STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County
The Honorable J. Derham Cole, Circuit Court Judge
Case No. 2019-CP-11-0457

Alonzo C. Jeter, III, ---------- PETITIONER,

v

State of South Carolina, ---------- RESPONDENT.

APPELLATE CASE No. 2022-000750
SUPPLEMENT TO
APPENDIX II

Alonzo C. Jeter, III, #282902
Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203
PETITIONER / pro se

Chelsey Faith Marto, AAG
1000 Assembly Street
Room 519
Columbia, South Carolina 29201
COUNSEL FOR RESPONDENT

RECEIVED
AUG 11 2022
S.C. SUPREME COURT

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April 29, 2020

Alonzo C. Jeter, III, #282902
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

The Honorable Brandy W. McBee
Clerk, Cherokee County Court
Post Office Drawer 2289
125 E. Floyd Baker Blvd.
Gaffney, South Carolina 29342

2020 MAY -5 PM 2:03
BRANDY W. MCBEE

RE: Alonzo C. Jeter, III, v State (PCR)
Case No. 2019-CP-11-0457

Dear Ms. McBee:

Enclosed, please find for filing Exhibit J, Exhibit K (Pages 1-21), and a Certificate of Service for the same.

Please find also, enclosed, an additional copy of these said documents along with a self-addressed stamped envelope. Please return to me file-stamped copies of these documents by way of the provided SASE.

Thank you for your assistance in this matter.

Sincerely,

Alonzo C. Jeter, III

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Alonzo Columbus Jeter, III, #282902, Applicant, v State of South Carolina, Respondent.	Case No. 2019-CP-11-0457 APPLICANT'S EXHIBITS J & K (Pages 1-21)

The Applicant, Alonzo C. Jeter, III, #282902, hereby submits the following as Exhibits in this case; (State v Carleson, 363 S.C. 586, 611 SE2d 283 (2005) - The burden is on the [Applicant] to provide a sufficient record for review. Harkins v Greenville County, 340 S.C. 606, 533 SE2d 886 (2000) (noting the [Applicant] has the burden of presenting an adequate record on appeal)):

S/

Alonzo C. Jeter, III, #282902
APPLICANT
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

April 29, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Alonzo Columbus Jeter, III, # 282902, Applicant, V State of South Carolina, Respondent.	Case No. 2019-CP-11-0457 CERTIFICATE OF SERVICE

2020 MAY -5 P 2:03
BRANDY [illegible]

I, Alonzo C. Jeter, III, # 282902, Applicant, hereby certify that I have served a copy of Applicant's Exhibits J & K (Pages 1-21), on Respondent by placing a copy of the same inside of a postage prepaid envelope and placing said envelope in the hands of Tyger River Correctional Institution's mailroom personnel on this 29 day of April, 2020, for mailing via the United States Mail, addressed as follows: Alan Wilson, Esquire, Attorney General of South Carolina, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

I further certify under the penalty of perjury that the above statement is true and correct.

SWORN and Subscribed before me
this 30 day of April, 2020

Paul D. Ce
Notary Public for South Carolina
My Commission Expires: Dec. 6, 2024

S/
Alonzo C. Jeter, III, # 282902
APPLICANT
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

RECEIVED
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S.C. SUPREME COURT

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Alonzo C. Jeter, III, # 282902, Petitioner, v. Barry Tucker, Respondent.	Case No. 2:19-cv-1945-MGL-MGB **REPORT AND RECOMMENDATION**

Alonzo Jeter, a *pro se* state prisoner, seeks habeas corpus under 28 U.S.C. § 2254. (Dkt. No. 1.) Jeter also asks the Court to stay this case pending the resolution of a related state-court action. (Dkt. No. 3.) Meanwhile, the Warden seeks summary judgment. (Dkt. No. 19.) Under 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the undersigned is authorized to review the motion and submit a recommendation to the District Judge. For the following reasons, the undersigned recommends granting the Warden's motion by dismissing this case for lack of jurisdiction.

BACKGROUND

Jeter has been in state prison since 2015 after pleading guilty to several drug charges. In addition to this federal habeas action, Jeter has filed three post-conviction relief ("PCR") actions in state court: (1) a 2016 case Jeter lost at the PCR court, with an appeal currently pending before the South Carolina Court of Appeals; (2) a 2017 case Jeter lost, both in the PCR court and on appeal; and (3) a 2019 case now pending in the PCR court. The 2016 PCR case relates directly to the 2015 sentences Jeter is now serving; the other two cases relate to two 2004 state-court convictions that have since expired. Although Jeter attacks only those 2004 convictions in this federal habeas case, the 2015 convictions and 2016 PCR case provide context for that attack.

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The 2004 Convictions

In October 2004, Jeter pleaded guilty in South Carolina state court to two counts of simple possession of crack cocaine, first offense. (Dkt. No. 18-1 at 158–62, 135–36.) He committed the first count in January of that year and the second that September. (*Id.* at 158, 161.) The court sentenced him to three years in prison on each charge but suspended the sentences upon time served in jail and three years of probation. (*Id.*) The court ran the sentences concurrently. (*Id.*) According to Jeter, he pleaded guilty only after getting the State and the court to agree that his two convictions would "merge"—that is, they would be entered as a single, first offense conviction for the purposes of any recidivism-based enhancements on any future charges he might face. (Dkt. No. 18-1 at 129–30.)

Jeter did not appeal, nor did he immediately file a collateral challenge in state or federal court. The sentences have expired.

The 2015 Convictions

On three separate occasions in January 2015, police filmed Jeter selling methamphetamine to an informant. (Dkt. No. 18-1 at 16–17.) For those sales, Jeter was charged with two counts of distributing methamphetamine, third or subsequent offense; two counts of distributing methamphetamine within a proximity to a park or school, third or subsequent offense; and one count of trafficking methamphetamine, third offense. (*Id.* at 4–5.)

Jeter and his counsel reached a negotiated-sentence plea agreement with the State: in exchange for Jeter pleading guilty to some lesser-included offenses, the State would recommend to the Court that Jeter spend fifteen years in prison. (*See* Dkt. No. 18-1 at 4.) In July 2015, Jeter pleaded guilty to two counts of distributing methamphetamine, second offense; two counts of distributing methamphetamine within a proximity to a park or school, second offense; and one

count of trafficking in methamphetamine, second offense. (Dkt. No. 18-1 at 8–9.) At the guilty-plea hearing, the court instructed the prosecutor to identify all of Jeter's prior convictions that the State was using to charge Jeter as a repeat offender. (*Id.* at 20.) The prosecutor identified a 2005 conviction for possession of "either methamphetamine or crack cocaine" and a 2013 conviction for possession of a controlled substance. (*Id.* at 20–21.) The prosecutor never mentioned Jeter's 2004 crack convictions. (*See id.*)

In keeping with the plea deal, the state court sentenced Jeter to fifteen years in prison on each of the two distribution charges and on the trafficking charge. (Dkt. No. 18-1 at 22–23.) It sentenced Jeter to ten years on each of the distribution-within-proximity charges. (*Id.* at 23.) The court ran all the sentences concurrently. (*Id.* at 22–23.) Jeter did not appeal.

The 2016 PCR Case

In April 2016, Jeter filed a PCR application challenging his 2015 convictions. (Dkt. No. 18-1 at 26–36.) Among other things, Jeter claimed plea counsel provided ineffective assistance by failing to challenge the State's decision to charge Jeter as a third offender. (*Id.* at 68.) Jeter contended he had no prior convictions that qualified as predicate offenses for any sort of recidivist charge, let alone third-offense charges. (*See id.*) He faulted plea counsel for not recognizing that and for encouraging him to accept a negotiated sentence on second-offense charges. (*Id.* at 66, 68).

The PCR court held a hearing in March 2017. (Dkt. No. 18-1 at 48.) Jeter testified that the 2013 controlled-substance conviction the State cited during his guilty plea involved marijuana, while the 2005 conviction it cited was actually Jeter's 2004 crack conviction; the prosecutor misspoke during the guilty-plea hearing. (*Id.* at 59–61, 103.) Because South Carolina did not allow charges to be enhanced with prior offenses that either involved marijuana or were over ten

years old, Jeter contended the State improperly charged him with third offenses. (*Id.*) Jeter testified plea counsel erred by not recognizing that and doing something about it. (*Id.* at 68.)

Plea counsel testified that he and Jeter discussed Jeter's prior convictions, but they were immaterial to counsel. (Dkt. No. 18-1 at 90–91.) Counsel explained the prosecutor planned to try the 2015 charges separately in order to trigger recidivist enhancements that could result in Jeter ultimately getting sentenced to life without parole. (*Id.*) Plea counsel believed the prosecutor would succeed in that plan. (*Id.* at 99.) Consequently, whether Jeter's prior convictions properly served as predicate offenses for the 2015 charges was unlikely to make a difference. Instead of challenging the State's decision to charge Jeter as a third-or-greater offender, plea counsel focused on negotiating a deal for as little prison time as possible. (*Id.* at 91–92.)

Several weeks after the hearing, the State moved to reopen the record. (Dkt. No. 18-1 at 152–54.) At a second hearing in June 2017, the State presented the indictments and the sentencing sheets from the 2004 crack case. (*Id.* at 120, 122.) The State told the court that after the first hearing, it discovered the 2004 case involved two convictions, not one. (*Id.* at 121.) The State argued the convictions were separate, which meant that even though the September 2004 offense was disposed of as a first-offense crime, it counted as a second offense for the purposes of recidivism enhancements on future charges. (*Id.* at 135.) And because South Carolina's ten-year limitation on using prior convictions to enhance charges does not apply to second offenses, the State contended, Jeter was properly charged in 2015 with third offenses. (*Id.*)

Jeter insisted the 2004 convictions had to be treated as one. (*Id.* at 142–50.) The PCR court disagreed and granted the State's motion, allowing the indictments and sentencing sheets into the record. (*Id.* at 149–50.)

A month later, the PCR court issued an order denying Jeter's application. (Dkt. No. 18-1 at 174–88.) As to the claim regarding the sentencing enhancements, the court found plea counsel performed sufficiently because he had a strategy of avoiding separate trials and a possible life sentence. (*Id.* at 184–85.) Importantly, the court also found counsel's alleged error did not prejudice Jeter because he did in fact have enough prior convictions to make him eligible for recidivism-based sentence enhancements. (*Id.* at 185.) The court based that finding on Jeter's 2004 crack convictions, which it treated as separate offenses. (*Id.*)

Jeter has petitioned for certiorari. (Dkt. No. 18-2.) Among other things, Jeter asserts the PCR court erred in denying his ineffective-assistance claim regarding the sentencing enhancements. (*Id.* at 14–20.) He argues the PCR court's treatment of his crack convictions was inconsistent with both South Carolina law and the agreement under which he pleaded guilty in 2004. (*Id.* at 18–20.) Jeter's certiorari petition is still pending before the South Carolina Court of Appeals as case number 2017-001777.

The 2017 PCR Case

In June 2017, Jeter filed a second PCR application. This time, he focused on his 2004 crack convictions. (Dkt. No. 18-4.) Proceeding *pro se*, he alleged he pleaded guilty in 2004 based on an agreement with the State that his two crack charges would be treated as a single, first-offense conviction. (*Id.* at 3.) The State breached that agreement, he alleged, by presenting them to the first PCR court as separate convictions that made him eligible for recidivist charges in 2015. (*Id.*) Jeter asked for a hearing and a lawyer. (Dkt. No. 29 at 31–32.)

Without holding a hearing, the PCR court issued an order in December 2017 conditionally dismissing the case. (Dkt. No. 18-5.) The court found the case barred both by the statute of limitations for PCR actions and by the equitable doctrine of laches. (*Id.* at 2, 4–5.) It also found

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Jeter's breach-of-agreement claim was not a valid ground for relief under the PCR statute. (*Id.* at 3.)

Jeter objected to the conditional order and again asked the PCR court to appoint him a lawyer. (Dkt. No. 29 at 49–53, 58–64.) He also amended his PCR application to assert an ineffective-assistance claim about his 2004 lawyer. (*Id.* at 55–56.) He alleged counsel failed to ensure public records clearly reflected the merging agreement. (*See id.*) According to Jeter, that failure allowed the State to prevail in the first PCR case by denying the agreement's existence. (*See id.*)

The PCR court issued a final order dismissing the case in August 2018. (Dkt. No. 18-6.) The court stated that, after reviewing Jeter's original 2017 application and his objections to the conditional order, it was adopting its reasoning from the conditional order. (*Id.* at 2.) The court neither addressed nor acknowledged the ineffective-assistance claim Jeter added to his application. (*See id.*) It also never addressed Jeter's requests for counsel or a hearing.

Still proceeding *pro se*, Jeter filed a notice of appeal in order to begin the process of perfecting a certiorari petition to the state Supreme Court. *See* Rule 243(b), SCACR (stating petitioner wishing to challenge PCR court's decision initiates challenge by filing a notice of appeal). But before Jeter submitted his petition, the Supreme Court dismissed the case, finding Jeter failed to explain why the PCR court's statute-of-limitations ruling was erroneous. (Dkt. No. 18-8.) *See* Rule 243(c), SCACR (requiring PCR applicant seeking review of order dismissing application as untimely to explain why that ruling was improper).

The 2019 PCR Case

In June 2019, Jeter filed a third PCR application in which he reasserted his claim that his lawyer for the 2004 crack charges was ineffective. (Dkt. No. 18-9.) The PCR case is pending in

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the Court of Common Pleas for Cherokee County, South Carolina, under case number 2019-CP-11-00457. As of the date of this report, the PCR court has not taken any action on it, and the State has not filed anything in the case.

PROCEDURAL HISTORY

Jeter filed his § 2254 petition this past July, shortly after he filed his third PCR case. He asserts three grounds for relief. The first attacks the 2004 convictions themselves, while the second and third challenge the proceedings in the 2017 PCR case:

GROUND ONE: Ineffective Assistance of Counsel—Sixth Amendment. Plea counsel failed to ensure that the agreement and understanding of the terms of the plea were written on the sentencing sheet. Plea Counsel failed to make a motion for clarification of the sentence structure ensuring that the sentencing sheets reflected the agreement and understanding that my plea and conviction would merge and be considered one 1st offense conviction for enhancement purposes.

GROUND TWO: Due Process Violation—The PCR Court and the South Carolina Supreme Court violated my rights to Due Process as both courts failed to consider the veracity and genuine issues of material fact regarding my claims.

GROUND THREE: The lower courts violated my rights to the assistance of counsel pursuant to the Sixth Amendment of the United States Constitution and Rule 71.1(D) of the South Carolina Rules of Civil Procedure, thereby also violating my rights to due process as well.

(Dkt. No. 1 at 16, 17.) Jeter asks this Court to direct the state court to hold a hearing and correct the record to reflect that the 2004 convictions were to count as only a single first offense. (*Id.* at 14.)

A motion to stay accompanies Jeter's petition. (Dkt. No. 3.) In it, Jeter asks this Court not to decide his federal habeas petition until the state courts rule on his latest PCR case. (*Id.* at 1.)

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The Warden opposes Jeter's stay request and seeks summary judgment. (*See generally* Dkt. No. 18.) The parties have fully briefed both the summary judgment motion and the motion to stay. (*See* Dkt. Nos. 18, 32, 33.)

DISCUSSION

The Warden contends this case must be dismissed because the Court lacks jurisdiction, because the case is untimely, and because Jeter's claims lack merit. (*See* Dkt. No. 18 at 1.) He also insists the Court not stay this case. (*Id.*) Jeter opposes the the Warden's positions.

The undersigned agrees the Court lacks jurisdiction and recommends dismissing the case on that threshold basis. However, if the Court finds there is jurisdiction, the undersigned would recommend staying this case until the pending PCR case ends.

I. Jurisdiction

The Warden argues the Court lacks jurisdiction because although Jeter is currently in prison, he is not challenging the judgment that put him there. The undersigned agrees.

A person "in custody pursuant to the judgment of a State court" may obtain a writ of habeas corpus from a federal district court if his custody violates federal law. 28 U.S.C. § 2254(a). The phrase "in custody" requires "that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed." *Maleng v. Cook*, 490 U.S. 499, 490–91 (1989) (per curiam). If that requirement is not met, the court lacks subject-matter jurisdiction over the case. *See id.* at 490, 494.

A former prisoner who has been released and fully served his sentence is a prime example of someone not "in custody" under § 2254(a). A person whose conviction has expired therefore cannot use § 2254(a) to challenge its validity because he is no longer in custody. *Maleng*, 499

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U.S. at 491. This is so even if the expired conviction continues to carry collateral consequences, such as its potential to be used to enhance a sentence for a later conviction. *See id.* at 492.

Jeter has made it clear that in this case, he is challenging only his long-expired 2004 convictions. Under the section of § 2254 petition form directing him to identify "the judgment of conviction [he is] challenging," Jeter listed only his 2004 convictions. (Dkt. No. 1 at 1.) The relief he seeks involves only the correction of the record regarding those convictions. (*Id.* at 14.) In other filings, Jeter has stated the 2016 PCR case is irrelevant to the issues in his federal habeas petition. (*See* Dkt. No. 22 at 1; Dkt. No. 32 at 9, 28.) *Maleng* therefore instructs that the Court lacks jurisdiction because Jeter filed his petition not being "in custody" under the expired convictions he challenges. The Court should dismiss on that basis.

Because Jeter is representing himself, the undersigned has considered whether his § 2254 petition should be liberally construed as also (or instead) attacking the 2015 convictions for which he is currently serving time. Jeter's clearly stated intent to focus only on the 2004 convictions make such a construction untenable. But even if the petition could be construed such a way—that is, even if his current convictions were the direct target of his petition—Jeter still could not dispute the validity of his 2004 convictions within such a case.

Maleng left open the question of whether an expired prior conviction "itself may be subject to challenge in the attack upon the [current] sentences which it was used to enhance." *Maleng*, 490 U.S. at 494. In 2001, the Supreme Court determined the answer was "No." *Lackawanna Cty. Dist. Atty. v. Coss*, 532 U.S. 394, 402 (2001). In *Coss*, the Supreme Court found that a petitioner claiming the sentence he is currently serving was enhanced by an unconstitutional prior conviction does satisfy § 2254(a)'s in-custody requirement. *Id.* at 401–02. However, based on the need for finality and other policy concerns, the Supreme Court then held that "once a state conviction is no

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longer open to direct or collateral attack in its own right . . . , the conviction may be regarded as conclusively valid." *Id.* at 403. Consequently, if an expired prior conviction "is later used to enhance a criminal sentence, the defendant generally may not challenge the enhanced sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained."[1] *Id.* at 403–04. In light of *Coss*, construing Jeter's petition as an attack on his current convictions would not allow Jeter to proceed with his case.

Acknowledging *Coss* and *Maleng*, Jeter argues he nevertheless qualifies for an exception to the in-custody requirement because he can demonstrate a connection between his current confinement and the 2004 convictions. (Dkt. No. 32 at 6–7.) He relies on *Willis v. Collins*, a case where the United States Court of Appeals for the Fifth Circuit stated that, in habeas cases involving expired convictions, "a positive and demonstrable nexus between a petitioner's current custody and the allegedly unconstitutional prior conviction may be sufficient to meet the jurisdictional requirements of § 2254(a)." 989 F.2d 187, 189 (5th Cir. 1993) (cleaned up); *see also Godfrey v. Dretke*, 396 F.3d 681, 684 (5th Cir. 2005) (clarifying the proposition applies to petitions that "can be read as a challenge to the current conviction," rather than only as a challenge to the prior one). The nexus Jeter alleges is "suffering continuing effects of the 2004 conviction[s]." (Dkt. No. 32 at 10.)

As a Fifth Circuit case, *Willis* is not binding precedent; it has only persuasive value in this Court. And multiple courts have concluded that *Coss* invalidated the proposition from *Willis* on which Jeter relies. *See, e.g.*, *Shrader v. West Virginia*, No. CV 1:14-25344, 2019 WL 252529, at

[1] The majority in *Coss* recognized an exception to this rule for petitioners who did not have counsel for the expired conviction. 532 U.S. at 405. Jeter does not qualify for this exception; he had counsel. And although Jeter contends that lawyer was ineffective, such a contention does not fit within the exception. *Fields v. Cartledge*, No. 0:16-cv-2463-TMC, 2017 WL 3140910, at *3 (D.S.C. July 25, 2017).

*3 (S.D. W. Va. Jan. 17, 2019) (citation omitted), *appeal dismissed*, 765 F. App'x 38 (4th Cir. 2019); *Burgers v. Almager*, No. CV 07-8379-JVS (PJW), 2009 WL 982604, at *1 (C.D. Cal. Apr. 9, 2009); *Garrison v. Wolfe*, No. 1:01-cv-531, 2007 WL 851881, *1–2 (W.D. Mich. Mar. 20, 2007). The undersigned takes a different view, as *Coss* and *Willis* addressed different aspects of habeas: *Willis* involved § 2254(a)'s in-custody requirement, while *Coss* created an additional roadblock for habeas petitioners who are "in custody." Nevertheless, she agrees that the rule established in *Coss* ultimately prevents *Willis* from helping Jeter.

Jeter next cites two South Carolina Supreme Court opinions as support for his contention that jurisdiction exists: *Brown v. State*, 814 S.E.2d 146 (S.C. 2018) (per curiam), and *McElrath v. State*, 277 S.E.2d 890 (S.C. 1981). (*See* Dkt. No. 32 at 32.) Those cases do not inform the jurisdictional issue before the Court. They involve the prerequisites for seeking PCR in state court, not the jurisdictional restrictions on pursuing habeas in federal court. *See, e.g.*, *Brown*, 814 S.E.2d at 147 (explaining that, unlike § 2254, the analogous PCR statute has no "in custody" requirement).

Finally, Jeter asserts his case is not moot. (Dkt. No. 32 at 8, 21, 28.) But whether a case is moot is "a separate inquiry from the jurisdictional issue" of whether a petitioner is in custody under § 2254(a). *Brooks v. N.C. Dep't of Corr.*, 984 F. Supp. 940, 946 (E.D.N.C. 1997); *see also Maleng*, 490 U.S. at 492 (clarifying that although collateral consequences of a conviction may prevent a habeas case from becoming moot after the petitioner's release, they do not satisfy the "in custody" requirement).

For the above reasons, the undersigned concludes the Court lacks jurisdiction to hear Jeter's challenge to his 2004 convictions. She therefore recommends dismissing this case without prejudice.

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II. Jeter's Motion to Stay

The undersigned next addresses Jeter's motion to stay this case pending resolution of his 2019 PCR application (Dkt. No. 3). She does so here because if a stay were warranted, it would be premature for the Court to rule on any issues in the case beyond jurisdiction.

Jeter explains he filed his 2019 PCR application because, the state courts never addressed the ineffective-assistance claim he presented in the 2017 PCR case. (Dkt. No. 3 at 1.) He wants this Court to not proceed until they do so by ruling on his current PCR application. (*See id.*)

The Warden opposes this request. (Dkt. No. 18 at 1.) He argues there is no reason to stay federal proceedings, as the 2019 PCR application will be dismissed as successive and time-barred. (*Id.*)

The Court need not address this issue unless it finds jurisdiction exists. In that event, the undersigned would recommend granting Jeter's motion to stay.[2]

Jeter wants this federal case stayed while he "attempt[s] to get the merits of [Ground One] ruled on" in state court. (Dkt. No. 3 at 1.) He also explains he filed the motion to stay "with intentions to avoid any violation of the statute of limitations of this Court." (*Id.*) Those statements go to the competing concerns of exhaustion and timeliness federal habeas petitioners sometimes face.

Exhaustion of all available state remedies is a bedrock prerequisite to federal habeas relief. *See* § 2254(b)–(c); *see also Rose v. Lundy*, 455 U.S. 509, 515 (1982) ("The exhaustion doctrine existed long before its codification by Congress in 1948."). It exists to "protect the state courts'

[2] Because rulings on motions to stay in habeas cases involving potentially unexhausted claims sometimes have a dispositive effect, *see Mitchell v. Valenzuela*, 791 F.3d 1166, 1171 (9th Cir. 2015), the undersigned is addressing Jeter's motion through a report and recommendation, rather than through an order. *See, e.g.*, *Mahdi v. Stirling*, No. 8:16-cv-3911-TMC-JDA, 2017 WL 9286977, at *1 n.1 (D.S.C. Oct. 3, 2017) (taking same approach "[o]ut of an abundance of caution"), *report and recommendation adopted*, 2017 WL 6015031 (D.S.C. Dec. 5, 2017); *Stokes v. Stirling*, No. 1:16-cv-845-RBH-SVH, 2017 WL 1136040, at *1 n.1 (D.S.C. Jan. 30, 2017) (same), *report and recommendation adopted*, 2017 WL 1104926 (D.S.C. Mar. 24, 2017).

role in the enforcement of federal law" and to "prevent disruption of state judicial proceedings." *Rose*, 455 U.S. at 518. Those purposes are integral to the preservation of federalism, and district courts must see that they are taken seriously; § 2254 petitions containing even one unexhausted claim usually must be dismissed in their entirety, even if they also contain properly exhausted claims. *Id.* at 510, 518, 520.

For years, a prisoner who filed a "mixed" § 2254 petition—one asserting both exhausted and unexhausted claims—had two options: delete the unexhausted claims from his petition or go back to state court, let that court system rule on his claims, and then (if need be) return to federal court. *Rose*, 455 U.S. at 510. The latter option became problematic in 1996, when Congress created a one-year limitations period for filing § 2254 petitions. *See* 28 U.S.C. § 2244(d). Combined with *Rose*'s dismissal requirement, the limitations period created a risk that prisoners who timely filed mixed petitions would "forever los[e] their opportunity for any federal review of their unexhausted claims." *Rhines v. Weber*, 544 U.S. 269, 275 (2005). That would certainly occur when the federal court dismissed a mixed petition after the limitations period had expired,[3] and it could easily occur when the federal court dismissed just before that period was to expire. *See id.*

To fix that problem, the Supreme Court approved the practice of staying § 2254 cases involving mixed petitions and holding them in abeyance while prisoners exhausted their unexhausted claims. *Rhines*, 544 U.S. at 275–76. It did so largely on comity principles. *See id.* at 274 ("'[I]t would be unseemly in our dual system of government for a federal district court to

[3] The filing of a § 2254 petition in federal court does not toll the limitations period. *Duncan v. Walker*, 533 U.S. 167, 181–82 (2001).

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upset a state court conviction without an opportunity to the state courts to correct a constitutional violation . . . .'" (quoting *Rose*, 455 U.S. at 518)).

The Supreme Court has extended the *Rhines* stay-and-abey procedure to be used in "any circumstances that could warrant a state court resolution of a prisoner's claims." *Hyman v. Keller*, No. 10-6652, 2011 WL 3489092, at *11 (4th Cir. Aug. 10, 2011) (per curiam).[4] The Fourth Circuit drew that conclusion from *Pace v. DiGuglielmo*, where the Supreme Court considered whether the filing of an untimely collateral challenge in state court tolls the limitations period for seeking federal habeas. 544 U.S. 408, 416 (2005). After holding that such a filing would not toll the period, the Supreme Court said a petitioner could avoid the predicament "by filing a 'protective' petition in federal court and asking the federal court to stay and abey . . . until state remedies are exhausted." *Id.*

To be sure, Jeter has not cited *Pace* or *Hyman*, but that is no barrier to applying them. *See Malvo v. Mathena*, 259 F. Supp. 3d 321, 329 (D. Md. 2017) (stating "the law sensibly holds that a petitioner need not explicitly rely on a Supreme Court opinion in order for that precedent to apply to his or her claim" and then applying *Pace* despite petitioner's failure to cite it). Jeter's stated concerns about timeliness and getting a ruling show he has the concerns of *Pace*, if not its title, in mind. As for *Hyman*, it bears a significant similarity to Jeter's case.

In *Hyman*, a prisoner unsuccessfully pursued two ineffective-assistance claims in North Carolina state court and then sought habeas in federal court. 2011 WL 3489092 at *3–7. One of Hyman's claims involved an exculpatory witness. *Id.* at *1. The state courts never explicitly addressed the claim. *Id.* at *9. In federal court, the state contended the claim was procedurally

[4] Although *Hyman* is an unpublished opinion, courts within this circuit have found it accords with other circuit courts' published opinions. *Malvo v. Mathena*, 259 F. Supp. 3d 321, 328–29 (D. Md. 2017).

defaulted because Hyman failed to pursue it. *Id.* at *8. The district court disagreed and granted habeas. *Id.*

On appeal, the Fourth Circuit concluded the case had to be stayed because the state courts failed to "confront[] the procedural or substantive propriety" of the claim, and the reason for their omission was unclear: "perhaps they did not consider [it] to be fairly presented, perhaps they meant to implicitly reject it on the merits, or perhaps they simply overlooked it." 2011 WL 3489092 at *9–10. That lack of clarity left the Fourth Circuit uncertain whether the state courts would allow Hyman to try to litigate the claim again. *Id.* at *10. Recognizing the federalism that animated *Rhines* and *Pace*, the Fourth Circuit held the appeal in abeyance in order to give the state courts "an opportunity to weigh in on the procedural and substantive issues" involving Hyman's claim. *Id.* at *11.

Here, as in *Hyman*, the Warden argues Jeter's ineffective-assistance claim against his 2004 lawyer (Ground One of Jeter's habeas petition) was not properly exhausted in state court and is now procedurally defaulted. (Dkt. No. 18 at 33.) The more compelling similarity to *Hyman* is the treatment Ground One received in state court. Jeter asserted the claim in the 2017 PCR case by amending his application to include it. (Dkt. No. 29 at 55–56.) The PCR court, however, never ruled on its substance, its timeliness, or any other aspect of it. Instead, the court disposed of Jeter's entire 2017 case by adopting its reasoning from the conditional order of dismissal, which was issued before Jeter asserted the claim and thus obviously did not address it. Even more curiously, the PCR court said it was adopting that reasoning after reading Jeter's responses to the conditional order and "the original pleadings." (Dkt. No. 29 at 118.) That phrase suggests the PCR court knew Jeter had amended his application, and yet it dismissed the case without addressing the amendment. In any event, the fact that the court did not address Ground One is clear, even if the

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reason why is not. This case therefore has the same irregularity that compelled the Fourth Circuit in *Hyman* to stay federal proceedings.

The Warden argues there is no need to stay this case; the 2019 PCR application will be dismissed as improperly successive because Jeter has already lost a PCR case challenging the crack convictions. (Dkt. No. 18 at 1.) That argument draws out an important point about *Hyman*. In that case, Hyman only pursued direct appeals before going to federal court; he never filed any collateral challenges in state court. 2011 WL 3489092 at *7 n.8. At first glance, that might seem like a key distinction between *Hyman* and this case; Hyman had an avenue of state-court relief that is no longer available to Jeter. But making that distinction begs the question. Although South Carolina's state courts strongly disfavor successive applications, *Robertson v. State*, 795 S.E.2d 29, 33 (S.C. 2016), a prisoner may nevertheless file one in certain rare circumstances, *see Bryant v. Cartledge*, No. 3:09-cv-3234-CMC, 2011 WL 145328, at *2 n.1 (D.S.C. Jan. 18, 2011). Jeter contends his pending PCR case will not be dismissed because it is similar to *Case v. State*, where the state Supreme Court allowed a prisoner to proceed with a successive PCR application because the judge presiding over his first application dismissed it without holding a hearing or providing him counsel. 289 S.E.2d 413, 413–14 (S.C. 1982) (per curiam). That happened to Jeter in the 2017 case.

South Carolina's Supreme Court has long been committed to "ensur[ing] that all defendants have a full and fair opportunity to present claims in *one* PCR application, thereby preventing an applicant from receiving more than 'one bite at the apple as it were.'" *Matthews v. Evatt*, 105 F.3d 907, 916 (4th Cir. 1997) (quoting *Gamble v. State*, 379 S.E.2d 118, 119 (S.C. 1989)), *abrogation on other grounds recognized by United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011). As the Fourth Circuit explained in *Matthews*, the state Supreme Court has allowed

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successive PCR applications where the defendant "never received a full bite at the apple" in the first PCR case because he "was essentially prevented—through no fault of his own—from fairly presenting his claims and/or having his claims adjudicated in the initial PCR application." *Id.* That observation informs the analysis here. The undersigned has not found any PCR cases with a history precisely like Jeter's. It may well be that the state courts find Jeter has had his one bite and therefore dismiss his latest application as successive. But between the similarities to *Case*, the PCR court's unusual handling of Jeter's ineffective-assistance claim, and the fact that Jeter's 2017 PCR application stemmed from what the State did in another PCR case, the undersigned cannot confidently predict the 2019 PCR case will end that way. The state courts could find Jeter was denied a full and fair shot at litigating Ground One. Because Jeter may still have a means of relief available to him in state court, his case is not meaningfully different than *Hyman*.[5]

The Warden also argues no stay is needed because the 2019 case is untimely. (Dkt. No. 18 at 1.) It is true that the 2017 PCR court found another of Jeter's claims involving the crack convictions time-barred under the PCR statute of limitations. Importantly, however, the court never made such a ruling—or any ruling—on Ground One. The current PCR court may find Jeter had to assert the claim within one year of conviction, as subsection 17-27-45(A) of the South Carolina Code generally requires and as the PCR court held in the 2017 case. Or, perhaps it may find the application timely; after all, the State went more than a decade without trying to use the convictions as predicates for sentencing enhancements, and Jeter has produced reports from South Carolina law enforcement agencies indicating he had only one crack conviction in 2004. (*See* Dkt.

[5] Indeed, in *Hyman*, the Fourth Circuit was similarly uncertain whether Hyman would be able to proceed in state court and, if so, what types of proceedings might be available to him. *See* 2011 WL 3489092 at *10 ("[W]e are uncertain whether, if Hyman seeks to resurrect the exculpatory witness component in the state courts, those courts will enforce a procedural bar."); *id.* at *11 n.11 ("We take no position as to what, if any, procedural avenues may yet be available to Hyman in the Court of Appeals or Supreme Court of North Carolina.").

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No. 18-1 at 156–57; Dkt. No. 29 at 76–79.) *Cf. Coats v. State*, 575 S.E.2d 557, 559 (S.C. 2003) (holding PCR application alleging ineffective assistance regarding parole eligibility was timely under the discovery rule in subsection 17-27-45(C); although applicant sought PCR years after conviction, he filed application within year of learning he was in fact not parole eligible). As with the successiveness question, comity counsels that the PCR court should decide this issue.

In sum, if the Court has jurisdiction, this matter should be held in abeyance until the pending PCR case ends.

CONCLUSION

For the above reasons, the undersigned recommends the Court dismiss this case without prejudice for lack of jurisdiction. Alternatively, if the District Judge finds jurisdiction exists, the undersigned recommends staying this case.

IT IS SO RECOMMENDED.

January 14, 2020
Charleston, South Carolina

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

The parties' attention is directed to the important notice on the next page.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

ALONZO C. JETER III, Petitioner,	§	
vs.	§	CIVIL ACTION NO. 2:19-1945-MGL
BARRY TUCKER, Respondent.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION AND DISMISSING THIS ACTION WITHOUT PREJUDICE

Petitioner Alonzo C. Jeter III (Jeter) filed this 28 U.S.C. § 2254 petition against Respondent Barry Tucker (Tucker). Jeter is self represented.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Jeter's petition be dismissed without prejudice for lack of subject matter jurisdiction or, in the alternative, stayed. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

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The Magistrate Judge filed the Report on January 14, 2020. Tucker filed his objections to the Report on January 24, 2020, and the Clerk filed Jeter's objections and his motion for a certificate of appealability on February 11, 2020. The Clerk then filed Jeter's reply to Tucker's objections on February 12, 2020, and Tucker filed his reply to Jeter's objections on February 14, 2020. Tucker filed another reply to Jeter's objections on February 18, 2020. The Clerk subsequently filed Jeter's supplemental objections and a supplement to his motion for a certificate of appealability on February 19, 2020.

In Jeter's objections and supplemental objections, he generally does nothing more than present the same arguments the Magistrate Judge has already considered and rejected in her comprehensive and well-reasoned Report. Because the Court agrees with her treatment of these issues, it need not repeat the discussion here. Jeter's remaining objection are so lacking in merit as to require no discussion. Consequently, the Court will overrule Jeter's objections.

Regarding Tucker's objections, inasmuch as the Court will grant Tucker's motion for summary judgment for lack subject matter jurisdiction, it will deem as moot his objections concerning the additional grounds on which he argues the Court should dismiss Jeter's petition.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Jeter's objections, deems as moot Tucker's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Jeter's petition is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction, Jeter's motion for a certificate of appealability is **DENIED**, and any remaining motions are **RENDERED AS MOOT**.

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IT IS SO ORDERED.

Signed this 5th day of March, 2020, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

*****

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

July 13, 2022

Alonzo C. Jeter, III, #282902
Manning Correctional Institution
W-5/53B
502 Beckman Drive
Columbia, South Carolina 29203

The Honorable Brandy W. McBee
Clerk, Cherokee County Court
Post Office Box 2289
125 E. Floyd Baker Blvd.
Gaffney, South Carolina 29342

RE: Alonzo C. Jeter, III, v State of South Carolina
Case No. 2019-CP-11-0457

Dear Honorable McBee,

I write seeking that you would inform me of whether or not there is any documentation, regarding the scheduling of the hearing which was held in this case on March 31, 2022, is included in the case file. If so, this would have been submitted to your office by the Honorable Judge J. Derham Cole, or the Office of the Attorney General.

Secondly, I recently mailed to your office for filing, South Carolina Department of Corrections' Supplemental Production Responsive To Subpoena, which also contained 2 (two) Audio CDs. Will you please confirm and verify for me that these CDs have been received by your office and have also been filed for the record in this case.

Thank you for your assistance and attention in these matters.

Sincerely,

Alonzo C. Jeter, III

* P.S. Please return to me a file-stamped copy of this correspondence by way of SASE.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Alonzo C. **JETER**, III,
SCDC # 00282902
Petitioner,

-vs-

The **STATE** of South Carolina,
Respondent.

ORDER
FOR TRANSPORTATION

C. A. No. **2019-CP-11-00457**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 MAR 29 AM 9:05
BRANDY W. MCBEE

TO: **BRYAN P. STIRLING**, Director, South Carolina Department of Corrections and
STEPHEN DUNCAN, Warden, MANNING Correctional Institution

Inmate **ALONZO COLUMBUS JETER, SCDC # 00282902,** presently confined in the South Carolina Department of Corrections, is the petitioner in the above-captioned post-conviction relief application for which a Rule 59(e) Motion is now pending.

A hearing is scheduled in this matter for **THURSDAY, MARCH 31, 2022** at **2:00 P.M.** in **COURTROOM WEST A** at the **SPARTANBURG COUNTY JUDICIAL CENTER** located at **180 MAGNOLIA STREET, SPARTANBURG, SOUTH CAROLINA.** It is necessary that the above-referenced inmate be present at the hearing.

IT IS THEREFORE ORDERED that the appropriate authority within the South Carolina Department of Corrections do transport **ALONZO COLUMBUS JETER, SCDC # 00282902,** to the Spartanburg County Judicial Center for the scheduled hearing and that he **ARRIVE NOT LATER THAN 2:00 P.M.** on **MARCH 31, 2022** after which he shall be returned to the appropriate correctional facility.

IT IS SO ORDERED.

J. DERHAM COLE, Resident **JUDGE**
The Seventh Judicial Circuit Court

MARCH 23, 2022

Office of
CLERK OF COURT
CHEROKEE COUNTY
MRS. BRANDY W. MCBEE, CLERK
Post Office Drawer 2289
Gaffney, S.C. 29342
Phone: 864-487-2571 • Fax: 864-487-2754

Date: 07/06/2022

Case Number: 2019CP1100457

The attached document and all remittance are being returned for the reason(s) checked below:

- ☐ **Insufficient amount of filing fee (please send $1.00)**
- ☐ **The Judge is no longer in this Circuit. Please forward to him/her directly.**
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- ☐ **Case ended: Date:_____ Reason Ended: _____**
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BRANDY W. MCBEE

Comments: Mr. Jeter,

You will need to hold on to these disks until it is time for your hearing. This office will only file evidence that is submitted during a trial.

Thank you.

Enc: