STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	
Isaiah Brown, S.C.D.C. No. 347241,	)	Case No.: 2018-CP-17-00465
Applicant,	)	
	)	**CONDITIONAL ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Isaiah Brown (Applicant) on October 15, 2018. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted at the June 2010 term of the Dillon County Grand Jury for murder (2010-GS-17-00494). Applicant was additionally indicted at the August 2010 term for criminal conspiracy (2010-GS-17-00616), possession of a weapon during the commission of a violent crime (2010-GS-17-00617), armed robbery (2010-GS-17-00618). William E. Grove, Esq. represented Applicant, and W. Shipp Daniel, III, Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. On August 8, 2011, Applicant pled guilty as indicted. The Honorable Howard P. King sentenced Applicant to imprisonment for concurrent terms of 45 years for murder, 5 years for criminal conspiracy, 5 years for the weapons charge, and 30 years for armed robbery.

Applicant thereafter filed a timely motion to withdraw the guilty plea. A hearing on the motion was convened before Judge King on March 7, 2012. Applicant was represented again by Mr. Grove and the State was again represented by Mr. Daniel. At that time, Applicant orally moved to reconsider the sentence.[1] At the conclusion of the hearing, Judge King denied both motions from the bench.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Dudek, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Brown, Op. No. 2014- UP-096. The Remittitur was issued on March 21, 2014.

First PCR Application: 2014-CP-17-00414

Applicant filed his first application for post-conviction relief on September 10, 2014 (2014-CP-17-00414). He alleged the following grounds for relief in his application:

1. "Denial of Effective Assistance of Counsel"
    a. "Failure to Investigate;"
    b. "Failure to properly [sic]"
2. "Involuntary Guilty Plea"
    a. "Counsel's ineffectiveness resulted in Plea"

Respondent made its return on November 21, 2014. Applicant, by and through PCR counsel Lance S. Boozer, Esq., amended his application by filing on January 6, 2016, alleging:

1. Ineffective assistance of counsel, in that:
    a. "Counsel failed to investigate co-defendant, Mikal Bethea."
    b. "Counsel failed to prepare for trial."
    c. "Counsel failed to investigate, review and/or discuss trial strategy, defenses and evidence with Applicant."
    d. "Counsel was not present during a meeting involving the Solicitor's office and Applicant."
    e. "Counsel failed to properly advise Applicant of possible sentencing range for the charges."

[1] The court noted the oral motion was not timely made, but was treated as timely made by the court, and Counsel was provided a full opportunity to present arguments in support.

f. "Counsel failed to challenge statements made by Applicant while he was interviewed at the age of 16 without being able to consult with his parent."
g. "Counsel failed to bring to the Court's attention Applicant had a pending Motion to Relieve Counsel. The Motion was never heard or ruled upon."
h. "Counsel failed to properly prepare for Reconsideration hearing."

2. Prosecutorial misconduct, for:
   a. ". . . attempting to interview Applicant in the absence of counsel."
3. "Ineffective assistance of appellate counsel."
4. "Involuntary guilty plea."

An evidentiary hearing into the matter was convened on January 12, 2016, before the Honorable Roger E. Henderson. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Jessica Kinard, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf; co-defendant Mikal Bethea and plea counsel Grove also testified. By written order dated January 25, 2016, and filed January 27, 2016, Judge Henderson granted relief, finding Counsel was ineffective in failing to interview Bethea.

The State timely filed a motion to alter or amend the order granting PCR. By written order dated June 1, 2016, and filed June 13, 2016, Judge Henderson granted the motion to alter or amend, and amended the prior order to deny post-conviction relief.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Kathrine H. Hudgins, Esq. on Applicant's behalf, who raised the following issues:

1. Was the guilty plea to murder rendered involuntary by trial counsel's failure to attempt to interview co-defendant, Mikal Bethea, who confirmed at the PCR hearing that he was the triggerman?
2. Was the plea counsel ineffective in failing to call co-defendant, Mikel Bethea, as a witness at the motion to consider sentence to confirm that Bethea was the triggerman but was allowed to plead to voluntary manslaughter for a fifteen years sentence when Petitioner, who was not the triggerman, pled guilty to murder and received a forty-five (45) year sentence?

Respondent filed its Return on July 5, 2017. By order dated October 30, 2017, the Supreme Court of South Carolina transferred the matter to the South Carolina Court of Appeals pursuant

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to Rule 243(l), SCACR. On March 27, 2018, the Court of Appeals denied the petition by unpublished order. The Remittitur was issued on April 12, 2018.

Federal Habeas Petition: 0:10-1365-DCN-SVH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on May 15, 2018 (C.A. No. 0:10-1365-DCN-SVH). In his Petition, Applicant set forth the following grounds for relief (verbatim):

> Brady Motion Violation on solicitor for using inadmissible frivolous allege claims of James Alford and Phillip J. Williams at my guilty plea. Guilty plea transcript page (19, 20) Lines (18 – 25, 1 – 24). This allegation should have been "exclude from evidence" by the solicitor cause it was hearsay. I never been around those 2 inmates Period. I never seen they claims inside my Brady Motion that been file. This allege claims violate my Due Process of law/rights as a human being also denies me of a fair disposition.

Respondent filed its Return and Motion for Summary Judgment on August 24, 2018. The action remains pending at the time of this writing.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (exerpted verbatim excepting [brackets]):

1. "After discovered evidence per 17-27-45(c) of prosecutorial misconduct [Berger v. United States, 295 U.S. 78 (1935)] to induce involuntary plea. [Hill v. Lockhart, 474 U.S. 52 (1985).]"
    a. "Solicitor failed to disclose, prior to trial, (or at anytime thereafter) that two federal snitches statements that led to his guilty plea were known to be false as these two adults, Alford and Williams, who stated Applicant confessed to actually pulling me the trigger in the case, and both of these letters gave exquisite detail, this would have came out at trial R.O.A. 19 had never been housed at same facility with juvenile applicant who was at DJJ"
    b. "The Failure to disclose this material fact favorable to accused in violation [of Brady v. Maryland, 373 U.S. 83 (1963)] rendered plea involuntary [Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999); Roberts v. State, 361 S.C. 1, 602 S.E.2d 768 (2004)] prior to the date of trial surprise

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representation of solicitor Applicant had sought jury trial "but for" failure to disclose He would have went to trial. These witnesses not on state witness list."

c. "Solicitor knowing presented false statements (above) to support of state case at guilty plea and said statements used to induce Guilty Plea. [Banks v. Dretke, 540 U.S. 668 (2004);[2] Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006)]."

Before this Court are the Dillon County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final order of Applicant's previous PCR action, the appendix from the appeal of Applicant's prior PCR action, the State's return to Applicant's federal habeas petition, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Newly-Discovered Evidence

First, the Court finds Applicant's assertion that his allegations constitute newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed 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(C). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

[2] This citation required considerable modification from the citation provided by Applicant, but Respondent believes it is the case to which he intended to refer.

(1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, or could have been, discovered before his trial. Indeed, the central element of Applicant's complaint was brought to his attention during the plea proceeding:

> Also throughout the course of the investigation, I actually received two letters from inmates at the jail, one letter per inmate. And these letters said that Isiah Brown confessed to actually pulling the trigger in the case. And both of these letters gave exquisite detail, and this is stuff that had I chosen to call them, this would have come out at trial.
>
> They have very detailed information as to the crime, where it happened, what color the car was. They actually said that Isiah told them that he had wiped the gun down for prints with a green bandanna, wrapped the gun in that green bandanna. He said that he put the bullets – the left-over bullets – in a stocking cap and wrapped those up, and they were in the attic of the house.
>
> Well, law enforcement took that information, got a search warrant for the house, found the gun in the attic wrapped in a green bandanna, just like we were told it was going to be. And the bullets were wrapped in a stocking cap, just like we were told it was going to be.

(Appx. 19-20). Applicant offered no objection. Applicant was (1) aware of the statements no later than his August 2011 plea, and (2) as the statements pertained to his own remarks, he would have been aware to seek defenses available to him based upon any inaccuracies therein. Put more simply, if he didn't tell another inmate about the gun, he would have known he did not do so at the time of his plea. Further, Applicant's claim the statements could not have possibly been accurate strains credulity where the statements were relied upon to locate the murder weapon hidden in his grandmother's attic, wrapped in a green bandanna.

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His claim that the statements were not turned over to the defense in discovery is similarly ludicrous, as the discovery of the weapon in the attic, in addition to his own incriminating statements, was central to the State's case against him. Indeed, Applicant testified under cross-examination at his January 12, 2016, PCR hearing:

> Q. He reviewed all the evidence with you?
>
> A. Like the statements but not the, like, dealing with my co-defendant's and stuff.
>
> Q. As far as what? What did you mean - - -
>
> A. Like question them and stuff like that. But like the statements and stuff, he viewed that with me.

(Appx. 116-17). Further, Applicant does not indicate *when* he "discovered" the purported identities of the inmates who provided the statements, nor *how* he "discovered" the purported identities where their names do not appear in his filings or transcripts until his federal habeas petition, nor even evidence that the purported identities are, in fact, the identities of the persons who offered the statements. For all of these reasons, Applicant has shown nothing to establish that he discovered the issues offered within the year prior to his filing, nor anything to show that the information was not otherwise available to him by the exercise of reasonable diligence at or before the time of his plea, nor anything to show that the alleged "discovery" is of such weight and quality that the "interests of justice" require further action.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the Court shall summarily dismiss this matter with prejudice.

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Statute of Limitations

The Court finds the application must 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:

> 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). 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) 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."

Applicant pled guilty on August 8, 2011, and the remittitur from his direct appeal issued on March 21, 2014. The current application was not filed until October 15, 2018—well after the one-year statutory filing period expired. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must also be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent

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application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the application should be dismissed as successive to Applicant's previous PCR application.

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CONCLUSION

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

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 4th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dillon County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 19th **day of** December **, 2018.**

PAUL M. BURCH
Chief Administrative Judge
Fourth Judicial Circuit

Darlington, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS

Isaiah Brown, #347241
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2018-CP-17-0465

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Isaiah Brown, #347241, Bar No. Address: McCormick Cl 386 Redemption Way McCormick, SC 29899 phone: fax: e-mail: other:	Johnny E. James Jr., Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Johnny E. James Jr. December 14, 2018
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☒ Other: Exempt

JUDGE

CODE: 2048 Date: 12/19/18

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

SCCA/233 (11-03)

ALAN WILSON
ATTORNEY GENERAL

January 3, 2019

The Honorable Gwen T. Hyatt
Clerk of Court, Dillon County
PO Box 1220
Dillon, SC 29536-1220

Re: Isaiah Brown, #347241 v. State of South Carolina
2018-CP-17-0465

Dear Ms. Hyatt:

Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable Paul M. Burch, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP." In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY
2019 JAN -3 PM 11:57

JEJ/mm

Enclosures