STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Alfonzo Bernard Richardson, 271264
☐ Plaintiff

v.

State Of South Carolina
☒ Defendant.

CASE NO.
2012-CP-23-0185

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Alfonzo Bernard Richardson, 271264, Bar No. Address: MCI 386 Redemption Way McCormick SC 29899 phone: fax: e-mail: other:	Karen C. Ratigan, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: KRatigan@scag.gov 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.

Karen Ratigan — July 13, 2012
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ 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:

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JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	))))	IN THE COURT OF COMMON PLEAS 2012-CP-23-0185
Alfonzo Bernard Richardson, S.C.D.C. No. 271264, Applicant, v. State of South Carolina, Respondent.	))))))))))	**CONDITIONAL ORDER OF DISMISSAL**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 JUN 25 AM 10: 39

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 12, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the August 2002 term of the Greenville County Grand Jury for first-degree burglary (2002-GS-23-7905) and murder (2002-GS-23-7906). He was represented by Andrew R. Mackenzie, Esquire.

On January 4, 2005, the Applicant pled guilty to first-degree burglary and voluntary manslaughter. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of thirty (30) years on each charge.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected

the appeal in the form of an Anders[1] brief. The Court of Appeals dismissed the appeal. State v. Richardson, Op. No. 2007-UP-248 (S.C. Ct. App. filed May 22, 2007).

2007-CP-23-3778

The Applicant filed a PCR application on June 14, 2007 (2007-CP-23-3778). The Applicant raised the following issues at the PCR hearing:

1. Ineffective assistance of plea counsel.
2. Involuntary guilty plea.
3. Prosecutorial misconduct.

An evidentiary hearing was convened on March 20, 2008 at the Greenville County Courthouse. Kenneth C. Gibson, Esquire represented the Applicant. The Honorable Alexander S. Macaulay denied and dismissed the PCR application by order dated April 8, 2008 and filed April 14, 2008.

The Applicant filed a notice of appeal. LaNelle C. DuRant, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson[2] petition. The South Carolina Supreme Court denied the petition for writ of certiorari on August 6, 2009.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 21, 2009 (0:09-2799-CMC-PJG). The Respondent submitted a motion for summary judgment on March 1, 2010. The Honorable Paige J. Gossett, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 14, 2010. The Honorable Cameron McGowan Currie, United

[1] Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).
[2] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 18, 2011, the Court of Appeals denied a certificate of appealability and dismissed the appeal. The Supreme Court of the United States denied the Applicant's subsequent petition for writ of certiorari on October 3, 2011.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of PCR counsel:
   a. Failed to file a Rule 59(e), SCRCP motion.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on January 4, 2005 and the South Carolina Court of Appeals dismissed the appeal on May 22, 2007. The Applicant

was therefore required to file his application before May 22, 2008. This application was filed on January 12, 2012, which was over three (3) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law."

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 19 day of July, 2012.

G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Pike, South Carolina.

A17 of 20 Richardson 271264
MCCI/7-4#149
386 Redemption Way.
McCormick, S.C. 29889

Daniel E. Shearouse
Clerk of Court
Post Office box 11330
Columbia, S.C. 29211

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THE DEPARTMENT OF CORRECTIONS HAS
CENSORED THIS ITEM. THEREFORE THE
DEPARTMENT DOES NOT ASSUME RESPONSI-
BILITY FOR ITS CONTENTS.

WARDEN
MCCORMICK CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

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