STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Eric L. Spann, #245840, Applicant,	)	Case No.: 2019-CP-02-3131
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter is before the Court based on a successive, sixth application for post-conviction relief filed by Applicant Eric Spann on December 19, 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:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. On September 20, 1996, Applicant stabbed John Edwards

[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. 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.).

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Williams to death with a knife. He was arrested, and thereafter, during its December 1996, the Aiken County Grand Jury indicted Applicant for Murder (1997-GS-02-1545).

On June 12, 1997, Applicant stabbed George Ross several times with a knife. Thereafter, during its July 1997 term, the Aiken County Grand Jury indicted Applicant for Assault and Battery with Intent to Kill (1997-GS-02-1092, Count 1) and Possession of a Firearm or Knife during the Commission of or Attempt to Commit a Violent Crime (Count 2).

Applicant was represented by Regina Poteat, Esquire, on all charges. Assistant Solicitor Lawrence Brown of the Second Circuit Solicitor's Office prosecuted the cases. Applicant was evaluated for criminal responsibility and competency and determined to be both criminally responsible and competent. On December 8, 1997, Applicant, alongside counsel, appeared before the Honorable Charles W. Whetstone, Jr., to plead guilty as indicted to murder and to the lesser-included offense of assault and battery of a high and aggravated nature. Pursuant to a recommendation from the State, Judge Whetstone sentenced Applicant to thirty years imprisonment for murder and ten years imprisonment for assault and battery of a high and aggravated nature, with the sentences to be served concurrently. The possession of a weapon charge was dismissed pursuant to the plea negotiations.

Applicant timely filed a notice of appeal. Thereafter, Applicant voluntarily withdrew his appeal. By order dated April 1, 1998, the South Carolina Supreme Court dismissed the appeal based on Applicant's motion to withdraw. The Remittitur was sent on April 27, 1998.

First PCR Application (1998-CP-02-0106)

On January 30, 1998, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully based on numerous claims of ineffective assistance of

counsel and involuntary guilty plea. Respondent made its return to the application and requested an evidentiary hearing.

An evidentiary hearing convened April 28, 1999, before the Honorable James W. Johnson, Jr. Applicant was present at the hearing and represented by Calvin Rouse, Esquire. Applicant went forward with the following claims of ineffective assistance of counsel:

-failure to request a preliminary hearing
-failure to adequately investigate and prepare for trial
-failure to interview witnesses
-failure to object to use of prior juvenile convictions at sentencing
-failure to properly advise on appellate rights

Testimony was taken from Applicant, his mother Betty Jean Spann-Wade, his friend Timothy O'Neal, and his plea counsel Regina Poteat. In an order dated September 10, 1999, Judge Johnson denied and dismissed the application with prejudice. Applicant did not appeal.

Second PCR Application (1999-CP-02-1079) and Subsequent Appeal

On October 29, 1999, Applicant filed his second application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Post-Conviction Counsel
   a. Failure to amend Applicant's application
   b. Failure to file an appeal
2. Ineffective Assistance of Trial Counsel

Respondent made its Return on September 27, 2000. Applicant was represented by Stanley G. Jackson, Esquire. On October 23, 2000, the Honorable Rodney A. Peeples issued an order granting Applicant the right to seek belated appellate review of his initial post-conviction relief action, with consent of the State.

Applicant, though counsel, filed a timely notice of appeal. Applicant was represented by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-

Office of Appellate Defense, who filed a Johnson[2] petition and moved to be relived as counsel for Applicant. Applicant filed his own *pro se* brief. By order dated July 2, 2001, the South Carolina Supreme Court dismissed Applicant's petition. The Remittitur was sent July 18, 2001.

Petition for Writ of Habeas Action in the United States District Court (2:01-3505-18AJ)

On August 31, 2001, Applicant filed a Petition for a Writ of Habeas Corpus to the United States District Court pursuant to 28 U.S.C. § 2254, asserting he was being held unlawfully for the following reasons:

1. "I received ineffective assistance of counsel, thus violating my 6th and 14th amendment rights to the U.S. Constitution. Counsel gave me misleading advice about the appeal process in whole, thus causing me to withdraw my appeal, also failed to object to the use of my juvenile record by the court and at sentencing and never should have brought it up also did not object to the court inquiring into my religious beliefs and did not prepare a defense for trial or do a adequate investigation in my case legally for a defense and gave me erroneous advice and did not make sure I received the benefits under law."
2. "I was give erroneous and egregious advice by my counsel to plead guilty based on the fact I had a meritorious defense under the S.C. Constitution Art. V § 4 to quash my murder conviction or indictment and I was never made aware of the elements to my charges on the record. Moreover Rule 11 FRCrimp was violated and my Plea was invalid under The Corpus Juris."

The State responded and moved for summary dismissal. On February 11, 2002, the Honorable Robert S. Carr, United States Magistrate, issued a Report and Recommendation recommending the petition be dismissed on the grounds of procedural default. On March 28, 2002, the Honorable David C. Norton, United States District Court Judge, issued an order adopting the Report and Recommendation and dismissing Applicant's petition in its entirety. Applicant filed a motion to alter or amend on April 16, 2002, which was subsequently denied by Judge Norton.

On September 18, 2002, Applicant filed a notice of appeal to the Fourth Circuit Court of Appeals. On November 7, 2002, the Fourth Circuit issued an unpublished per curiam opinion

[2] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1998).

dismissing the appeal and denying a certificate of appealability. Spann v. Rushton, 50 F. App'x 612 (4th Cir. 2002).

Third PCR Application (2003-CP-02-0745) and Subsequent Appeal

On June 6, 2003, Applicant filed his third application for post-conviction relief, alleging he was being held unlawfully based on various claims challenging the subject matter jurisdiction of the general sessions court to accept his pleas, including that the indictments were not properly filed with the clerk of court, that the grand jury was selected in a racially discriminatory manner, and the witnesses who testified before the grand jury did not have sufficient knowledge.

On October 2, 2003, Respondent made its return to the application and moved to dismiss the action as successive and filed beyond the statute of limitations. On February 23, 2004, a hearing was convened before the Honorable L. Casey Manning. Applicant was present and represented by Richard E. Miley, Esquire. At the conclusion of the hearing, Judge Manning allowed Applicant to leave the record open to submit an affidavit. By order dated August 23, 2005, and filed October 24, 2005, Judge Manning denied and dismissed the application with prejudice.

Applicant filed a timely notice of appeal and was represented on appeal by Deputy Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who filed a Johnson petition for writ of certiorari and motion to be relieved as counsel. Applicant filed a *pro se* petition. By order filed June 7, 2007, the South Carolina Supreme Court denied the petition for certiorari and granted the petition to relieve counsel. The Remittitur was sent on June 25, 2007.

Fourth PCR Application (2009-CP-02-2037) and Subsequent Appeal

On August 28, 2009, Applicant filed his fourth application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. Failure to advise Applicant to the mandatory community supervision program
2. Involuntary plea agreement

Respondent made its Return on November 19, 2010, requesting that the application be denied and summarily dismissed. By conditional order of dismissal dated November 22, 2010, and filed December 2, 2010, the Honorable Doyet A. Early, III, acting in his capacity as Chief Administrative Judge for the Second Judicial Circuit, provisionally dismissed the application but provided Applicant with twenty days from the service of said order to provide sufficient reasons why the dismissal should not become final. Applicant submitted a response to the conditional order of dismissal on November 29, 2010, and then subsequently Applicant filed a "Motion to Alter or Amend" pursuant to Rule 59(e), SCRCP, on January 4, 2011.

Before a final order of dismissal was signed, Applicant filed a Notice of Appeal to the South Carolina Supreme Court on March 21, 2011. Applicant then filed a "Motion for a Writ of Mandamus" dated August 22, 2011, and filed August 26, 2011. By order dated September 7, 2011, the court denied and dismissed Applicant's PCR application with prejudice.

Applicant subsequently filed a timely notice of appeal and petition for a writ of certiorari. By Order dated October 14, 2011, the South Carolina Supreme Court dismissed Applicant's appeal. The Remittitur was sent November 1, 2011.

Application for Forensic DNA Testing

On September 11, 2012, Applicant filed an Application for Forensic DNA Testing in the Court of General Sessions, pursuant to the Access to Justice Post-Conviction DNA Testing Act. S.C. Code §§ 17-28-10 et seq. A hearing was convened[3] on August 27, 2014, before the Honorable

[3] Applicant's DNA application was first dismissed by Judge Early for failure to file within the statutory time limit. Applicant filed a reply to the order of dismissal, and was then granted an evidentiary hearing on the matter.

Doyet A. Early. Applicant was present and represented by counsel, P. Andrew Anderson, Esquire. Deputy Solicitor David Miller of the Second Circuit Solicitor's Office represented the State. At the hearing, the Court indicated that given the fact that it was undisputed that there was no DNA present on the evidence in the matter, there was no relief it could grant Applicant. Based upon that discussion, Applicant agreed to withdraw his PCR for DNA testing and pursue a traditional PCR instead. As a result of Applicant's decision to withdraw, Judge Early dismissed the matter in a written Order dated September 16, 2014.

Fifth PCR Application (2014-CP-02-2593) and Subsequent Appeal

Applicant then filed his fifth application for post-conviction relief on November 6, 2014. In this application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence based on his recent discovery that the victim's clothing did not have any of Applicant's DNA on it based on a SLED report
2. Ineffective Assistance of Plea Counsel
3. Involuntary Plea Bargain

On August 18, 2015, the State served its return and moved to dismiss the action as untimely, successive, and for failing to make a prima facie showing of newly discovered evidence. A hearing into the matter was convened on December 15, 2015, before Judge Early. Applicant was present at the hearing and was represented by P. Andrew Anderson, Esquire. At the start of the hearing, the State renewed its motion to dismiss. Judge Early took the motion under advisement and proceeded forward with an evidentiary hearing, during which testimony was taken from Applicant and plea counsel.

Thereafter, Judge Early issued an order of dismissal, finding this fifth application was procedurally barred as untimely, successive, and for failing to establish he was entitled to relief

based on newly discovered evidence. This order was signed January 6, 2016 and filed January 19, 2016.

Applicant's Counsel submitted a lengthy proposed order on behalf of Applicant on January 13, 2016. At the time Applicant's proposed Order was submitted to the Court for consideration the Order of Dismissal had already been signed but was not filed with the Court until January 19, 2016. Applicant's counsel then received service of the Order of Dismissal on January 25, 2016. In response, Applicant's counsel filed a "Motion to Reconsider" on February 2, 2016. On February 22, 2016, the Court filed an Order denying Applicant's Motion to Reconsider.

Applicant appealed, contending that "since the lack of blood or DNA evidence was revealed as a part of the recent DNA PCR," Applicant's PCR was neither successive nor untimely. The Court dismissed the case by Order on May 19, 2016. Applicant then filed another "Motion for Reconsideration/Rehearing" in the South Carolina Supreme Court. The rehearing request was denied on June 15, 2016. The Remittitur was issued on June 15, 2016.

Petition for Habeas Corpus in the Original Jurisdiction of the Supreme Court

On September 26, 2016, Applicant filed a "Notice of Petition for a Writ of State Habeas Corpus," in the original jurisdiction of the South Carolina Supreme Court. On October 19, 2016, the Supreme Court dismissed the Petition because Applicant failed to "allege a constitutional violation that constitutes a denial of fundamental fairness shocking to the universal sense of justice," pursuant to Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998).

Petition for Writ of Habeas Action in the United States District Court (2:01-3505-DCN)

On December 2, 2016, Applicant filed a motion under 28 U.S.C. § 2244 for an order authorizing the United State District Court to consider a second or successive application for relief under 28 U.S.C. § 2254. In this Motion, Applicant also alleged the following:

> Ground One: Plea counsel failed to disclose DNA forensic analysis to Applicant before advising him to plead guilty to murder. The DNA Analysis is negative for the crime. Applicant did not discover the DNA Analysis until June 25, 2013, after filing a DNA post-conviction relief application, when Applicant's DNA PCR Counsel disclosed it to him.

On January 6, 2017, the United States Court of Appeals for the Fourth Circuit filed an order denying the motion.

CURRENT ACTION BEFORE THE COURT

On August 12, 2019, Applicant filed his ***sixth*** and current application for post-conviction relief, alleging the court of general sessions did not have jurisdiction to accept his murder plea because he did not have a preliminary hearing before he was indicted by the grand jury. Applicant requests following forms of relief: "Murder indictment dismissed for lack of jurisdiction and subject matter jurisdiction by Court of General Sessions."

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

Attached to Respondent's return and before this Court are the Aiken County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal; Applicant's prior post-conviction relief records challenging these convictions and appeals therefrom; Applicant's federal habeas records; and the records of the current PCR action.

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 this ***sixth*** application because it is successive to Applicant's five previous post-conviction relief applications. Courts disfavor successive applications and place 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. 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.

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 PCR rules "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.

Respondent argues Applicant has failed to show that a successive application is appropriate or why he could not have raised this claim in his five prior post-conviction relief actions, as this information was readily available not only at the time of his plea but also the time of his initial post-conviction relief proceeding. While applicant is correct that subject matter jurisdiction claims can be raised at any time, he still has the burden of establishing why he could not have raised this claim in his initial post-conviction relief action. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) ("Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple as it were.' A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application."). This Court finds Applicant unable to show that these claims could not have been raised in his initial application, as his claims were known prior to his plea and easily could have and should have been raised in his initial post-conviction relief action. Accordingly, this Court finds the application should be dismissed as successive to Applicant's five prior post-conviction relief actions.

Summary Dismissal Based on the Statute of Limitations

Respondent also moved to summarily dismiss the application 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). Additionally, 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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his murder indictment and eventual guilty plea are invalid because the plea court lacked jurisdiction based on its failure to hold a preliminary hearing. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45.

Applicant pled guilty to murder in December of 1997, nearly twenty-four years ago, and the remittitur from his direct appeal that he voluntarily withdrew was issued on April 27, 1998. Based on Section 17-27-45(A), Applicant needed to file an application for post-conviction relief based on claims that he knew or should have known within one year of the issuance of his remittitur. The current application was not filed until December 19, 2019, well after the one-year statutory filing period expired. Therefore, this Court finds the application should be summarily dismissed as barred by the statute of limitations.

Res Judicata

Because the allegations in the current application were or could have been raised in Applicant's previous state proceeding, 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 a previous PCR application in the circuit court. Applicant had a full opportunity to litigate all his allegations known or should have been known at the time of his initial PCR action. The finality of the previous courts' rulings should be respected, and this Court intends to 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 Aiken 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 Aiken 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 6th **day of** December**, 2021.**

CLIFTON NEWMAN
Chief Administrative Judge
Second Judicial Circuit

Kingstree, South Carolina