540(H) Lifetime Sexual Registry and Electronic Monitoring.

(b). Based upon section 17-27-20, Persons who may institute proceeding; exclusiveness of remedy. Any person who has been convicted of or sentenced for a crime and who claims:

(1). That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.

(2). That the court was without jurisdiction to impose sentence of lifetime registration.

(3). That the lifetime registration sentence exceeds the maximum

punishment authorized by law absent any reasonable opportunity for judicial review to determine the risk of re-offending.

(4). That there exists evidence of material facts, not previously presented and heard, that requires vacation of the sentence in regards to the lifetime sexual offender registry in the interest of justice.

(5). That the sentence of lifetime registry and electronic monitoring is otherwise subject to collateral attack within one year from the date actually discovered, upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy, may institute without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

ATTACHMENT

(6). This remedy is not a substitute for nor does it affect any remedy incident to the proceeding in the trial court, or of direct review of the sentence. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other writ or remedies heretofore available for challenging the validity of the lifetime sexual registration as a sex offender under SORA's statute's §23-3-430, §23-3-460(A) and §23-3-540(H). It shall be used exclusively in the place of them.

(c). Pursuant to section 17-27-45, Filing procedures for Post-Conviction Relief Applications;

(1). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina or both, impose upon state criminal proceeding; a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this CHAPTER MAY BE FILED NOT LATER THAN ONE year after the date on which the standard or right was determined to exist.

(2) The Plaintiff alleges that there is evidence of material facts not previously presented and heard that requires vacation of the sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

ATTACHMENT

(11). State concisely and in the same order the facts which support each of the grounds set out in (10).

SUPPORTING FACTS:

(a). Plaintiff alleges that he is being held captive of an lifetime sexual offender registration under SORA's statutes §23-3-430, §23-3-460(a), and §23-3-540(h) which are held to be unconstitutional on June 9th, 2021, under the case of * Powell v. Keel, S.E.2d 2021 WL2346055.

(1). Plaintiff alleges that the lifetime sexual registration sentence is actually a life sentence and violates the substantive due process rights of the Plaintiff in violation of the Constitution of the United States and the Constitution of South Carolina under Article 1 Section 15.

(2). Plaintiff contends that when the court imposed the sentence requiring the Plaintiff to register as a sex offender for life in pursuant to §23-3-430, §23-460(a), and §23-3-540(H), was without jurisdiction to impose such punitive punishment, this was an arbitrary action, and without the opportunity to have an judicial review to determine the risk of re-offending is cruel and unusual! punishment violating the Eighth Amendment of the United States Constitution, and the Constitution of South Carolina Article 1 § 3 Due Process and Equal Protection of the law, and §15.

(3). Plaintiff asserts that there is evidence of material facts that the lifetime sex offender registry exists and is found to be unconstitutional which is subject to an collateral attack within one year from the actual date which is June 9th, 2021, and the lifetime sexual offender registration requires vacation in the form of immediate removal from the lifetime sex offender registry in the interest of justice,

ATTACHMENT

SUPPORTING FACTS:

(b). Plaintiff contends that he is entitled to institute proceeding with an application available under common law to challenge the lifetime sexual offender registry that was placed upon him, because he has a protected liberty interest in which the State shall not abridge or infringed.

(1). Plaintiff asserts that the substantive standard or the right was not previously recognized or in existence at the time of the original state court trial proceeding. Plaintiff asserts that the standard or right is intended to be retroactively applied based upon the S.C. Supreme Court decision which is binding on June 9th, 2021 in * Powell v. Keel, S.E.2d 2021 WL2346055 S.C Code Ann. §23-3-430, §23-3-460(A), and §23-3-540(H), held unconstitutional.

(c). Plaintiff contends that he is entitled to a Declaratory Judgment, Injunction Permanently in the form of immediate removal from the sex offender registry as for life.

A p p l l a t e No: 2022-000278

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,) Case No:

-vs-

Mr. Alan M. Wilson, Attorney General,) "SUMMONS"
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

TO: Mr. Mark Keel, Chief (SLED)

A lawsuit has been filed against you.
Within 30 days after service of this summons on you, you must serve on the Plaintiff an Answer to attached complaint or a motion under Rule 12 of the South Carolina Rules of Civil Procedures. The answer or motion must be served on the Plaintiff's address: Mr. Marlon Levon Miller, #339382, ACI. Hampton Unit F-3 A#31, 1057 Revolutionary Trail Hwy 47, P.O. Box 1151, Fairfax, S.C. 29827.

Dated: 9-17-21

/s/ Marlon J. Miller
Mr. Marlon Levon Miller, #339382

Defendants:
Mr. Mark Keel, Chief (SLED)
South Carolina Law Enforcement
Division
P.O. Box 21398
Columbia, S.C. 29221-1398

Mr. Alan M. Wilson, Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211-1549

You must also file the original answer or motion with the court.

Date: _____

CLERK OF COURT

Appellate No: 2022-000278

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,) Case No:

-vs-

Mr. Alan M. Wilson, Attorney General,) NOTICE OF LAWSUIT AND
State of South Carolina, Mr. Mark Keel) REQUEST TO WAIVE SERVICE OF A
(SLED) South Carolina Law) SUMMONS
Enforcement Division,)
Defendants,)

TO: Mr. Mark Keel, Chief (SLED)

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached. This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the waiver within (30) thirty days from the date shown below, which is the date this notice was sent. Two copies of the waiver forms are enclosed, along with a stamped self-addressed envelope. You may keep the other copy.

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed but no summons will be served on you and you will have (60) Sixty days from the date if this notice is sent to answer the complaint.

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the Court to require you, or the entity you represent, to pay the expense of making service.

Defendant: _____

Dated: _____

Plaintiff: Marlon J. Miller

Dated: 9-17-21

Appellate No: 2022-000278

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,) Case No:

-vs-

Mr. Alan M. Wilson, Attorney General,) "SUMMONS"
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

TO: Mr. Alan M. Wilson, Attorney General

A lawsuit has been filed against you.
Within 30 days after service of this summons on you, you must serve on the Plaintiff an Answer to attached complaint or a motion under Rule 12 of the South Carolina Rules of Civil Procedures. The answer or motion must be served on the Plaintiff's address: Mr. Marlon Levon Miller, #339382, ACI. Hampton Unit F-3 A#31, 1057 Revolutionary Trail Hwy 47, P.O. Box 1151, Fairfax, S.C. 29827.

/s/ Marlon L. Miller
Mr. Marlon Levon Miller, #339382

Defendants:

Mr. Alan M. Wilson, Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211-1549

Mr. Mark Keel, Chief
South Carolina Law
Enforcement Division
P.O. Box 21398
Columbia, S.C. 29221-1398

You must file the original answer or motion with the court.

Date: 9-17-21

CLERK OF COURT

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

Appellate NO: 2022-000278

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FIFTH JUDICIAL CIRCUIT)

Mr. Marlon Levon Miller, #339382,)
Plaintiff,)

Case No:)

-vs-)

Mr. Alan M. Wilson, Attorney General,)
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

NOTICE OF A LAWSUIT AND)
REQUEST TO WAIVE SERVICE OF A)
SUMMONS)

RECEIVED
MAR 30 2022
S.C. SUPREME COURT

TO: Mr. Alan M. Wilson, Attorney General

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached. This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the waiver within (30) thirty days from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped self-addressed envelope. You may keep the other copy.

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed but no summons will be served on you and you will have (60) Sixty days from the date if this notice is sent to answer the complaint.

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the Court to require you, or the entity you represent, to pay the expense of making service.

Defendant: _____

Dated: _____

Plaintiff: Marlon J. Miller

Dated: 9-17-21

JIAN JAGU

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,)

Case No:

-vs-

Mr. Alan M. Wilson, Attorney General,)
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

**"WAIVER OF THE SERVICE OF
SUMMONS"**

RECEIVED
MAR 30 2022
S.C. SUPREME COURT

TO: Mr. Marlon Levon Miller, #339382

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid self-addressed stamped envelope, for the purpose of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I, understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or motion under Rule 12 within (60) Sixty days from the date when this request was sent. If I fail to do so, a default judgment will be entered against me or the entity I represent.

Dated: _____

Defendant: _____

Address: _____

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4 of the South Carolina Rule of Civil Procedures requires certain Defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A Defendant who is located in the United States or the State of South Carolina and who fails to return a signed waiver of service requested by a Plaintiff located in the United States or the State of South Carolina will be Required to pay the expenses of service, unless the Defendant shows good cause for the failure. "Good Cause", does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue or that the court has no jurisdiction over this matter or over the Defendants or the Defendants property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the Plaintiff and file the original with the court.

By signing and returning the waiver form you are allowed (30) thirty more days to respond than if a summons had been served.

Dated: 9-17-21

Respectfully submitted,
/s/ Marlon Miller
Mr. Marlon Levon Miller, #339382
ACI. Hampton Unit F-3 A#31
1057 Revolutionary Trail Hwy 47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

Appellate No: 2022-000278

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

MR. Marlon Levon Miller, #339382,)
Plaintiff,) Case No:

-vs-

Mr. Alan M. Wilson, Attorney General,)
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law Enforcement)
Division,)
Defendants,)

PROOF OF SERVICE

PROOF OF SERVICE

The undersigned hereby certify that on this 19th day of Sept 2021, a true copy of the Plaintiff's Civil Action PCR Application, along with Summons, Notice of a Lawsuit and Request to Waive Service of a Summons, and Waiver of the Service of Summons, two of each have been served on each Defendant, by placing into the U.S. mail postage prepaid and addressed to: Mr. Alan M. Wilson, Attorney General, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211-1549, and Mr. Mark Keel, Chief (SLED) South Carolina Law Enforcement Division, P.O. Box 21398, Columbia, S.C. 29221-1398.

Dated: 9-14-21

Respectfully submitted,
/s/ Marlon L Miller 339382
Mr. Marlon Levon Miller, #339382
ACI. Hampton Unit F-3 A#31
1057 Revolutionary Trail Hwy 47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

RECEIVED
MAR 30 2022
S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

December 7, 2021

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
Post Office Box 2766
Columbia, SC 29202-2766

Re: Marlon L. Miller, #339382 v. State of South Carolina
2021-CP-40-4999

Dear Ms. McBride:

Enclosed please find the original Return and Motion to Dismiss of the Respondent, with its accompanying attachments, in the above-captioned case, for filing in your office.

Appellate No. 2022-000278

Sincerely,

Yasmeen E. Klein
Assistant Attorney General

YEK/kw
Enclosure

cc: The Honorable L. Casey Manning, Chief Administrative Judge
Marlon L. Miller, #339382

RECEIVED
MAR 30 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Marlon L. Miller, #339382)	2021-CP-40-4999
)	
Applicant)	
)	
v.)	RETURN AND MOTION TO DISMISS
)	
State of South Carolina,)	
)	
Respondent)	
_____)	

In response to Applicant, Marlon L. Miller's action for post-conviction relief (PCR) commenced October 5, 2021, Respondent, the State of South Carolina, makes the following Return and moves to dismiss the application as untimely pursuant to S.C. Code Ann. § 17-27-45. Respondent respectfully offers the following in support of its Return and motion to dismiss:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the May 2011 term, the Richland County Grand Jury indicted Applicant for first degree criminal sexual conduct with a minor (2011-GS-40-1700), and lewd act on a minor child (2011-GS-40-1699). James D. Cooper, Esquire represented Applicant. Assistant Solicitor Margaret F. Bodman prosecuted the case.

Applicant pled guilty as negotiated on August 30, 2012, before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to twenty years imprisonment for first degree criminal sexual conduct with a minor, and fifteen years imprisonment for lewd act on a minor, to be served concurrently. Applicant did not appeal.

II. CURRENT APPLICATION

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

1. "See Attachments"
 - a. "After Discovered Evidence."

As requested relief, Applicant is seeking "Declaratory Judgment, Permanent Injunction and immediate removal from the lifetime Sexual Registry with an judicial review to assess the risk of re-offending." Respondent notes the referenced attachments were not included as part of the application and are not available on the Public Index. Attached to this return and incorporated herein are the Richland County Clerk of Court records, Applicant's SCDC records, and the records of this PCR action.¹ Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not appoint counsel in this matter, and instead issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not

¹ Respondent attempted to obtain a transcript of the guilty plea proceeding but was informed a copy was no longer available due to the expiration of the five year retention requirement.

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

entitled to relief); *Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court*, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCPP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

i. Statute of Limitations

Respondent submits this application should 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:

(A) 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.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held 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). Additionally, S.C. Code Ann. § 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.”

In the present case, Applicant has failed to provide specific allegations for why he believes he is being held in custody unlawfully. Applicant additionally failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on August 30, 2012, and did not pursue a direct appeal. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before August 31, 2013. Applicant did not file his application until October 5, 2021, eight years beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant’s current PCR application as he alleges no new rights to be applied retroactively, and raised no allegations of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

IV. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application because it was untimely filed under the Uniform Post-Conviction Procedure Act.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:

Yasmeen E. Klein

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 7, 2021

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2021-CP-40-4999

MARLON L. MILLER, #339382)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)


Respondent,)
_____)

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Marlon L. Miller, #339382 (HAA-0043-B)
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29827

DATED this 7th day of December, 2021.



Katie Wade, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

December 7, 2021

The Honorable L. Casey Manning
Chief Administrative Judge
Post Office Box 192
Columbia, SC 29202-0192

Re: Marlon L. Miller, #339382 v. State of South Carolina
2021-CP-40-4999

Dear Judge Manning:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Richland County Clerk of Court for filing.

If you have any questions, please do not hesitate to contact me.

Appellate No: 2022-000278

Sincerely,

Yasmeen E. Klein

Yasmeen E. Klein
Assistant Attorney General

YEK/kw
Enclosure(s)

cc: Marlon L. Miller, #339382

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Marlon L. Miller, #339382

) 2021-CP-40-4999
)
)

Applicant

v.

) **CONDITIONAL ORDER OF DISMISSAL**
)
)

State of South Carolina,

) *Appellate No. 2022-0022*
)
)

Respondent

RICHLAND COUNTY
FILED
2021 DECEMBER 9 AM 9:21
JEANNE M. WOODRUFF
C.C.P. & S. & H.C.

This matter comes before the Court by way of Applicant, Marlon L. Miller's action for post-conviction relief (PCR) filed October 5, 2021. Respondent made its Return and motion to dismiss on December 7, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the May 2011 term, the Richland County Grand Jury indicted Applicant for first degree criminal sexual conduct with a minor (2011-GS-40-1700), and lewd act on a minor child (2011-GS-40-1699). James D. Cooper, Esquire represented Applicant. Assistant Solicitor Margaret F. Bodman prosecuted the case. Applicant pled guilty as negotiated on August 30, 2012, before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to twenty years imprisonment for first degree criminal sexual conduct with a minor, and fifteen years imprisonment for lewd act on a minor, to be served concurrently. Applicant did not appeal.

CURRENT APPLICATION

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

1. "See Attachments"
 - a. "After Discovered Evidence."

As requested relief, Applicant is seeking "Declaratory Judgment, Permanent Injunction and immediate removal from the lifetime Sexual Registry with an judicial review to assess the risk of re-offending." This Court finds the referenced attachments were not included as part of the application and are not available on the Public Index. For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, and the records of this PCR action.

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 as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

The Court finds that this PCR shall 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:

(A) 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.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held 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). Additionally, S.C. Code Ann. § 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.”

In the present case, Applicant has failed to provide specific allegations for why he believes he is being held in custody unlawfully. Applicant additionally failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on August 30, 2012, and did not pursue a direct appeal. Pursuant to section 17-27-4(A), Applicant needed to file his

application for post-conviction relief on or before August 31, 2013. Applicant did not file his application until October 5, 2021, eight years beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively, and raised no allegations of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and shall be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

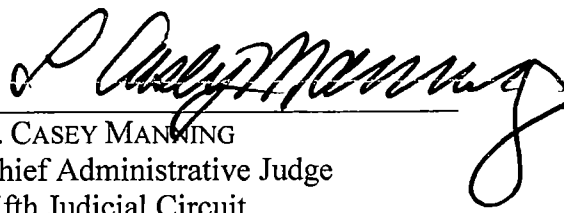
CONCLUSION

Pursuant to S.C. Code Ann. § 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 (20) 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Yasmeen E. Klein, Assistant Attorney General
PCR Division – Fifth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, 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 8 day of December, 2021.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

Dated stamped Dec 31, 2021

JAM JADEL

Appellate NO: 2022-000278

Dated: 12-22-21

The Honorable Jeanette W. McBride
Clerk of Court, for Richland County
P.O. Box 2766
Columbia, S.C. 29202-2766

RE: To file Plaintiff's Reply in Opposition to the Defendants Return
and Motion to Dismiss/ Proposed Conditional Order of Dismissal with the
Court of Common Pleas.

Mr. Marlon Levon Miller, #339382, -vs- Mr. Alan M. Wilson, Attorney General,
State of South Carolina, Mr. Mark Keel, Chief (SLED) South Carolina Law
Enforcement Division.
C/A#2021-CP-40-04999

Dear Mrs. McBride:

Enclosed you will find the Plaintiff's Reply in Opposition to the
Defendants Return and Motion to Dismiss/ Proposed Conditional Order of
Dismissal, to be filed with the Court of Common Pleas. Please file and
send back a date stamped copy for my records.

Sincerely,

1s/ Marlon Miller #339382
Mr. Marlon Levon Miller, #339382
ACI, Hampton Unit F-3 A#43
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

JAN 14 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,) C/A#2021-CP-40-04999

-vs-

Mr. Alan M. Wilson, Attorney General,)
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

REPLY IN OPPOSITION TO THE
DEFENDANTS RETURN AND MOTION TO
DISMISS / PROPOSED CONDITIONAL
ORDER OF DISMISSAL

In reply to the Defendants Return and Motion to Dismiss / Proposed Conditional Order of Dismissal, the Plaintiff, Mr. Marlon Levon Miller, #339382, initiated this common law civil action under the Uniform Post-Conviction Relief Procedure Act on October 5th, 2021. Plaintiff asserts that this action is timely and ripe for review and made in pursuant to the S.C. Code Ann. §17-27-45(b). Plaintiff respectfully offers the following in support of his Reply in Opposition / Proposed Conditional Order of Dismissal, to show why this matter should continue, as justice is so required, as a matter of law.

Appellate No: 2022-000278

II. CURRENT APPLICATION

The Plaintiff alleges that after sentencing and being placed on the sex offender registration for life, was unlawful and unconstitutional under the statutes of §23-3-430, §23-3-460(A), and §23-3-540(H). The application was filed with his attachments in which the Plaintiff will re-submit to the Court. The attachments were in regards to questions (10), and (11) of the application which states:

(10). State concisely the grounds on which you base your allegations that you are being held in custody unlawfully; and

(11). State concisely and in the same order the facts which support each of the grounds set out in (10).

Plaintiff respectfully attached his answer to the questions to the application and served each Defendant with a copy of his application, summons, notice of lawsuit and request to waive service of the summons, and two waiver forms for the purpose of signing and returning one back to the Plaintiff to file with the Court. Plaintiff informed each Defendant, that they must return within (30) thirty days of receipt and must answer within (60) sixty days after returning waiver form. Defendants alleged that the attachments were not included as a part of his application. The Defendants failed to comply with the rules of process. For the record, the Defendants have attempted to manipulate the Pleading by alleging Applicant -vs- Respondents. Plaintiff initiated this action as Plaintiff -vs- Defendants under common law in pursuant to the S.C. Code Ann. §17-27-20, Persons who may institute proceeding exclusiveness of remedy.

This action is not alleging ineffective assistance of Counsel and should not be treated as such or manipulated. This matter is considered timely and ripe for review to receive an judicial review to assess the risk of reoffending.

10231

III. DEFENDANTS MOTION TO DISMISS
AND CONDITIONAL ORDER OF DISMISSAL

Plaintiff is hereby granted twenty (20) days from the date of service of this Order in which he received on December 13th, 2021, to provide specific reasons, factual or legal, why the application should not become final. Plaintiff asserts that the Defendants motion to dismiss is frivolous and without merit. This application is not one in which he is alleging ineffective assistance of counsel, where there may be a need to appoint counsel, rather this application is provided as a common law complaint against the following Defendants. The issue is based upon the Uniform Post-Conviction Relief Procedure Act §17-27-45(b), After Discovered Evidence in the S.C. Supreme Court ruling in * Powell v. Keel, S.E.2d 2021 WL2346055, decided on June 9th, 2021. Therefore, Plaintiff is entitled to an hearing.

STATUTE OF LIMITATION

Plaintiff asserts that the Defendants claim of statute of limitations does not apply, is frivolous and without merit. Plaintiff's action is a common law lawsuit based upon the Uniform Post-Conviction Relief Procedure Act §17-27-45(b), Filing Procedure of Post-Conviction Relief Application, states in part,

(B). When a Court whose decisions are binding upon the Supreme Court of this State, an application under this chapter must be filed not later than one year after the date on which the standard or right was determined to exist.

The Plaintiff's facts are subject to collateral attack and requires vacation of the lifetime sexual offender registration by way of an judicial review. Plaintiff contends that the After Discovered Evidence is based upon the S.C. Supreme Court ruling in * Powell v. Keel, S.E.2d 2021 WL2346055. Plaintiff' complaint should not be dismissed.

Appellate No: 2022-000274

CONCLUSION

WHEREFORE, the Plaintiff, Mr. Marlon Levon Miller, #339382, an pro-se litigant in this matter, prays for consideration of his Reply in Opposition to the Defendants Return and Motion to Dismiss / Proposed Conditional Order of Dismissal. Pursuant to the S.C. Code Ann. §17-27-20, Persons who may institute proceeding; exclusiveness of remedy, the Plaintiff respectfully asks that this Honorable Court, grant his common law application permission to continue, with an hearing, as justice is so required, as a matter of law.

Dated: 12-22-21

Respectfully submitted,
1st Marlon Miller #339382
Mr. Marlon Levon Miller, #339382
ACT. Hampton Unit F-3 A#43
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

ATTACHMENT

(10). State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

1. Plaintiff alleges being captive under the lifetime sexual offender registration unlawfully, under the State's statute §23-3-430, §23-3-460(A), and §23-3-540(H).
2. Plaintiff asserts that the sentence of lifetime sex offender registry was in violation of the Constitution of the United States or the Constitution or laws of this State.
3. Plaintiff contends that the Court was without jurisdiction to impose such a punitive lifetime GPS monitoring or lifetime sexual offender registry.
4. Plaintiff asserts that the lifetime sex offender registration sentence exceeds the maximum punishment authorized by law absent any reasonable opportunity for judicial review to determine the risk of re-offending.
5. Plaintiff contends that there exists evidence of material facts, not previously presented and heard, that requires vacation of the sentence in regards to the lifetime sexual offender registry in the interest of justice.
6. Plaintiff alleges that the State has created a state liberty interest infringing upon depriving him of his liberty interest.
7. Plaintiff asserts that the lifetime sexual offender registry is otherwise subject to collateral attack within the one year from the date of actual discovery upon any ground of alleged error heretofore available under any common law, statutory, or other writ, motion, petition, proceeding, or remedy; may institute without paying a filing fee, a proceeding under this chapter §17-27-20, to secure relief.

Appellate No. 2022-000278

ATTACHMENT

(11). State concisely and in the same order the facts which support each of the grounds set out in (10).

1. Plaintiff alleges being held captive on the lifetime sexual offender registration and the lifetime GPS Electronic monitoring which was held to be unconstitutional on June 9th, 2021, in the case of * Powell v. Keel, S.E.2d 2021 WL2346055, by the S.C. Supreme Court.

2. Plaintiff alleges that the lifetime sexual registration sentence is actually a life sentence and it violates the substantive due process rights and the procedural due process rights of the Plaintiff, because it does not afford the Plaintiff a reasonable opportunity for an judicial review to assess the risk of re-offending. It's in violation of the Constitution of the United States and the Constitution of this State violating Art 1 Section 15.

3. Plaintiff contends that when the Court imposed the sentence requiring him to mandatory GPS monitoring and Lifetime sexual offender registration in pursuant to §23-3-430, §23-3-460(A), and §23-3-540(H), without an opportunity for a judicial review to determine the risk of re-offending, the Court was without jurisdiction to impose such punitive punishment.

4. Plaintiff contends that the lifetime sexual offender registry sentence under §23-3-430, §23-3-460(A), and §23-3-540(H), is in violation of the Eighth Amendment cruel and unusual punishment of the Constitution of the United States and the Constitution of this State, and exceeds the maximum punishment authorized by law, because it does not afford the Plaintiff an procedural due process right to an judicial review, nor does it provide equal protection of the law.

ATTACHMENT

(11). State concisely and in the same order the facts which support each of the grounds set out in (10).

5. Plaintiff asserts that there exists evidence of material facts that the lifetime sexual offender registration is subject to collateral attack, and should be acted upon according to the Uniform Post-Conviction Relief Procedure Act §17-27-45(B), within one year from the date actually discovered, that requires vacation in the interest of justice. This After Discovered Evidence was initiated by the S.C. Supreme Court ruling in * Powell v. Keel, on June 9th, 2021.

6. Plaintiff contends that he is entitled to institute an application available under common law to challenge the lifetime sexual offender registration placed upon because he has a right to protect his liberty interest in the future.

7. Plaintiff asserts that the substantive standard or the right was not previously recognized or in existence at the time of the original state court trial proceeding. Plaintiff asserts the standard or right is intended to be applied retroactively, based upon the binding decision of the S.C. Supreme Court's ruling in * Powell v. Keel, S.E.2d 2021 WL2346055 S.C. Code Ann. §23-3-430, §23-3-460(A), and §23-3-540(H), held unconstitutional on June 9th, 2021.

8. Lastly, Plaintiff contends that he is entitled to an Declaratory Judgment, Injunctive Relief Permanantly, and any other type of relief in the form of immediate removal from the lifetime internet as a sexual registrant, as justice is so required, as a matter of law.

1000 1000 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR FIFTH JUDICIAL CIRCUIT

Mr. Marlon Levon Miller, #339382,)
Plaintiff,) C/A#2021-CP-40-04999

-vs-

Mr. Alan M. Wilson, Attorney General,) CERTIFICATE OF SERVICE
State of South Carolina, Mr. Mark Keel)
(SLED) South Carolina Law)
Enforcement Division,)
Defendants,)

Appellate No: 2022-000278

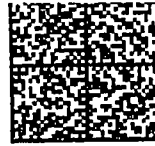
CERTIFICATE OF SERVICE

The undersigned hereby certify that on this 22 day of December, 2021, a true copy of the Plaintiff's Reply in Opposition to the Defendants Return and Motion to Dismiss / Proposed Conditional Order of Dismissal, along with a copy of his Attachments to his complaint, were served on each Defendant by placing into the U.S. mail addressed to: Office of the Attorney Generals's Attn: Yasmeen E. Klein, Assistant Attorney General, PCR Division-Fifth Circuit P.O. Box 11549, Columbia, S.C. 29211, and Mr. Paul T. A'Hearn, III, Esquire, Deputy General Counsel, South Carolina Law Enforcement Division, P.O. Box 21398, Columbia, S.C. 29221-1398.

Dated: 12-22-21

Respectfully submitted,
/s/ Marlon J. Miller #339382
Mr. Marlon Levon Miller, #339382
ACI. Hampton Unit F-3 A#43
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Plaintiff

Devon Miller, #339382



US POSTAGE
ZIP 29827 \$001.56⁰
02 4W
0000373916 DEC. 23. 2021

I. Hampton Unit F-3 A#43

Box 1151

Fax, SC. 29827

Attn: Yasmeen E. Klein
Assistant Attorney General
PCR Division - Fifth Circuit
P.O. Box 11549
Columbia, SC. 29211

MAIL



ALAN WILSON
ATTORNEY GENERAL

March 4, 2022

Marlon Miller, #339382 (HAA-0043-B)
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29827

Appellate No: 2022-00028

Re: Marlon Miller, #339382 v. State of South Carolina
Case No: 2021-CP-40-4999

Dear Mr. Miller:

Enclosed please find a copy of the Final Order of Dismissal in the above-captioned case signed by the Honorable Jocelyn Newman and filed with the Richland County Clerk of Court.

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

DRB/jj

Enclosed for Service

RECEIVED

MAR 30 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

MARLON MILLER, #339382

Applicant,

v.

STATE OF SOUTH CAROLINA

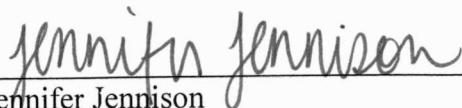
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

**Marlon Miller, #339382 (HAA-0043-B)
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29827**

This 4th day of March, 2022.



Jennifer Jennison
Administrative Coordinator for Respondent

SWORN to before me this 4th day of March, 2022.



Notary Public for South Carolina.

My Commission Expires: *May 16, 2029*

RECEIVED
MAR 30 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Marlon L. Miller, #339382)
)
 Applicant)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-40-4999

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2022 FEB 24 AM 10:35
 JEANETTE W. HODGINS
 CLERK, C.P., G.S., & F.C.

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Marlon L. Miller on October 5, 2021. Respondent made its Return and Motion to Dismiss on December 7, 2021, requesting the application be summarily dismissed because it was untimely.

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 filed December 9, 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 an Affidavit of Service dated January 12, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted a response filed on December 31, 2021, titled "Reply in Opposition to the Defendants Return and Motion to Dismiss/ Proposed Conditional Order of Dismissal" wherein Applicant argues his application is timely pursuant to S.C. Code Ann. § 17-27-45(B), and that being placed on the sex offender registry for life was unlawful and unconstitutional under §§ 23-3-430, 23-3-460(A), and 23-3-540(H). Applicant argues the statute of limitations does not apply, and that Respondent's dismissal is frivolous and without merit. Applicant claims his action

is being filed as after-discovered evidence pursuant to section 17-27-45(B) of the Uniform Post-Conviction Relief Procedure Act, due to the recent ruling in *Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (2021), *reh'g denied* (Aug. 4, 2021).

This Court finds Applicant has failed to comply with the filing requirements under section 17-27-45 of the South Carolina Code. Applicant pled guilty on August 30, 2012. Pursuant to section 17-27-^{45(A)}~~45(B)~~, Applicant needed to file his application for post-conviction relief on or before August 31, 2013. Applicant did not file his application until October 5, 2021, eight years beyond the expiration of the statute of limitations.

Further, while Applicant filed this action as an application for post-conviction relief alleging upon after-discovered evidence regarding the constitutionality of the sex-offender registry, post-conviction relief is not the proper avenue to challenge a statutory requirement to register as a sex offender. *See Williams v. State*, 378 S.C. 511, 514–15, 662 S.E.2d 615, 617 (Ct. App. 2008) (providing that post-conviction relief (PCR) is a proper avenue of relief only when the applicant mounts a collateral attack challenging validity of his conviction or sentence; the only exceptions are claims, specifically listed in PCR Act, that an applicant's sentence has expired, or that an applicant's probation, parole, or conditional release has been unlawfully revoked). Therefore, having to register as a sex offender is a civil collateral consequence of a criminal conviction, and as such, it cannot be appropriately challenged under the Uniform Post-Conviction Relief Act. *See Thompson v. State*, 415 S.C. 560, 564, 785 S.E.2d 189, 191 (2016) ("As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state." *State v. Nation*. 408 S.C. 474, 481, 759 S.E.2d 428, 432 (2014) (citing *In re Justin B.*, 405 S.C. 391, 394, 404-08, 747 S.E.2d

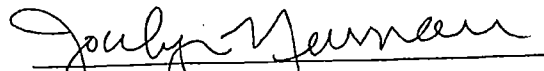


774, 775, 781-83 (2013)). Accordingly, the application for PCR fails to state a claim which is cognizable under the Uniform Post-Conviction Relief Act, and the application must be dismissed.

Moreover, Applicant is not currently subject to sex-offender registry requirements as he is presently incarcerated due to his convictions for first degree criminal sexual conduct with a minor and lewd act with a minor. These convictions may mandate registration as a sex offender in the future, but the requirements of section 23-3-430 have not been triggered at this time and will not be triggered until Applicant is released from incarceration. *Thompson v. State*, 415 S.C. 560, 785 S.E.2d 189 (2016); *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). Accordingly, this application does not present a justiciable controversy, and the Court does not have subject-matter jurisdiction. This Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown 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 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 23rd day of February, 2022.


JOELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

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S.C. SUPREME COURT

