FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP0600318

Willie Frazier		**South Carolina State of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: **Conditional Order of Dismissal.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/| Clifton Newman — **Circuit Court Judge**

2127 — **Judge Code**

12/21/2021 — **Date**

For Clerk of Court Office Use Only

This judgment was entered on **December 7, 2021**, and a copy mailed first class or placed in the appropriate attorney's box on **December 21, 2021**, to attorneys of record or to parties (when appearing pro se) as follows:

Willie Frazier #219272
Rhu Room 895
MCI
386 Redemption Way
McCormick, SC 29899

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Carter

Court Reporter

Constance B. Carter - Deputy Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Willie Frazier, SCDC No. 219272, Applicant, v. State of South Carolina, Respondent.	Case No.: 2019-CP-06-0318 **CONDITIONAL ORDER OF DISMISSAL**

This matter is before the Court based on a successive, fourth application for post-conviction relief filed by Applicant Willie Frazier on August 12, 2019. In response, Respondent the State of South Carolina made its return[1] and moved to summarily dismiss the action as procedurally barred as successive, untimely, and for failing to make a prima facie showing of newly discovered evidence pursuant to the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed as untimely and successive and provisionally dismisses the action based on the following:

[1] Respondent's return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts this return as timely filed and denies Applicant's motion for an entry of default against the State. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County on convictions and sentences unrelated to those challenged in this action.[2] The charges Applicant challenges in this application arose in Barnwell County. In February 1995, the Barnwell County Grand Jury indicted Applicant for Pointing a Firearm (1995-GS-06-0051), Attempted Armed Robbery (1995-GS-06-0036), and Assault and Battery with Intent to Kill (ABWIK) (1995-GS-06-0035). Applicant was represented by Karen Fryer, Esquire.

On February 8, 1995, Applicant, alongside counsel, appeared before the Honorable James W. Johnson, Jr., where he pled guilty to Pointing a Firearm, Attempted Armed Robbery, and the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN). Judge Johnson sentenced Applicant to one to five years imprisonment for pointing a firearm, one to six years imprisonment for attempted armed robbery, and one to six years imprisonment for ABHAN, all under the Youthful Offender Act Applicant did not appeal his convictions and sentences.

First PCR Application (2004-CP-06-0188) and Subsequent Appeal

More than nine years later, Applicant filed his first application for post-conviction relief on August 11, 2004. In this application, Applicant alleged he was being held in custody unlawfully

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[2] Applicant was indicted by the Aiken County Grand Jury for Criminal Conspiracy (1997-GS-02-1726), Burglary (Dwelling) (1997-GS-02-1727), Possession of Firearm or Knife during Commission of Violent Crime (1997-GS-02-1742), and Armed Robbery (1997-GS-02-1743). He was represented on the charges by I.S. Leevy Johnson, Esquire. Applicant was found guilty following a jury trial. Applicant is serving life sentences for Armed Robbery and Burglary as well as concurrent terms of five years imprisonment each for Criminal Conspiracy and Possession of Firearm or Knife during Commission of Violent Crime. A Notice of Appeal was filed and an appeal perfected. Applicant's convictions and sentences were affirmed. State v. Frazier. Op. No. 2000-MO-108 (S.C. Sup. Ct. filed August 23, 2000). The Remittitur was sent on September 12, 2000. Applicant has filed numerous post-conviction relief actions and other collateral actions challenging these Aiken County convictions, all of which have been denied.

based on a claim of lack of subject matter jurisdiction. Respondent made its return and motion to dismiss on June 14, 2005, requesting that the application be dismissed as untimely. A hearing was held on August 10, 2006, before the Honorable Doyet A. Early, III, circuit court judge. Angela Abstance, Esquire, represented Applicant. By order dated September 25, 2006, and filed October 9, 2006, Judge Early denied and dismissed the application with prejudice, finding Applicant failed to timely pursue relief.

Applicant filed a timely notice of appeal. By order issued on November 27, 2006, the South Carolina Supreme Court dismissed the appeal pursuant to Rule 227(c), SCACR, finding Applicant "failed to show that there is an arguable basis for asserting that the determination by the lower court was improper." The remittitur was issued thereafter.

Second PCR Application (2010-CP-06-0015) and Subsequent Appeal

On January 29, 2010, Applicant filed his second post-conviction relief application challenging these convictions, alleging the following issues:

1. "Prior conviction of Attempted Armed Robbery still persist."
2. "Illegal conviction and sentence under YOA status S.C. Code 24-19-10."
3. "6th and 14th Amendment violation LWOP violation."

Respondent submitted its Return and Motion to Dismiss on September 1, 2010. Judge Early, acting in his capacity as Chief Administrative Judge of the Second Judicial Circuit, issued a Conditional Order of Dismissal on September 3, 2010, provisionally dismissing the application as successive and untimely but affording Applicant twenty days from the date of service to respond with sufficient reasons as to why he should be allowed to proceed with this application.

Applicant responded to the Conditional Order with a document entitled "Objection: Standing, Belated Direct Appeal Conditional Order Reply" on September 24, 2010. In this document, Applicant argued the following:

1. Applicant has standing because results of prior convictions still persist.

2. Applicant was not eligible for YOA sentence for Attempted Armed Robbery. The plea enhanced later convictions in Aiken County. Counsel failed to object to the YOA sentence.
3. Counsel failed to file an appeal following the guilty plea raising the issue of sentence.
4. The recidivist statute does not state that a YOA conviction can be used for enhancement.

After reviewing this response, Judge Early determined Applicant failed to provide a sufficient reason to overcome the procedural bars and issued his Final Order of Dismissal on February 4, 2011.

Applicant filed a timely notice of appeal. By order issued on May 3, 2011, the South Carolina Supreme Court dismissed the appeal pursuant to Rule 234(c), SCACR, finding Applicant failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. The Remittitur was sent on May 20, 2011.

Third PCR Application (2011-CP-06-0116) and Subsequent Appeal

On March 14, 2011, Applicant filed his third post-conviction relief application challenging these convictions, alleging various claims of ineffective assistance of plea counsel and prior PCR counsel, involuntary guilty plea, and violations of his due process rights. Respondent moved to dismiss the action as successive, untimely, and barred by the doctrine of *laches*. Judge Early, acting in his capacity as Chief Administrative Judge of the Second Judicial Circuit, issued a Conditional Order of Dismissal on August 15, 2011, provisionally dismissing the application as successive and untimely but affording Applicant twenty days from the date of service to respond with sufficient reasons as to why he should be allowed to proceed with this application. Applicant filed a response, but after a review of this response, Judge Early determined Applicant failed to provide a sufficient reason to overcome the procedural bars and issued his Final Order of Dismissal on December 21, 2011. This Final Order of Dismissal was filed on January 9, 2012. Applicant subsequently filed a motion to reconsider, which was denied.

Applicant filed a timely notice of appeal. By order issued on July 23, 2012, the South Carolina Supreme Court dismissed the appeal pursuant to Rule 234(c), SCACR, finding Applicant "failed to provide a written explanation as to why the lower court ruling was improper." The Remittitur was sent on August 10, 2012)

Petition for Habeas Corpus in the United States District Court (4:14-cv-889-MGL-TER)

Applicant subsequently filed a *pro se* Petition for Writ of Habeas Corpus on March 13, 2014. In this petition, Applicant asserted the following ground for relief:

> Ground One: Actual innocence. – "Prosecution failure to disclose 'after request' Audio tape made by [Applicant] given statement co-defendant committed the shooting and prosecution failure to disclose witnesses statements that co-defendant involved in case shot the victim. Prosecution never disclosed Rule 5 material exculpatory' evidence of the witness statements favorable to [Applicant]."
> Ground Two: Miscarriage of Justice – "District Court denied [Applicant's] motion to stay the proceedings, but the order never specified with or without prejudice."
> Ground Three: Lack of Subject Matter Jurisdiction/ Actual Innocence – "Trial court should have dismissed the criminal charge because the solicitor failed to re-indict following nolle prose qui of the Court indictment to the offenses of assault and battery with intent to kill, and possession of a firearm."
> Ground Four: "[Applicant's] YOA was not revoked by the parole services in accordance with due process, within procedural due process, YOA conviction was used to enhance current sentence. [Applicant] claims presented herein show a fundamental miscarriage of justice, parole board could have expunged YOA and informed the Court to show YOA cannot be used as a violent crime for enhancement."

On April 29, 2014, the Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued a Report and Recommendation recommending that the petition be dismissed with prejudice as successive and unauthorized. On June 18, 2014, the Honorable Mary G. Lewis, United States District Judge, adopted the Report and Recommendation and the petition was summarily dismissed. A certificate of appealability was also denied.

Petition for Habeas Corpus in the United States District Court (4:21-cv-01674-MGL)

Applicant subsequently filed a second *pro se* Petition for Writ of Habeas Corpus on August 18, 2021. United States Magistrate Judge Thomas E. Rogers, III, issued a report and

recommendation that the petition be denied as successive and unauthorized. This action is still pending as of the filing of this return.

CURRENT ACTION BEFORE THE COURT

On August 12, 2019, Applicant filed this successive application for post-conviction relief, alleging the following:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. "Trial counsel failed to motion to quash direct indictment."
4. "Prosecutorial Retaliation"

On September 13, 2019, Applicant filed a *pro se* accompanying "Memorandum of Law" and a September 23, 2019, Applicant filed a "Motion to Amend" with the following allegations:

1. Ineffective Assistance of Counsel
2. Lack of Notice of Indictment
3. Procedural Due Process Violation

Applicant requests following forms of relief: "Vacate prior conviction that was used as a strike to enhance § 17-25-45.

Applicant has filed numerous motions for summary judgment, arguing that he is entitled to relief as a matter of law.

In response, Respondent made its return to the action and moved to dismiss the application as untimely, successive, and barred by *res judicata* and *laches*.

Attached to Respondent's return and before this Court are the Barnwell County Clerk of Court records, the South Carolina Department of Corrections' records, prior PCR records, prior PCR appeal records, Applicant's federal habeas corpus records, and the current PCR records.

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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Summary Dismissal Based On Successiveness

Respondent moved to summarily dismiss the application because it is successive to Applicant's previous post-conviction relief applications. Applicant has previously filed three post-conviction relief actions and two federal habeas actions. Applicant cannot proceed forward on a successive application based on these grounds which he could have raised in his initial action. Summary dismissal is appropriate.

The Uniform Post-Conviction Procedures Act disfavors successive applications and places the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. S.C. Code Ann. § 17-27-90; Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016) (noting all defendants are entitled to a full and fair opportunity to present claims in one post-conviction relief application and successive PCR applications and appeals are generally disfavored because they allow a defendant to receive more than one bite at the apple); Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004) (noting that state law generally procedurally prohibits a continuance of post-conviction proceedings and submission of successive petitions for post-conviction relief); Tilley v. State, 334 S.C. 24, 511

S.E.2d 689 (1999) (noting successive post-conviction relief applications are disfavored and the applicant has the burden to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Section 17-27-90 states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Section 17-27-90 is clear—successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The South Carolina Supreme Court held the South Carolina post-conviction relief processes "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 395. Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised these claims in his initial application.

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." Accordingly, the application should be dismissed as successive to Applicant's three previous PCR applications.

Summary Dismissal Based on the Statute of Limitations

Respondent also argues 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).

In the present case, Applicant alleges he is entitled to post-conviction relief based on a variety of challenges ranging from ineffective assistance of counsel to involuntary guilty plea to due process violations. However he has failed to explain why he could not have timely raised these claims, which all fall under Section 17-27-45(A) and require any application to have been filed within one year of his guilty plea of February 8, 1995. Applicant did not file this application until on August 12, 2019, well over two decades after he pled guilty. Accordingly, this Court finds this application should be dismissed as untimely.

Summary Dismissal Based on the Doctrine of Laches

This application should further be summarily dismissed based on the equitable doctrine of *laches*. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id.

Where a PCR applicant fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("*Laches* connotes not only an undue lapse of time, but also negligence and opportunity to have

acted sooner."). "Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Whitehead, 352 S.C. at 219, 574 S.E.2d at 202. Recognizing the importance of finality in litigation, Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. § 17-27-45(A).

Applicant filed this PCR action over two decades after he pled guilty and was sentenced. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held). Applicant's delay has greatly prejudiced the State (as well as Applicant). Absent some explanation or justification for the delay in seeking PCR, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Witness memories and physical evidence will have naturally faded and degraded. State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant).

As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. For some inexplicable reason, he waited more than

two decades to pursue these claims. Therefore, this application should be summarily dismissed as barred by the equitable doctrine of *laches*.

Res Judicata

Because the allegations in the current application were or could have been raised in Applicant's previous state proceedings, this action is further barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth, 275 S.C. 615, 274 S.E.2d 415.

In Foxworth v. State, the appellants—Myron Foxworth and Gary Wilson—were convicted of armed robbery and sentenced to twenty-two years imprisonment. Both men appealed their convictions, which were affirmed and their appeals dismissed. Id. at 616, 274 S.E.2d at 415. They then filed *pro se* petitions for writs of habeas corpus relief in the South Carolina Federal District Court, without exhausting their state PCR remedies. The District Court considered "the trial record and the numerous allegations raised in the petitions . . . and [it] dismissed [the petitions] on the merits." Id. Both men then filed *pro se* PCR applications, but the PCR judge found their applications were without merit. He further found that *res judicata* barred claims raised in the applications, as well as those that *could have* been raised. Id. at 616-17, 274 S.E.2d at 415-16 (emphasis added). Our Supreme Court agreed. Relying upon section 17-27-90 and its prior decisions construing that statute, the Court held:

> The language of Section 17-27-90 is not restricted to State proceedings but rather refers to "any other proceeding" where relief might be sought prior to the submission of a subsequent application. We, therefore, extend the reasoning espoused in *Land v. State*,

> *supra*, to the situation where, as here, an application in the State court follows a federal habeas corpus adjudication. The burden is on the applicant to prove that the alleged grounds for relief could not have been raised in federal court.

Id. at 618, 274 S.E.2d at 416.

Applicant has litigated previous PCR applications in the circuit court. The finality of the previous courts' rulings should be respected, and this Court should summarily dismiss this action as barred by the principles of *res judicata*.

Frustration of Finality of Convictions

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. *See Butler v. State*, 397 S.E.2d 87 (S.C. 1990). . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95.

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703

F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, 401 U.S. 667, 691 (1971), Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

Mackey, 401 U.S. at 691 (Harlan, J., concurring in judgments in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's Opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to litigate his successive and time-barred application is contrary to the recognized need for finality of litigation.

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 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 Baernwell County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – Megan Harrigan Jameson
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Barnwell County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 7th day of December, 2021.

CLIFTON NEWMAN
Chief Administrative Judge
Second Judicial Circuit

Kingstree, South Carolina

ALAN WILSON
ATTORNEY GENERAL

December 15, 2021

The Honorable Rhonda D. McElveen
Clerk of Court, Barnwell County
Post Office Box 723
Barnwell, South Carolina 29812

Re: **Willie Frazier, #219272 v. State of South Carolina**
2019-CP-06-00318

Dear Ms. McElveen:

Enclosed please find the original Conditional Order of Dismissal, signed by the Honorable Clifton Newman, in the above-captioned case for filing in your office. Please forward a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/ks
Enclosure(s)

cc: Willie Frazier, #219272