

SATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

CASE NO.2021-CP-21-1711

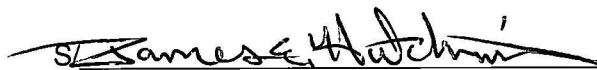
JAMES EDGAR HUTCHINSON
APPELLANT.

V.

STATE OF SOUTH CAROLINA
RESPONDENT.

NOTICE OF APPEAL

JAMES EDGAR HUTCHINSON APPEALS THE ORDER conditional order and final order of dismissal OF
THE HONORABLE MICHAEL G. NETTLES, DATED: _____
D. Craig Brown, Dated: _____
APPELLANT RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER of final order of
dismissal
ON May 11th 2022



JAMES EDGAR HUTCHINSON #258003







State of South Carolina
In The Supreme Court
Appeal From Florence County
Court of Common Pleas
D. Craig Brown
Circuit Court Judge

Case No. 2021-CP-21-1711
James Edgar Hutchinson #258003
Appellant,

v.
State of South Carolina
Respondent.

Notice of Appeal

James Edgar Hutchinson Appeals the order
Final order of dismissal of The Honorable D. Craig Brown
Dated 5-6-2022
Appellant received written notice of entry of
this order of dismissal on 5-11-2022.

~~James Edgar Hutchinson~~

James Edgar Hutchinson #258003
Lee, C.T., F-7-50
990, Wisacky Hwy,
Bishopville, S.C. 29010

cc: 10F12

To: Clerk of Court Florence County
The Honorable Doris Poulas Ottara
Florence Judicial Center

Suite-1100
141, N. Irby St.
Florence, S.C. 29501

5-23-2022

State of South Carolina
In The Supreme Court
Appeal from Florence County
Court of Common Pleas
D. Craig Brown
Circuit Court Judge

Case NO. 2021-CP-21-1711
James Edgar Hutchinson #258003
Appellant.

v.

State of South Carolina
Respondent.

Notice of Appeal

James Edgar Hutchinson appeals the order
final order of dismissal of The Honorable D. Craig Brown

Dated: 5-6-2022

Appellant received written notice of entry of
this order of dismissal on 5-11-2022.

~~James E. Hutchinson~~

James Edgar Hutchinson #258003
Lees, C.F.F-7-50
990. wisacky Hwy,
Bishopville, S.C. 29010

cc: 10F12

To: The Honorable D. Craig Brown 5-23-2022
Florence Judicial Center
Suite - 3605
141. N. Irby St. Florence S.C.,
29501

Letter To Supreme Court
Clerk of Court Filing
Notice of Appeal

The Honorable Patricia A. Howard
Clerk of South Carolina Supreme Court
P.O. Box-11330
Columbia, S.C. 29211

Re: State of South Carolina
County of Florence
Respondent.

V.
James Edgar Hutchinson #258003
Appellant

Case No. 2021-CP-21-1711

Enclosed is a Notice of Appeal in the above case.
Also enclosed are the following:

- 1.) Proof of Service of Notice of Appeal on all respondents.
- 2.) A copy of the orders ^{Conditional and Final} orders of dismissal which are to be challenged on appeal
- 3.) This appeal is being filed with the Supreme Court.
See Rule 203 §243(C) S.C. Rules of App. Ct.
- 4.) A statement of the case, argument, case law, citations, statutes, Affidavits and Transcripts as to why the dismissal was improper.

cc: The Honorable
Patricia A. Howard
South Carolina
Supreme Court
Clerk of Court
Self/ File

James Edgar Hutchinson
James Edgar Hutchinson #258003
Lee, C.I. F-7-50
990. Wisacky Hwy,
Bishopville, S.C. 29010

Completed: 5-23-2022
mailed on: - -2022

PROOF OF SERVICE
OF
NOTICE OF APPEAL
STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

CASE NO. 2021-CP-21-1711

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
RESPONDENT.

V.

JAMES EDGAR HUTCHINSON
APPELLANT.

NOTICE OF APPEAL

I CERTIFY THAT I HAVE SERVED A NOTICE OF APPEAL ON The Honorable Supreme Court
BY DEPOSITING A COPY OF IT IN THE U.S. MAIL, POSTAGE PREPAID ON
ADDRESSED TO The Honorable Patricia A. Howard, Clerk of South
Carolina Supreme Court P.O. box-11330 Columbia, S.C. 29211

James E. Hutchinson

JAMES EDGAR HUTCHINSON #258003

[REDACTED]

[REDACTED]

[REDACTED]

Letter To Clerk of Lower Court
Filing Notice of Appeal

5 / 23 / 2022

Case No. 2021-CP-21-1711

The Honorable Doris Poulas O'Hara
Clerk of Court for Florence County
Florence Judicial Center
Suite - 1100
181. N. Irby St.
Florence, S.C. 29501

Re: State of South Carolina
County of Florence
Respondent.

v.
James Edgar Hutchinson #258003
Appellant.

Dear Clerk of Court Doris Poulas O'Hara
Enclosed for filing is a Notice of Appeal in the
above case.

Also proof of service & notice of appeal to all
parties.

Will you please file them and my copies, then return the
copies to me to send to the Supreme Court, & my file.

cc: Clerk of Court
Doris Poulas O'Hara
Florence County

Clerk of Supreme
Court of South Carolina
Patrica A. Howard

self / file

~~James Edgar Hutchinson~~
James Edgar Hutchinson #258003
Lee, L.I. F-7-50
990. Wisacky Hwy.
Bishopville, S.C. 29010

5-23-2022

Assistant Attorney General D. Russell Barlow II
The Honorable D. Craig Brown
Barton J. Vincent General Counsel S.C. D.C.
Attn: Jonathan Eckstrom

Proof of Service
of
Notice of Appeal
State of South Carolina
In The Supreme Court

Appeal From Florence County
Court of Common Pleas
D. Craig Brown, new
Chief Administrative Judge

&
Michael G. Nettles, former
Twelfth Judicial Circuit
Case no. 2021-LP-21-1711
State of South Carolina
County of Florence
Respondant.

v.
James Edgar Hutchinson #258003
Appellant.

Notice of Appeal

I certify that I have served a Notice of Appeal
on D. Russell Barlow # by depositing a copy of it
in the U.S. Mail, postage prepaid on 5-22-2022
addressed to South Carolina Attorney
General's Office P.O. Box 11549, Columbia, S.C. 29211

~~S. James E. Hutchinson~~
James Edgar Hutchinson #258003
Lee, C.I. F-7-50
990, Wisacky Hwy.
Bishopville, S.C. 29010

cc: 1 of 12

D. Russell Barlow #

5-23-2022

Proof of Service
of
Notice of Appeal
State of South Carolina
In The Supreme Court

Appeal From Florence County
Court of Common Pleas

D. Craig Brown, new
Chief Administrative Judge

§
Michael G. Nettles, former
Twelfth Judicial Circuit

Case No. 2021-CP-21-1711
State of South Carolina
County of Florence
Respondent.

v.
James Edgar Hutchinson #254003
Appellant.

Notice of Appeal

I certify that I have served a Notice of Appeal
on The Honorable Doris Poulas Ottara by depositing a copy of it
in the U.S. Mail, postage prepaid on 5-22-2022
addressed to Clerk of Court Florence County
Suite-1100 Florence Judicial Center 141 N. Frby St. Florence, SC,
29501



James Edgar Hutchinson #254003
Lee, L.I. F-7-50
990. Wisacky Hwy.
Bishopville, S.C. 29010

cc: lof12

Doris Poulas Ottara

5-23-2022

Proof of Service
of
Notice of Appeal
State of South Carolina
In The Supreme Court

Appeal From Florence County
Court of Common Pleas

D. Craig Brown, new
Chief Administrative Judge

Michael G. Nettles, former
Twelfth Judicial Circuit

Case No. 2021-CP-21-1711

State of South Carolina
County of Florence

Respondant

v.

James Edgar Hutchinson #258003
Appellant.

Notice of Appeal

I certify that I have served a Notice of Appeal
on The Honorable D. Craig Brown by depositing a copy of it
in the U.S. Mail, postage prepaid on 5-22-2022
addressed to Florence Judicial Center Suite 3605
191 N. Tryon St. Florence, S.C. 29501

~~James Edgar Hutchinson~~

James Edgar Hutchinson #258003
Lee, C.F. F-7-50
990. Wisacky Hwy.
Bishopville, S.C. 29010

cc: 10 F 12

D. Craig Brown

5-23-2022

Proof of Service
of
Notice of Appeal
State of South Carolina
In The Supreme Court

Appeal From Florence County
Court of Common Pleas

D. Craig Brown, New
Chief Administrative Judge
&

Michael G. Nettles, Former
Twelfth Judicial Circuit

Case NO. 2021-CP-21-1711

State of South Carolina
County of Florence
Respondent.

v.
James Edgar Hutchinson #258003
Appellant.

Notice of Appeal

I certify that I have served a Notice of Appeal
on Barton J. Vincent by depositing a copy of it
in the U.S. Mail, postage prepaid on 5-23-2022
addressed to General Counsel Attn: Jonathan Eckstrom
S.C.D.C. 4444, Broad River Rd, Columbia, S.C. 29221

~~James A. Hutchinson~~

James Edgar Hutchinson #258003
Lee, C.I. F-7-50
990. Wisacky Hwy,
Bishopville, S.C. 29010

LL110 F12

5-23-2022

Barton J. Vincent General Counsel
Attn: Jonathan Eckstrom

State of South Carolina
In The Supreme Court
Appeal from Florence County
Court of Common Pleas
D. Craig Brown
Circuit Court Judge

Case no. 2021-CP-21-1711
James Edgar Hutchinson #258003
Appellant

v.

State of South Carolina
Respondent.

Notice of Appeal

James Edgar Hutchinson appeals the order
Final order of dismissal of The Honorable D. Craig Brown
Dated: 5-6-2022

Appellant received written notice of entry of
this order of dismissal on 5-11-2022.

~~James E. Hutchinson~~

James Edgar Hutchinson #258003
Lee, C.T. F-7-50
990 Wisacky Hwy.
Bishopville, S.C. 29010

cc: 10 of 12

To: D. Russell Barlow # 5-23-2022
Assistant Attorney General
P.O. Box - 11549
Columbia, S.C. 29211

State of South Carolina
In The Supreme Court
Appeal From Florence County
Court of Common Pleas
D. Craig Brown
Circuit Court Judge

Case No. 2021-CP-21-1711
James Edgar Hutchinson #258003
Appellant.
v,
State of South Carolina
Respondent.

Notice of Appeal

James Edgar Hutchinson appeals the order
final order of dismissal of The Honorable D. Craig Brown
Dated: 5-6-2022
Appellant received written notice of entry of
this order of dismissal on 5-11-2022.

S/ James E. Hutchinson

James Edgar Hutchinson #258003
Lee, C. J. F-7-50
990. Wisacky Hwy,
Bishopville, S. C. 29010

cc: 10F12

General Counsel
To: Barton J. Vincent
Attn: Jonathan Eckstrom
S.C. D.C.
4444. Broad River Rd,
Columbia S. C. 29221

5-23-2022

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James Edgar Hutchinson, #258003

Applicant

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-21-1711

) **FINAL ORDER OF DISMISSAL**

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by James Edgar Hutchinson (Applicant) filed on August 5, 2021. The State made its return on October 28, 2021, requesting this action be summarily dismissed because the circuit court had jurisdiction to accept Applicant's guilty plea; the application was filed after the statute of limitations had expired; and for failure to state a cognizable claim for relief.

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 December 8, 2021, and filed December 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 Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a certificate of service dated February 10, 2022, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant at the Lee Correctional Institution.

Applicant submitted multiple responses to the Florence County Clerk of Court to include: (1) "Exhibits" numbering twenty-six pages to be added as part of the record dated October 15, 2021, and filed November 8, 2021; (2) "Affidavit of Merits" numbering sixteen pages and dated December 21, 2021, and filed December 28, 2021; (3) "Affidavit of Merits" numbering five pages

FILED

CERTIFIED A TRUE COPY

Shirley A. Ottens
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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dated December 21, 2021, and filed on December 28, 2021. In Applicant's filings, he argues that his "conviction was obtained in violation of the Constitution of the United States, the S.C. Constitution, and the laws of this state and [he is] suffering persistent effects and collateral consequences as [he has] alleged in [his] post-conviction application due to ineffective assistance of counsel in this invalid conviction, and States proposed dismissal is improper." Ultimately, Applicant's filings argue the jurisdictional grounds of his convictions which were raised in his PCR application.

This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because the circuit court had jurisdiction to accept Applicant's guilty plea; the application was filed after the statute of limitations had expired; and for failure to state a cognizable claim for relief. 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.

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.**

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P 273

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 6th day of May, 2022.



D. CRAIG BROWN
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina.

2022 MAY 11 AM 10:22
CLERK OF COURT
12th JUDICIAL CIRCUIT
FLORENCE, SC 29501

FILED

DCB
P. 373

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

James Edgar Hutchinson, #258003,)
Applicant)

Case No.: 2021-CP-21-1711

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by James Edgar Hutchinson (Applicant) on August 5, 2021. The State made its return and moved to summarily dismiss the action because the circuit court had jurisdiction to accept Applicant's guilty plea, the application was filed after the statute of limitations had expired, and for failure to state a cognizable claim for relief. For the reasons discussed below, this Court grants the State's motion to summarily dismiss the PCR action.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court.¹ Applicant was indicted at the August 1989 term of the Florence County Grand Jury for breaking into a motor vehicle, privily stealing, second degree burglary, and grand larceny (1989-GS-21-0927). Represented by Malcolm Whisenhunt, Esquire, Applicant appeared for a plea before the Honorable John H. Waller, Jr., on

¹ Applicant is currently incarcerated due to a third and separate burglary offense (2018-GS-21-1520; -1523). Applicant filed this application because the underlying conviction to this matter was legally used to enhance his current sentence pursuant to 16-11-311(2) of the South Carolina Code. ("the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]")

August 7, 1989. Applicant pleaded guilty to second degree burglary and grand larceny. The State dropped the remaining charges. Judge Waller accepted Applicant's Plea and sentenced him under the Youthful Offender Act to an indeterminate period of time not to exceed six years. Applicant did not appeal.

II. CURRENT APPLICATION

Applicant *untimely* commenced this PCR action on August 5, 2021. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Lack of Jurisdiction
 - a. Rt. 8-box 140 Bar Ranch Rd. now referred to as 325 Bar Ranch Rd. is in Darlington County. No valid waiver of presentment.
2. Ineffective assistance of counsel
 - a. Counsels failure to investigate caused me to unknowingly not raise valid defense
3. Involuntary Guilty Plea
 - a. Plea is unintelligent placing me in a position where I felt I had no choice but to plead guilty.

As relief, Applicant requests his sentence be vacated and void to stop its normal function, to prevent its use to support enhancement purposes to stop its prejudice in Applicant's current incarceration for his third burglary conviction (2018-GS-21-1520; -1523).² Before the Court and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, and the records of the current PCR action.

III. DISCUSSION

The State moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code (2014) on the basis that there is no genuine issue of material fact which would necessitate an

² The State noted in its return and motion to dismiss that this is not a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This is discussed in the "Failure to State a Claim" subsection below.

evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requested 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. *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); *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), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). This Court has reviewed the pleading and the record in this case and finds there is no genuine issue of material fact. Therefore, summary dismissal is appropriate. Set forth below are the Courts findings as to each issue:

i. Allegation of Lack of Jurisdiction

Applicant alleges the trial court did not have jurisdiction to accept his guilty plea because Rt. 8-box 140 Bar Ranch Rd. now referred to as 325 Bar Ranch Rd. is in Darlington County.³ However, this Court finds this allegation is without merit.

In South Carolina, jurisdiction, the basic authority of a court to hear and exercise judgment over a criminal matter, is based upon two considerations; territorial jurisdiction, and subject matter jurisdiction. The territorial jurisdiction of a municipal court is limited to the boundaries of the municipality. Under section 22-3-710, "All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon, and only which, shall a warrant of arrest issue." Under section 14-25-45, "Each

³ This was listed as the burglary victim's residence at the time of the crime in the arrest warrant.

municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. . . ." *Town of Honea Path v. Wright*, 194 S.C. 461, 9 S.E.2d 924 (1940); *State v. Fennel*, 263 S.C. 216, 209 S.E.2d 433 (1974).

In the present case, the indictments clearly cite that the offenses occurred within Florence County. Additionally, the arrest warrants were issued by a Florence County magistrate. Therefore, both the magistrates and the trial court judge clearly had jurisdiction. Applicant has provided no proof except his own assertion that the address is in Darlington County. 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). This Court finds Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter shall be summarily dismissed with prejudice.

ii. Statute of Limitations

Applicant's allegations shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act⁴ (the Act). Specifically, the Act requires:

An application for relief filed pursuant to this chapter *must* be filed within *one year after the entry of a judgment . . . or within one year after the sending of the remittitur*

S.C. Code Ann. § 17-27-45(A) (emphasis added).

⁴ S.C. Code Ann. § 17-27-10 to -160.

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, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). Further, section 17-27-70(c) authorizes this 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 pleaded guilty on August 7, 1989, and he did not pursue a direct appeal. The application was, therefore, due on or before August 8, 1990. This application was filed on August 5, 2021, *well after* the requisite filing period expired. Accordingly, Applicant’s allegations shall be summarily dismissed because the action is untimely.

iii. Failure to State a Claim

Additionally, this Court finds Applicant’s action shall be summarily dismissed for failure to state a cognizable claim for relief. See Rule 12(b)(6), SCRCPP (stating a defending party may move for summary judgement based on the plaintiff’s failure to “state facts sufficient to constitute a cause of action”). Further, the application shall be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

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;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

This Court finds Applicant’s allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). “The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is *not* rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences.” *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991) (emphasis in original). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. *Id.*; *see also Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364,

1365-66 (4th Cir. 1973) (“[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea . . .”). “[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence . . .*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original).

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. *See State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant’s punishment.” *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973).

The fact that a conviction for a violent offense may be used to enhance a subsequent conviction is a collateral consequence of a guilty plea. *Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997). Applicant’s allegation is only that his prior burglary, the conviction he is challenging in this application, was used to enhance the sentence arising out of his subsequent burglary conviction pursuant to section 16-11-311(2) of the South Carolina Code is a non-collateral attack on his conviction. As such, this allegation and every part of the application based thereupon shall be dismissed pursuant to Rule 12(b)(6), SCRCF.

IV. CONCLUSION

Pursuant to subsection 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should

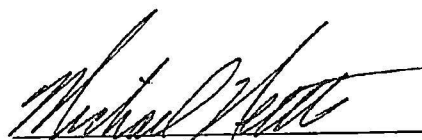
not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have, factual or legal, with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Michael D. Davidson, Esquire
PCR Division – Twelfth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Florence 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 Dec, 2021.

Spencer, South Carolina


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

20 21 CP 21 1211

STATE OF SOUTH CAROLINA)

County of Florence)

James Edgar Hutchinson #258003)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION REVIEW

CLERK OF COURT
COURT HOUSE
FLORENCE COUNTY, SC

2021 AUG - 5 PM 2: 07

FILED

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 here Correctional Institution
F6A-1125 990 Wisacky Hwy, Bishopville, SC, 29010
2. Name and location of Court which imposed sentence Florence County, S.C.
12th Judicial Circuit, 180 N. Irby St, Florence, S.C, 29501
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Invalid, Involuntary Guilt Plea,
(a) 1989 - GS - 21 - 927 (that is still causing
(b) prejudice and persistent lingering effects,)
McDuffie v. State 271 S.E.2d, 595 (1981)

5. The date upon which sentence was imposed and the terms of the sentence: 2002-65-21-1670

- (a) August 7th 1999
- (b) Youthful Offender Act.
- (c) 1 to 6 years sentence

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty INvoluntary & Unintelligently.
- (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 appeal, Counsel prejudiced my case by

8. If you answered "yes" to (7), list:

not allowing court to exercise its discretion on jurisdiction issue

- (a) the name of each Court to which you appealed:
 - i. NO
 - ii. NO
 - iii. NO
- (b) the result in each such Court to which you appealed:
 - i. NO
 - ii. NO
 - iii. NO
- (c) the date of each such result:
 - i. NO
 - ii. NO
 - iii. NO
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NO
 - ii. NO
 - iii. NO

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Did not receive competent advice from counsel, and by his failure to investigate
- (b) the locality of the offense caused me enter an invalid & involuntary plea, Due to his ineffective assistance and erroneous advice. The County officials and courts led me to think this offense & conviction was "just".

conviction is in violation of my S.C. and U.S. constitutional rights and the laws of this State.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully. This alleged offense is located in Darlington County, True Bill indictment was from Florence County

- (a) lack of Jurisdiction
- (b) Ineffective Assistance of Counsel
- (c) Involuntary Guilty Plea

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Rt. 8 - box 140, Bar Ranch Rd, now referred to as 325, Bar Ranch Rd, is in Darlington County.

- (a) No valid waiver of presentment.
- (b) Counsel's failure to investigate caused me to
- (c) unknowingly not raise valid defense plea is intelligent.

12. Prior to this application have you filed with respect to this conviction: Placing me in a position where I felt I had no choice but to plead guilty.

- (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. no
 - ii. no
 - iii. no
 - iv. no
- (b) the name and location of the Court in which each was filed:
 - i. no
 - ii. no
 - iii. no
 - iv. no

- (c) the disposition thereof:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (d) the date of each such disposition:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. NO
 - ii. NO
 - iii. NO
 - iv. NO

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
NO

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

- (a) which grounds have been presented:
 - i. NO
 - ii. NO
 - iii. NO
- (b) the proceedings in which each ground was raised:
 - i. NO
 - ii. NO
 - iii. NO

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: Never made aware the burden was on me
- (a) no Counsel or the Court ~~never~~ informed
- (b) me I was entitled to be heard on the
- (c) validity of this invalid conviction, never knew I
17. Were you represented by an attorney at any time during the course of: had any merits,
- (a) your arraignment and plea? yes
- (b) your trial, if any? no trial / just a plea
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? (no appeal) no court or counsel has ever informed me that the burden of proof is on me to prove prior invalid.
- (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. Whisenhunt
Florence County Public Defender's
Office
190 N. Irby St.
Florence, S.C. 29501
- ii. Counsel's errors and deficient performance caused a misapprehension of law on my legal position, erroneously inducing me to enter an invalid plea,
- (b) the proceedings at which each such attorney represented you:
- i. Whisenhunt
Guilty Plea 1969-65-21-927
- ii. to a Burglary 2nd Degree
non-violent,
- iii. in General Sessions of
Florence County 12th Circuit

IF not for Counsel's deficient performance and erroneous advice I would not have plead guilty, but would have insisted on going to trial.

19. State clearly the relief you seek in filing this application: State v. McCoy 825 E. 2d 914, Phillips v. State 314 S.E.2d 313 (1984) supported 2002 and 2002 supported this case, State v. Small 563 S.E.2d 754 (2005)
vacated & void to stop its normal function,
to prevent its use to support
enhancement purposes to stop its prejudice,

2018-6521
1520
and
1523

20. Are you now under sentence from any other court that you have not challenged? no
yes, this conviction now is resting on the
2002 conviction which is also resting
on this complained of 1989 conviction,
where the trial transcript shows the court
misinformed me by saying I did not have to prove
anything in 2002 case causing a misapprehension
of law in a recidivist case,

STATE OF SOUTH CAROLINA)
County of Florence)

VERIFICATION

I, James Edgar Hutchinson, 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.

James Edgar Hutchinson

SWORN to and subscribed before me this 28
day of July, 2001.
Debra Eastrely (L.S.)
Notary Public

My Commission Expires: 3/3/2004

2001 AUG -5 PM 2:07
FORSYTH COUNTY, NC
COOP & BS
FORSYTH COUNTY, NC

FILED

Same as [redacted] # 254003

Turbeville, S.C. 29162

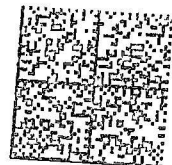
1578 Collier Hwy,
Turbeville, S.C.
29162

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



7017 1070 0000 3622 3805



US POSTAGE IMPITNEY B
ZIP 29162 \$015.5
02 4W
0000378440 JUN 02 20

**RETURN RECEIPT
REQUESTED**

**RETURN RECEIPT
REQUESTED**

South Carolina Supreme Court
To: The Honorable Clerk of Court
Patricia A. Howard
P.O. - box - 11330
Columbia, South Carolina, 29211

RECEIVED
JUN 14 2022
S.C. SUPREME COURT