

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-04-1796

Jeffrey D. Jones, #290522

State of South Carolina

2012 FEB - 9 A 9:08
CLERK'S OFFICE
ANDERSON

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kathleen E. May

Attorney for: Plaintiff Defendant
or
 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(i), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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Clerk
CLERK OF COURT

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:

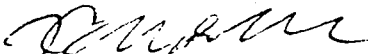
INFORMATION FOR THE PUBLIC INDEX

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.


Circuit Court Judge

8131
Judge Code

2/10/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 9th day of Feb. 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Feb. 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

Jeffrey D. Jones, #290522

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kristen E. May

Attorney General's Office

PO Box 11649 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

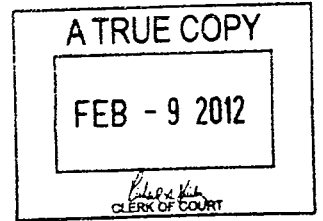
FILED-CLERK'S OFFICE
ANDERSON SC
2012 FEB - 9 A 9:08
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
)
 Jeffrey D. Jones,)
)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-04-1796

FINAL ORDER



FILED - CLERK'S OFFICE
 ANDERSON SC
 2012 FEB - 9 A 9:08
 COMMON PLEAS AND
 GENERAL SESSIONS

This matter comes before this Court by way of an Application for post-conviction relief (PCR) filed June 3, 2011. Respondent made its Return and Motion to Dismiss on November 2, 2011, requesting that the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed November 17, 2011, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is the acknowledgement of receipt form dated December 1, 2011.

In a document captioned "Motion to Object/Reconsider," filed December 8, 2011, Applicant argues that his application should not be summarily dismissed because "there is evidence evidence of material facts not properly presented and heard that requires vacation of the conviction conviction and sentence." Applicant asserts that his PCR counsel was ineffective in failing to amend amend Applicant's *pro se* PCR application to include all grounds and that Applicant's PCR counsel

counsel failed to ensure that all issues raised were properly addressed in the Order of Dismissal. Specifically, Applicant claims that PCR counsel failed to amend Applicant's application to include include failure of plea counsel to request a competency hearing and therefore failed to ensure all issues Applicant wanted raised were addressed in the Order of Dismissal. To the contrary, the issue issue of Applicant's competency and whether PCR counsel was ineffective in failing to properly present the issue was explicitly addressed and denied in the PCR Court's Order of Dismissal. The PCR court found that the Applicant failed to prove that he was incompetent when he entered his guilty plea and that plea counsel informed the PCR court that he had no concern about Applicant's Applicant's competency during his representation of Applicant. The South Carolina Court of Appeals later affirmed the PCR court's denial on the issue of Applicant's competency and whether whether plea counsel was ineffective for failing request a competency hearing by dismissing the Applicant's Petition for Writ of Certiorari. The United States District Court also denied Applicant Applicant relief on these allegations.

This Court finds that Applicant's allegation that PCR counsel was ineffective in failing to properly present the competency issue was later raised and ruled upon in Applicant's PCR Appeal [where appellate counsel raised the issue of whether the PCR judge erred in denying relief where Applicant was not shown to be competent to enter a plea and where trial counsel failed to have Applicant evaluated and failed to request a competency hearing] and in Applicant's Petition for Writ of Habeas Corpus [where Applicant raised the issue of ineffective assistance of counsel for failing to have Applicant evaluated for competency before having Applicant enter a guilty plea].

This Court has reviewed the Applicant's response to the State's motion to dismiss in its

entirety, in conjunction with the original pleadings, and finds that sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant has shown no reason for the eight year delay between his conviction and his filing of this PCR application. Furthermore, the Applicant has shown no reason why these grounds could not have been raised or were not properly raised by him in his previous PCR application, PCR appeal, and Habeas Corpus Corpus Petition. 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 PCR is hereby denied and dismissed with prejudice.

This Court hereby advised the Applicant he must file and serve a Notice of Appeal within thirty (30) days of service on this Order to secure appellate review. See Rule 203, SCRAP. The Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 6 day of February, 2012.



J. Cordell Maddox, Jr.
Chief Administrative Judge
Tenth Judicial Circuit

Anderson South Carolina

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ANDERSON SC
2012 FEB - 9 A 9: 00
COMMON PLEAS AND
GENERAL SESSIONS

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

JEFFREY D. JONES, #290522,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Order has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

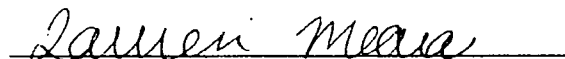
**Jeffrey D. Jones, #290522
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899**

This 15th Day of February, 2012.



Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 15th Day of February, 2012.


Notary Public for South Carolina.
My Commission Expires: 9/25/19

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-04-1796

Jeffrey D. Jones, #290522,

FILED-CLERK'S OFFICE
 ANDERSON SC

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kaelon E. May

COMMON PLEAS AND
 GENERAL SESSIONS

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

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 Affirmed; Reversed; Remanded; Other

A TRUE COPY
 NOV 17 2011
 Clerk of Court

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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 :

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Circuit Court Judge - R. Lawton McIntosh

2155
 Judge Code

11-18-11
 Date

KN
 10

For Clerk of Court Office Use Only

This judgment was entered on the 17th day of Nov., 2011 and a copy mailed first class or placed in the appropriate attorney's box on this 17th day of Nov., 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Jeffrey D. Jones, #290522

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon E. May

Attorney General's Office

PO Box 11579 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

CLERK OF COURT - Richard A. Shirley

Court Reporter:

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ANDERSON SC
2011 NOV 17 A 9:12
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
ANDERSON SC

COUNTY OF ANDERSON NOV 17 2011 A 9:12

COMMON PLEAS AND
GENERAL SESSIONS

2011-CP-04-1796

Jeffrey D. Jones,

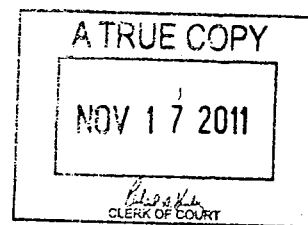
Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL



This matter comes before this Court by way of an application for post-conviction relief (PCR) filed June 3, 2011. Respondent made its Return and Motion to Dismiss on November 2, 2011.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the September 2002 term of the Anderson County Grand Jury for murder (02-GS-04-2452). He was represented by Robert Gamble, Esquire. On February 3, 2003, the Applicant pled guilty to the charge. He was sentenced by the Honorable J.C. Nicholson, Jr. to confinement for a period of thirty years. The Applicant did not appeal his conviction or sentence.

The Applicant filed an application for post-conviction relief (PCR) on April 17, 2003 (2003-2003-CP-04-1098). In his Application the Applicant alleged: (1) Ineffective assistance of counsel in

counsel in that counsel's deficient performance failed to render legal assistance, counsel told defendant to plead guilty, and counsel misadvised defendant as to parole eligibility; (2) involuntary involuntary guilty plea in that counsel manipulated and coerced defendant into pleading guilty, and defendant was not competent at the time of his plea; and (3) constitutional violation of Miranda rights in that officers manipulated and coerced statement out of defendant. An evidentiary hearing into the matter was convened on February 27, 2007, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Victor McDade, Esquire. Respondent was represented by Daniel E. Grigg of the South Carolina Attorney General's Office. On March 20, 2007, the Honorable Alexander Macaulay issued an Order denying and dismissing Applicant's application with prejudice.

Applicant subsequently appealed the denial of his PCR application. Applicant was represented in the appeal by M. Celia Robinson, Appellate Defender. Ms. Robinson filed a Petition for Writ of Certiorari, raising the following issues: (1) whether the PCR judge erred in ruling that the PCR application could not properly be amended prior to or during the PCR hearing and erred in ruling that Applicant was barred from seeking relief on grounds not initially raised?; (2) whether the PCR judge erred in denying relief where Applicant established that he was wrongly advised about parole eligibility and that he would not have entered a guilty plea but for the fact that he believed he would be required to serve only 85%?; and (3) whether the PCR judge erred in denying relief where Applicant was not shown to be competent to enter a plea and where trial counsel failed to have Applicant evaluated and failed to request a competency hearing? The State filed its Return to the Petition on March 27, 2008. The South Carolina Court of

of Appeals denied the Applicant's Petition on June 11, 2009. The remittitur was issued on June 29, 29, 2009.

Applicant filed a Petition for Writ of Habeas Corpus on February 16, 2010 (9:10-49-HFF- (9:10-49-HFF-BM). The State filed its Return on April 12, 2010. In his Petition, the Applicant raised raised the following grounds: (1) guilty plea not knowingly and intelligently entered because the trial trial judge misadvised him during his plea that he would have to serve 85% of his sentence; (2) ineffective assistance of counsel for failing to have Applicant evaluated for competency before having Applicant enter a guilty plea; (3) due process violation by an improperly paneled grand jury; jury; and (4) abuse of discretion on behalf of PCR Court. The United States District Court granted granted Respondent's motion for summary judgment. The Order dismissing Applicant's petition was was issued on December 1, 2010.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel and PCR Counsel
 - a) admissibility of confession / involuntary confession in that PCR counsel and trial counsel did not have mental health examination done;
2. Ineffective Assistance of PCR Counsel
 - a) failure to conduct an investigation;
 - b) failure to invoke the discovery process;
 - c) failure to question witnesses;
 - d) failure to abide by Rule 71.1(d);
 - e) failure to abide by Rule 71.1(e);
 - f) failure to argue sham legal process;
 - g) failure to amend PCR application;
 - h) failure to file a 59(e) or file a proposed order on behalf;

3. Involuntary Guilty Plea
 - a) Applicant was told by Judge that he will serve 85% of whatever time he imposed;
4. Subject Matter Jurisdiction
 - a) "the solicitor's failure to move to dispose of this case within 180 days from the date of defendant's arrest indicates a voluntary and intentional relinquishment of the right to do so, and upholding such waiver, this case should have been dismissed."

III.

Before this Court are the records of the Anderson County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, Applicant's current application for PCR, Applicant's records from his first PCR case (2003-CP-04-1098), and the records from Applicant's prior appeal and habeas proceedings. This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), this Court makes the following findings of fact and conclusions of law:

This Court finds that this Application for Post-Conviction Relief 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 (Supp. 2003).

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offense(s) he challenges in this Application on February 3,

2003. This Application was filed on June 3, 2011, well after the one-year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2010) 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." Therefore, this Court finds that this Application for post conviction relief must be summarily dismissed for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

This Court finds that the current Application for PCR must be summarily dismissed because it is successive to Applicant's prior applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2010) 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to 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).

(1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” [Emphasis in original]. Id., 305 S.C. at S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant’s claims regarding the admissibility of his confession and/or involuntary confession, counsel’s failure to have Applicant’s mental health examined, subject matter jurisdiction, jurisdiction, and that Applicant was misadvised concerning parole eligibility have all been previously previously raised by the Applicant in his first PCR case (2003-CP-04-1098), in Applicant’s appeal of appeal of his first PCR case, and in Applicant’s Petition for Habeas Corpus. In Applicant’s first PCR PCR case, the Order denying PCR specifically addressed and denied each of these issues. The PCR PCR court found that the Applicant failed to prove that he was incompetent when he entered his guilty plea and that plea counsel informed the PCR court that he had no concern about Applicant’s Applicant’s competency during his representation of Applicant. The PCR court found with regard to regard to subject matter jurisdiction that there was nothing improper with the methods of the grand grand jury in returning the indictment against Applicant. Additionally, the court found the grand jury jury in Applicant’s case met within two (2) months after the incident occurred. The PCR court further found that while Applicant did not appropriately raise the issue of being wrongly advised about the 85% rule in his application and thus barred from seeking relief on this ground, if this issue issue was properly before the court, the court found that it was not a sufficient basis upon which to to grant Applicant’s requested relief. The South Carolina Court of Appeals later affirmed the PCR

PCR court's denial by dismissing the Applicant's Petition for Writ of Certiorari. The United States District Court also denied Applicant relief on these allegations.

The courts of South Carolina have thoroughly heard and responded to the aforementioned claims in the past and again the Applicant attempts to raise these same claims in his current Application. This Court finds that the Applicant in his current Application has failed to provide a sufficient reason why his allegations were not properly raised in his previous application and appeals. A successive application is one which raises grounds not raised in prior applications, grounds previously heard and determined, or grounds waived in prior proceedings. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The Applicant's application is successive because the Applicant's current allegations have already been raised and ruled upon. Accordingly, this Court finds that this Application for post conviction relief must be summarily dismissed because it is successive to Applicant's prior PCR, PCR appeal, and Habeas proceedings.

V.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-

post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation” . . .” Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. This exception is not applicable to the Applicant’s current Applicant because the Applicant did appeal the denial of his first PCR application. Therefore, this Court finds that this allegation must be denied and dismissed.

VI.

This Court further finds that the doctrine of *res judicata* bars the Applicant’s claims. *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 actions bars supplement 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 actions. Id.

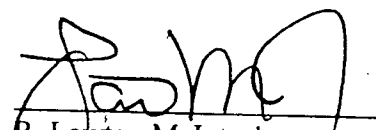
The Applicant had a full opportunity to litigate all allegations complained of in this Applicant for post-conviction relief in the state and federal courts. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, this Court finds the Applicant’s claims are barred by *res judicata*.

VII.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Kaelon E. May, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 15 day of November, 2011


R. Lawton McIntosh
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

FILED-CLERK'S OFFICE
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