

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT  
)

John D. Alexander, #194748

)  
) Case No.: 2018-CP-42-03181  
)

Applicant,

)  
)

v.

) **CONDITIONAL ORDER OF DISMISSAL;**  
) **ORDER GRANTING MOTION TO FILE**  
) **RETURN OUT OF TIME AND DENYING**  
) **MOTION FOR SUMMARY DISPOSITION**  
)

State of South Carolina,

Respondent.

)  
)

This matter comes before the Court by way of a post-conviction relief application filed by John Douglas Alexander (hereafter "Applicant") on September 14, 2018, Respondent made its Return, requesting the application be summarily dismissed.

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In November 2006, the Spartanburg County Grand Jury indicted Applicant for assault and battery with intent to kill (count one) and possession of a firearm during commission of a violent crime (count two) (2006-GS-42-04462). Thomas A. M. Boggs, Esquire, represented Applicant. Jennifer A.J. Jordan and Robert Coler, Esquires prosecuted the case. Applicant proceed to trial before the Honorable J. Derham Cole on June 13, 2007. On June 14, 2007, the jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to life imprisonment pursuant to South Carolina Code Annotated Section 17-25-45 as to count one and five years' imprisonment as to count two.

Applicant filed a timely notice of appeal. M. Celia Robinson, Esquire, of the Office of Appellate Defense perfected the appeal, and raised the following two issues:

1. Did the trial judge err in failing to issue a charge on the law of self-defense where such a charge was supported by the evidence and material to a fair presentation of

RRK  
Page 1 of 10

FILED  
2018 SEP 16 AM 8:49  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

the case?

2. Did the trial judge err in issuing a charge on the law which included an instruction on presumptions which lessened and shifted the prosecution's burden of proof.

The South Carolina Court of Appeals affirmed Applicant's conviction on April 29, 2010.

*State v. Alexander*, Op. No. 2010-UP-265 (S.C. Ct. App. Filed April 29, 2010). The remittitur was issued on May 17, 2010.

***First PCR Application: 2010-CP-42-2428***

Applicant subsequently filed a PCR application on May 6, 2010, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel:
  - a. Applicant was denied his non-waivable Constitutional right to be present at a "critical state" of his criminal trial;
  - b. Counsel conceded at trial that the evidence didn't support a charge on self-defense;
  - c. Counsel failed to present a meaningful or effective defense at trial;
  - d. Counsel failed to adequately investigate, prepare for and advise Applicant of a possible defense based on insanity;
  - e. Applicant was denied right to peremptory challenge and strike a juror who after being selected, sworn in and the trial started, was discovered to have been associated with the judge;
  - f. Counsel failed to object to or request a mistrial when the phrase "malice and malice aforethought" was used forty-two times during closing arguments and the jury charge; and
  - g. Counsel failed to object to the jury instructions.
2. Trial Judge's abuse of discretion, in that:
  - a. Trial judge conspired along with the Solicitor to commit prosecutorial abuse by allowing the term "malice and malice aforethought" forty-two times during the closing argument and jury charge; and
  - b. Jury instruction constituted prejudicial error.
3. Violation of due process, in that Applicant's Fourth, Fifth, Sixth, and Fourteenth Amendment rights were violated.
4. Prosecutorial misconduct, in that:
  - a. Prosecutor gave false impression to Court and jury which involved corruption of the truth seeking function of the trial process; and
  - b. *Brady* violation.

Respondent filed its return on October 19, 2010. An evidentiary hearing into the matter was convened on December 8, 2011, at the Spartanburg County Courthouse. Applicant was

FILED  
2011 SEP 16 AM 8:00  
CLERK OF COURTY  
SPARTANBURG COUNTY  
ANN W. COX

present at the hearing and was represented by John R. Holland, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On March 26, 2012, the Honorable J. Mark Hayes, II, issued the order of dismissal denying Applicant's PCR application.

On April 11, 2012, Applicant filed a *pro se* motion to alter or amend the judgement of the order of dismissal of March 26, 2012. On April 27, 2012, Applicant filed an amendment to his motion to alter or amend the PCR judge's dismissal of the claim. On April 26, 2012, the State moved to dismiss Applicant's Rule 59(e) motion because South Carolina does not recognize hybrid representation, and Applicant was at that time represented by PCR Counsel John R. Holland, Esquire. Judge Hayes denied Applicant's motion in an order dated May 3, 2012.

On September 4, 2012, Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, filed a *Johnson* petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant, which offered the following issue:

Whether defense counsel was ineffective in failing to object to a jury charge instructing that malice may be inferred from the use of a deadly weapon where evidence was presented that the lesser included offense of assault and battery of a high and aggravated nature may have been committed?

On October 18, 2012, Applicant filed a *pro se* petition for writ of certiorari, which the Supreme Court treated as a *pro se* response to the *Johnson* petition. On May 7, 2013, Applicant filed a motion seeking to relieve counsel and appoint new counsel. Respondent made its return to the motion on March 22, 2013. On April 3, 2013, the Supreme Court denied Applicant's motion. The Supreme Court transferred the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied the petition by written order filed May 21, 2015. The remittitur was issued on June 8, 2015.

On June 12, 2015, Applicant filed a motion to rescind the remittitur. The South Carolina

FILED  
2015 SEP 16 8:50  
SOUTH CAROLINA  
COURT OF APPEALS  
COLUMBIA

Court of Appeals issued an order recalling the remittitur on June 25, 2015. On July 6, 2015, Respondent filed its return to the petition for rehearing. Applicant filed its reply on July 10, 2015. On August 20, 2015, the Court of Appeals denied Applicant's petition for rehearing. On September 21, 2015, the Supreme Court dismissed Applicant's petition for writ of certiorari. The remittitur was reissued on October 19, 2015.

***Federal Habeas Corpus Petition: 6:16-600-HMH-KFM***

Applicant filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 on March 3, 2016. Applicant set forth the following grounds for relief:

1. That by way in through ineffective assistance of counsel the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. As well as Article 1 Section 3 of the South Carolina Constitution.
2. That the Petitioner was denied and deprived of due process and equal protection of the law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. As well as Article 1 Section 3 of the South Carolina Constitution by and through ineffective assistance of counsel.
3. That the Petitioner was denied and deprived of due process and equal protection of the law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. As well as Article 1 Section 3 of the South Carolina Constitution. By and through ineffective assistance of counsel under Appellate Court Rule 407 Professional Conduct Rule 1.4 Communication Section(a)(2)(3) and (b) Communicating With Client Section three and five.
4. The petitioner contends that he was denied and deprived of Due Process and Equal Protection of Law as a result of trial counsel failing to afford or provide him the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and South Carolina Constitution Article 1 Section 3.
5. That the Petitioner was denied and deprived of Due Process and Equal Protection of Law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, South Carolina Constitution Article 1 Section 3 and South Carolina Code Ann. (1976) Statute Section 50. By and through ineffective assistance of counsel.
6. The Petitioner asserts that he was denied and deprived of Due Process and Protection of Law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 South Carolina Constitution.

CLERK OF COURT  
PARTIAL JUDGE COUNTY  
AND VENDOR

2016 SEP 16 AM 8:50

FILED

Through and by way of ineffective assistance of counsel where trial counsel failed to object and allow Petitioner's guaranteed right to Federal Rules of Criminal Procedure Rule 43, 18 U.S.C.A. to be denied and deprived.

7. That the Petitioner was deprived and denied Due Process and Equal Protection of Law behind trial counsel failed to provide him the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 South Carolina Constitution.
8. That the Petitioner was denied and deprived of Due Process and Equal Protection of Law pursuant to the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 South Carolina Constitution. By way and through trial counsel's deficient assistance of counsel of failing to object to Solicitor Jordan's deliberate and intentional misconstruing as well as distorting the elements of Assault and battery of a high and aggravated nature during her Closing Arguments.
9. That the petitioner was denied and deprived of due process and equal protection of the law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article One Section Three South Carolina. As a result of Solicitor Jordan given a false impression to the court and jury, which gave a corruption of the truth seeking function of the trial process. As such, pursuant to statute section 17-247-20 S.C. Code of Law (1976) there exists evidence of material facts not previously presented or heard which requires vacation of the conviction or sentence in the interest of justice.
10. That through and by way of ineffective assistance of counsel the petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth and Fourteenth Amendments as well as Article One Section Three of the South Carolina Constitution where trail counsel failed to object to Solicitor Jordan's Closing Argument stating Three false, misleading and deceitful statements to the trial judge and jury that, "Mr. Freeman sustained life-threatening injuries to the stomach." On the contrary, all facts, medical, surgical and examination Reports in testimony precisely and clearly demonstrates that Mr. Freeman's injuries were to the pelvis and non-life-threatening.
11. That the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth and Fourteenth Amendments as well as Article One Section Three of the South Carolina Const. By way and through ineffective assistance of counsel where trial counsel failed to object to Solicitor Jordan willfully violated Federal Rules of Criminal Procedure Rule 16(a)(1); and Brady v. Maryland, 473 US 83, 87 (1963) to withhold material, exculpatory and/or mitigating evidence from the Petitioner.
12. That the Petitioner was denied and deprive of due process and equal protection of law under the Sixth and Fourteenth Amendments and Article One Section Three of the South Carolina Constitution.

FILED  
2023 SEP 16 AM 8:50  
CLERK OF COURT  
SOUTH CAROLINA  
JUDICIAL DISTRICT  
OF HANCOCK COUNTY  
ANDREWS CO.

of the South Carolina Constitution. Through and by way of ineffective assistance of counsel where trial counsel particularly behind trial counsel failed to pursue a *Missouri v. Seibert*, 542 U.S. 600, 124S.Ct. 2601 (2004) violation committed by the State.

13. That the Petitioner was denied and deprive of due process and equal protection of law under the Fifth, Sixth and Fourteenth Amendments and Article One Section Three S. C. Const. Behind trial counsel's failure to object to the trial court's partial bias and prejudicial General Intent To Kill Jury Charge.
14. That the Petitioner was denied and deprive of due process and equal protection of law under the Sixth Amendment of the United States Constitution behind trial counsel's failed to object to the trial court's sentencing the Petitioner to Life Without Parole where the State failed under Statute Section 17 - 25 - 45 (H) S.C. Code of Law (1976) to comply with Section 7. Timely notice.
15. That the Petitioner was denied and deprived of due process and equal protection of law under the Sixth Amendment of the United States Constitution behind trial counsel's failed to discover, utilize and presents to the trial Court and Jury critical exculpatory material evidence i.e., A Voluntary Statement made by the Petitioner's defense witness which profoundly supports and establishes the elements and jury charge of self-defense.
16. That the Petitioner was denied and deprived of due process and equal protection of law under the Sixth and Fourteenth Amendments of the United States Constitution as well as Article One Section Three of the South Carolina Constitution. Through and by way of ineffective assistance of counsel. Particularly, where trial counsel failed to object when the prosecution injected an arbitrary factor into the Juror's deliberation process and on misleading, deceiving and seducing the Jury to reach a wrongful verdict.
17. That the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth, and Fourteenth Amendments as well as Article One Section Three and Article Five, Section Seventeen S. C. Const. Through and by way of ineffective assistance of counsel. Particularly, trial counsel failed to object where the trial court exercised no restraint, caution or circumspection to the requirement of neutrality or in making remarks and comments on the force, effect, weight and sufficiency of evidence, credibility of witness and guilt of the Petitioner as to the controverted facts.
18. That the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution as well as Article One Section Three S. C. Const. Through and by way of ineffective assistance of counsel. Particularly, behind trial counsel failing to object to the trial Court giving the Jury in answer to their question concerning malice through the bailiff, outside the presence of trial counsel or Petitioner.

SC  
CLERK OF COURT  
JULY 2016  
2016 SEP 16 AM 8:50  
FILED

- without making the Jury's question or the Court's answer part of the record.
19. That the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth, and Fourteenth Amendments. As well as Article One Section Three S. C. Constitution through and by way of ineffective assistance of counsel. Specifically, trial counsel failed to object when the trial Court issued an unconstitutional, highly prejudicial and bias Jury Charge to the jury.
  20. That the Petitioner was denied and deprived of due process and equal protection of law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, as well as Article One Section Three S. C. Const. Through and by way of ineffective assistance of counsel. Particularly, trial counsel failed to object to the trial Court's granting the prosecution's request for a charge that malice may be inferred from the use of a deadly weapon.
  21. That the Petitioner was denied and deprived of due process and equal protection of law under the Sixth and Fourteenth Amendments of the United States Constitution, as well as Article One Section Three S. C. Constitution. Through and by way of ineffective assistance of counsel. Specifically, trial counsel failed to object to and seek to quash the indictment where it neglected to include the act or acts of malice the Petitioner would be held to answer for trial.
  22. That the Petitioner was denied and deprived of due process and equal protection of law under the Sixth Amendment of the United States Constitution, as well as Article One Section Three S. C. Const. Through and by way of ineffective assistance of counsel. Concisely, trial counsel failed to petition the Circuit Court for a court – appointed psychiatrist examination and for an expert witness to assist in the preparation, utilization and presentation of the Petitioner's mental defects which yields mitigating evidence pertinent and relevant to the elements of malice and criminal intent.

Respondent filed its return and motion for summary judgment on April 25, 2016. On April 25, 2016, Applicant filed its motion for default and its motion for summary judgment. On May 12, 2016, Respondent filed its response in opposition to motions for entry of default and for summary judgment. On June 13, 2016, Applicant filed its response to summary judgment and return. On June 23, 2016, Respondent filed its reply to Petitioner's response to summary judgment and return.

On June 24, 2016, Applicant filed a motion to engage in discovery. Respondent filed its response opposing the motion on July 11, 2016. On July 18, 2016, Applicant filed a motion for a

FILED  
2017 SEP 16 AM 8:58  
CLERK OF COURT  
SOUTH CAROLINA  
JUDICIAL DISTRICT  
OF WYOMING COUNTY

hearing on the Petitioner's motion for summary judgment, as well as its reply to Respondent's reply to Petitioner's response to summary judgment and return. On July 25, 2016, Applicant filed its reply to response in opposition to motion to engage in discovery.

On August 4, 2016, Respondent filed its response in opposition to motion for hearing on Petitioner's motion for summary judgment. On August 3, 2016, the Honorable Kevin F. McDonald issued an order denying the Applicant's motion to engage in discovery and denying Applicant's motion for a hearing on his motion for summary judgment.

On August 15, 2016, Applicant filed a motion to alter or amend judgment. On September 6, 2016, Respondent filed its response in opposition to Petitioner's motion to alter or amend judgment. On September 19, 2016, Applicant filed its reply to the Respondent's response in opposition to Petitioner's motion to alter or amend judgment.

On January 13, 2017, the Honorable Kevin F. McDonald issued the report and recommendation that Respondent's motion for summary judgment be granted and Applicant's petition, motion for default judgment, and motion for summary judgment be denied. *Alexander v. Cartledge*, 6:16-0600-HMH-KFM, 2017 WL 782886 (D.S.C. 2017). Applicant filed no objection to the report and recommendation.

On February 1, 2017, the Honorable Henry M. Herlong, Jr., Senior United States District Judge adopted the Magistrate's report and recommendation and dismissed Applicant's petition. *Alexander v. Cartledge*, 6:16-0600-HMH-KFM, 2017 WL 782509 (D.S.C. 2017). Judge Herlong also denied Petitioner's motion for summary judgment and motion for default judgment.

On February 6, 2017, Applicant filed an untimely objection to report of magistrate judge. On February 8, 2017, Judge Herlong ordered that Applicant's motion to alter or amend the judgment be denied.

RKK  
Page 8 of 10

2017 SEP 16 AM 8:50  
FEDERAL COURT  
DISTRICT OF COLUMBIA  
AMERICAN BAR ASSOCIATION

FILED

On February 9, 2017, Applicant filed a renewed petition to alter or amend judgment pursuant to Rule 59(e) Fed. R. Civ. Proc. On February 14, 2017, Judge Herlong granted Applicant's renewed motion to alter or amend the judgment. Judge Herlong also vacated the February 1, 2017, order adopting the report and recommendation and dismissing the case. Judge Herlong also vacated the February 8, 2017 order denying Applicant's motion to alter or amend the judgment.

On February 23, 2017, Respondent filed its reply to Petitioner's objections to report and recommendation. Judge Herlong again summarily dismissed the petition by order dated February 28, 2017. *Alexander v. Cartledge*, 6:16-0600-HMH-KFM, 2017 WL 770570 (D.S.C. 2017). On March 8, 2017, Applicant filed its response to reply to Petitioner's objections to report and recommendation. On March 27, 2017, Applicant filed a petition to alter or amend judgment pursuant to Rule 59(e) Fed. R. Civ. Pro. On April 3, 2017, Judge Herlong denied Applicant's motion to alter or amend the judgment.

On April 28, 2017, Applicant filed a notice of appeal in the United States Court of Appeals for the Fourth Circuit. On May 2, 2017, Applicant filed a motion for certificate of appealability. On May 10, 2017, Applicant filed a request for appointment of Counsel. On October 17, 2017, the Fourth Circuit denied Applicant's motion for a certificate of appealability, denied the motion for appointment of counsel, and dismissed the appeal. *Alexander v. Cartledge*, 699 Fed.Appx. 171 (4th Cir. 2017). On November 3, 2017, Applicant filed a petition for rehearing and a petition for rehearing *en banc*. On December 12, 2017, the Fourth Circuit Court of Appeals denied both petitions.

On March 8, 2017, Applicant filed a petition for writ of certiorari to the United States Supreme Court. The petition was denied. *Alexander v. Williams*, 138 S.Ct. 1708

RKK  
Page 9 of 16

FILED  
2017 SEP 16 AM 8:51  
CLERK OF COURT  
CHERYL A. COOCH  
MAY 3 2017  
BY W. COX

Applicant filed a petition for rehearing in the United States Supreme Court. This petition was denied.

## II. Current Action before this Court

In his second and current PCR application, Applicant alleges he is being held unlawfully for the following reasons:

### 1. Due Process Violation

- a. "At a Post-Conviction Relief hearing the Applicant can and will produce clear, overwhelming material evidence and facts that "twice" during his initial post-conviction relief hearing the Honorable J. Mark Hayes II prohibited and disallowed Applicant to fully or fairly submit to the Court specific and concise grounds on which he based his allegations or, (supporting facts and evidence) that he is being held in custody unlawfully."

### 2. Newly Discovered Evidence

- a. "Applicant contends that Newly Discovered Evidence demonstrates that Solicitor Jennifer Jordan knowingly and intentionally abused the Grand Jury Process as well as used it for purpose of oppression and injustice in violation of S.C. Code Ann. Sec. 14-7-1700 and 14-9-210 (1976). And as a result, the constitutional error created a Fundamental Miscarriage of Justice which impeded and prevented Due Administration of Justice;"
- b. "Applicant contends that Newly Discovered Evidence establishes that the Trial Court's four separate Rulings to deny and deprive the Applicant a charge on the law of Self-Defense (where the evidence warranted such a charge) was contrary to the Interest of Judicial Economy which robbed him of Fundamental Fairness to the Due Process of a fair and impartial Jury Trial; and"
- c. "Applicant contends that Newly Discovered Evidence establishes that: (1) when a secret in chamber meeting was held and the trial court "Ruled" that no Self-Defense Instruction would be given to the Jury, at the beginning of the trial; and (2) during Jury Deliberations, when the Jury asked and the Court gave a Supplemental Malice Instruction in the absence of the Applicant and Trial Counsel; it was trial counsel's duty to put the substance of the "Ruling on the record."

In his amendment, filed July 22, 2019, Applicant alleged "actual innocence" and other PCR ground.

Before this Court are Applicant's Spartanburg County Clerk of Court Records

FILED  
2020 SEP 16 AM 8:51  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

Applicant's South Carolina Department of Corrections Records, prior appellate records, the final orders of Applicant's previous PCR and federal habeas actions, and this PCR action's records.

**III. 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 based upon the following findings:

***Newly-Discovered Evidence***

Applicant's assertion that his claims 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 PCR 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 PCR 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). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

*Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

RKK  
Page 11 of 16

FILED  
2023 SEP 06 AM 8:51  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

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. Furthermore, Applicant's allegations regarding the self-defense charge have been raised *multiple times* in his prior actions in state and federal courts. 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, this matter must be summarily dismissed.

#### *Statute of Limitations*

This Court finds that this 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).

Applicant was convicted on June 14, 2007, and the remittitur from his direct appeal issued on May 17, 2010. The current application was not filed until September 14, 2018—well after the one-year statutory filing period expired. Therefore, the application must be summarily dismissed as barred by the statute of limitations.

TKK  
Page 12 of 16

CLERK OF COURT  
SPRINGFIELD COUNTY  
JANUARY 17, 2019

2018 SEP 16 AM 8:51

FILED

*Successive*

This Court finds that this application must 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 new grounds raised in a subsequent applications 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 PCR 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. 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 PCR application; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant's claims of newly discovered evidence are non-specific and wholly unsupported. Applicant has failed to establish

FILED  
2022 SEP 16 AM 8:51  
CLERK OF COURT  
JANICE B. COLE  
SOUTH CAROLINA  
COUNTY

sufficient reason why he could not have raised his current allegations of newly discovered evidence in his previous PCR application or in his federal habeas action. Therefore, he has failed to meet the burden imposed upon him, and the application must be summarily dismissed as successive to Applicant's previous PCR application.

#### *Res Judicata*

The application is 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 v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's present allegations are indistinguishable from those offered in his prior PCR application and his prior federal habeas corpus application. Additionally, Applicant could have raised his additional allegation of "newly discovered evidence" in his prior actions. The prior PCR Court and the appellate courts issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

#### IV. Timeliness of Return

Respondent has moved the Court accept this return for filing out of time. In light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent moves the Court accept the return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court

FILED  
2023 SEP 14  
AM 8:51  
CLERK OF COURT  
SOUTH CAROLINA  
COURT HOUSE  
COLUMBIA, SC

RRK  
Page 14 of 16

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."); *Gulnyard 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.).

Concordantly, the Court denies Applicant's motion seeking summary dismissal. The grant of post-conviction relief due to the State's failure to reply or lateness of reply is not appropriate. *See* Rule 55(e), SCRPC ("No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof unless the claimant establishes his claim to relief by evidence satisfactory to the Court[.]"). A colorable claim for relief must be supported by evidence and testimony on the record and a meritless application cannot be saved by inaction by the State. Accordingly, the Court denies Applicant's motion for default judgment.

**V. Conclusion**

Pursuant to South Carolina Code Annotated 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Chelsey F. Marto, Jr., Esquire  
PCR Division – Seventh Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

2020 SEP 16 AM 8:51  
CLERK OF COURT  
SPARTANBURG COUNTY  
MAY W. COX

FILED

Applicant is cautioned that his response to this order must be actually received by the

RKK  
Page 15 of 16

Spartanburg County Clerk of Court and opposing counsel within twenty days from the date of the service of this Order, 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 31<sup>st</sup> day of August, 2020.

*R. Keith Kelly*  
R. KEITH KELLY  
Chief Administrative Judge  
Seventh Judicial Circuit

*Spartanburg*, South Carolina

FILED  
2020 SEP 16 AM 8:51  
CLERK OF COURT  
SPARTANBURG COUNTY  
4th FL. COX



ALAN WILSON  
ATTORNEY GENERAL

September 11, 2020

The Honorable Amy W. Cox  
Spartanburg County Clerk of Court  
Post Office Box 3483  
Spartanburg, South Carolina 29304

Re: John D. Alexander, #194748 v. State of South Carolina  
2018-CP-42-03181

Dear Ms. Cox:

Enclosed please find the original **Conditional Order of Dismissal; Order Granting Motion to File Return out of Time and Denying Motion for Summary Disposition** signed by the Honorable R. Keith Kelly, in the above-captioned case, for filing in your office.

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

Sincerely,

/s Chelsey F. Marto  
Chelsey F. Marto  
Assistant Attorney General

CFM/ec

Enclosure

FILED  
2020 SEP 16 AM 8:49  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX