STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Terrance Adams, #229165, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2022–CP–40–05069 **CONDITIONAL ORDER OF DISMISSAL**

The matter before the Court is an action for post-conviction relief (PCR) commenced by Applicant Terrance Adams on September 28, 2022, asserting allegations of ineffective assistance of counsel. Respondent, the State of South Carolina, made its return and motion to summarily dismiss the application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR applications, and barred by the doctrine of *res judicata* pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90. After a review of the record and pleadings, this Court agrees this application should be summarily dismissed as untimely, barred by the statute of limitations, successive to Applicant's previous PCR applications, barred by the doctrine of *res judicata* pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During the July 2005 term, the Richland County Grand Jury incidcted Applicant for four counts of Petit Larceny (2005-GS-40-3474; -3475; -3936; -4170), six counts of first degree burglary (2005-GS-40-3477; -3478; -3548; -3935; -3940; -4169), two counts of grand larceny (2005-GS-40-3547; -3941), possession of burglary tools (2005-GS-40-3549), and resisting arrest (2005-GS-40-3550).

Richland County Assistant Public Defenders Lauren Mobley and Tivis Sutherland represented Applicant. Assistant Solicitors Richard Cathcart and Margaret Fent of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant proceeded to a jury trial January 30 – February 1, 2006, before the Honorable James W. Johnson, Jr. The jury found Applicant guilty, and Judge Johnson sentenced Applicant to a term of imprisonment of thirty days for each count of petit larceny, five years for possession of burglary tools, one year for resisting arrest, and life imprisonment without the possibility of parole for both charges of first-degree burglary, to run concurrently.

Applicant timely appealed. Appellate Defender Aileen Clare of the Office of Appellate Defense submitted an Anders[1] brief on Applicant's behalf. By written Order the South Carolina Court of Appeals dismissed the appeal, affirming Applicant's convictions and sentences. State v. Adams, 2008-UP-435 (S.C. Ct. App. filed August 5, 2008). The Remittitur was returned on August 22, 2008.

First PCR Action and Subsequent Appeal (2008-CP-40-7814)

Applicant subsequently filed an application for PCR on October 29, 2008, and amended September 8, 2009, in which he alleged the following grounds for relief:

1. "Ineffective assistance of counsel."
   a. "failing to sufficiently argue serious fourth amendment violation."
   b. "failing to argue directed verdicts on appeal"
   c. "not arguing on appeal the state's improper comments during closing arguments"
   d. "not arguing that the state's evidence was in fatal variance with the indictments"
   e. "not objecting to the in court identification"
   f. "not requesting or taking exception to the letters related offenses"
   g. "failure to adequately investigate or prepare"

[1] Anders v. California, 386 U.S. 738 (1967).

An evidentiary hearing into the matter was convened on November 5, 2009, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. On April 19, 2010, the Honorable G. Thomas Cooper, Jr., issued the order of dismissal denying Applicant's application for post-conviction relief with prejudice.

On November 19, 2010, Chief Appellate Defender Wanda Carter filed a Johnson[2] petition for writ of certiorari in the South Carolina Supreme Court on behalf of Applicant. On September 22, 2011, by written Order, the South Carolina Supreme Court denied the petition. The Remittitur was returned on October 10, 2011.

Second PCR Action and Subsequent Appeal (2012-CP-40-2904)

Applicant subsequently filed his *second* application for PCR on April 23, 2012, in which he alleged the following grounds for relief:

1. "Applicant was denied Due Process to numerous procedural irregularies."
2. "Ineffective assistance of collateral counsel/PCR counsel"
3. "Prosecutorial misconduct/Due process"

Respondent filed its return April 27, 2012, moving to dismiss the application as untimely, successive, and for failure to state a cognizable claim for relief. The Honorable James R. Barber, III, in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on May 2, 2012. Applicant submitted several *pro se* objections to the conditional order. After review of Applicant's responses, Judge Barber issued a final order summarily dismissing the action with prejudice on August 1, 2012.

Applicant *pro se* appealed the denial of his PCR which was denied by the Court by Order dated September 4, 2012, for failure to establish an arguable basis for appeal pursuant to 243(c),

[2] Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

SCACR. The Court then denied Applicant's motion to reconsider the dismissal of the notice of appeal. The Remittitur was returned on February 22, 2013.

Habeas Corpus Action (3:12-1482-JFA-JRM)

Applicant then filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on June 1, 2012, and amended August 6, 2012. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued on July 30, 2013, a Report and Recommendation to dismiss Applicant's petition. The Honorable Joseph F. Anderson, United States District Judge, adopting the Report and Recommendation, dismissed Applicant's petition on September 11, 2013, and did not issue a certificate of appealability. Adams v. Stevenson, No. CA 3:12-1482-JFA-JRM, 2013 WL 5143294 (D.S.C. Sept. 12, 2013).

Applicant appealed the decision. The United States Court of Appeals for the Fourth Circuit dismissed the appeal and denied a certificate of appealability on July 1, 2014. Adams v. Stevenson, 577 F. App'x 218 (4th Cir. 2014).

Third PCR Action: 2021-CP-40-1063

Applicant subsequently filed his *third* application for PCR on March 8, 2021, in which Applicant alleged the following grounds for relief:

1. Denied effective assistance of counsel of the competent representation":
   a. "Declarant false statements to magistrate judge resulted into unlawful detention. The judge reindict during trial for burglary first degree absence and jury approve."
      i. "Trial counsel Laruen H. Mobley and Stacey Owening Rowell were incompetent in failing to challenge the affiant declaration. The arrest warrant affidavit is a voluntary false of facts written down and sworn to by a declarant. Bail hearing."
      ii. "Trial counsel Stacey Owening Rowell was incompetent at the preliminary hearing on June 23, 2005 in failure to ask declarant facts on the circumstance regarding whether the witness or

witnesses saw applicant exit or enter the dwelling which is in violation of S.C. Code 1976 § 16-11-311. Affiant responded saying we waiting for the finger prints to come back from laboratory. Prejudice begins when counsel failed to ask for continuance until test reports are completed. Instead the magistrate judge bound over without objection."

b. "Denied effective assistance of counsel and has proof that case number 1993-GS-40-9530 & case number 1993-GS-40-9516 are not convictions under section 1-1-60 for purpose to enhance the 2005 charge(s), thus information is not listed in thus notice to seek a mandatory sentence of life without parole (filed January 9, 2006), let the record reflect applicant is entitled to a hearing pursuant to section 17-28-80."

Respondent filed its return on June 17, 2021, moving to dismiss the application as untimely, successive, and barred by the doctrine of *res judicata*. The Honorable L. Casey Manning, in his capacity as Chief Administrative Judge, issued a conditional order of dismissal filed on June 21, 2021. Applicant submitted several *pro se* objections to the conditional order. After review of Applicant's responses, Judge Manning issued a final order summarily dismissing the action with prejudice on August 10, 2021.

CURRENT APPLICATION

In Applicant's *untimely fourth* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:[3]

1. "Counsel failure to requests lesser included offence on [sic]"
2. "Receiving stolen goods in a lesser included offenses capered with 1st degree burglary"
3. "Blockburger test should be conducted on essential element"

Applicant seeks relief in the form of vacation of his sentence, new trial, or release from confinement.

In response, Respondent made its return to the action and moved to dismiss the application

[3] Due to the length of Applicant's allegations, they are not recited verbatim here.

as untimely, barred by the statute of limitations, successive to Applicant's previous PCR applications, barred by the doctrine of *res judicata* pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90.

Attached to Respondent's return and before this Court are the Richland County Clerk of Court records regarding the subject's convictions and sentences; Applicant's records from the South Carolina Department of Corrections; 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 §§ 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 that 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 Statute of Limitations

Respondent moved for summary dismissal for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[4] 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

[4] S.C. Code Ann. § 17-27-10 to -160.

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 the 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 alleges he is entitled to post-conviction relief based on allegations of ineffective assistance of counsel. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted as charged at a

jury trial on February 1, 2006. Applicant timely appealed and the Remittitur was returned to the circuit court on August 22, 2008. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before August 22, 2009. Applicant did not file this PCR application until September 28, 2022, *fourteen years, one month, and seven days* beyond the statute of limitations.

Moreover, S.C. Code Ann. §§ 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively. Lastly, Applicant has not alleged in any of his claims that this was newly discovered evidence, and thus Applicant has failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45(C).

Accordingly, this Court finds this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Summary Dismissal Based on Successiveness

Respondent moved for summary dismissal because the current Application is successive to the Applicant's *three* previous applications for post-conviction relief. 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). S.C. Code Ann. § 17-27-90 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.

Pursuant to § 17-27-90, successive PCR actions are barred 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). The South Carolina Supreme Court held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Id. 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. 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 that the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, 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 § 17-27-90 of the South Carolina Code. This Court finds Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his *three* previous applications for post-conviction relief and other collateral challenges.

Accordingly, this Court finds Applicant has failed to meet the burden imposed upon him and finds this application shall be dismissed as successive to Applicant's prior post-conviction relief actions.

Summary Dismissal Based on the Doctrine of Res Judicata

Additionally, Respondent moved to summarily dismiss the application because it 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 of 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).

This Court finds Applicant had a full opportunity to litigate all his allegations in his prior PCR actions. Applicant's present allegations of ineffective assistance of counsel are substantively indistinguishable from those offered in his prior applications for post-conviction relief. The prior PCR Court issued a final judgment on the merits of the 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*.

Frustration of Finality of Convictions

As a final matter, the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity of 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). This Court finds 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – D. Russell Barlow, II
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland 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 1 day of Feb, 2022.

DEANDREA G. BENJAMIN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina