

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
George A. Cousins, #350976,	)	Case No.: 2022-CP-34-00176
Applicant,	)	
	)	
v.	)	
	)	<b>FINAL ORDER OF DISMISSAL</b>
State of South Carolina,	)	
Respondent.	)	

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This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant George A. Cousins on July 13, 2022. Respondent moved to summarily dismiss the application on August 29, 2022, because it is untimely, successive, and barred by the doctrine of *res judicata*.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal filed September 7, 2022, provisionally summarily dismissing the application, but affording Applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not be finalized. Applicant refused service of the conditional order on October 31, 2022, as evidenced by the attached affidavit of personal service.

On September 20, 2022, Applicant filed two documents. In the first document, entitled "motion for summary judgment", Applicant stated that his prior PCR Counsel did not litigate all his issues. He stated that COVID-19 was unduly burdensome for him regarding filing his application. He requested another evidentiary hearing. Applicant claims he has newly discovered evidence. He stated he was forced into pleading. He claims that he is entitled to equitable tolling because he filed a motion for summary judgment. Applicant's second document is entitled "motion to strike." In this document, he requests the conditional order be stricken because he just

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spent eleven days in quarantine. Applicant claims he is entitled to a hearing because he has not yet raised a claim concerning a coerced plea.

This Court has reviewed both responses in full and finds neither are sufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant's allegation of newly discovered evidence, such that he should be entitled to vacation of his sentence and immunity, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

- (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt

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encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

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

Applicant claimed he had newly discovered evidence without stating what that evidence was, presenting it to the Court, stating how it could not have been discovered prior to the plea, or showing how it impacts the plea at all. 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 a 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 with prejudice.

Applicant had a full opportunity to litigate all his allegations in his prior actions. In fact, this application is near identical to the last application, with no new substantive claims being raised. He also raised all of the claims in this application in his habeas petition as well. 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*.

Additionally, this Court finds that the application is barred for unexcused neglect. Applicant pled guilty to all charges on May 24, 2012, and the order granting the motion to reconsider the sentence was filed on May 17, 2013. The application was therefore due on May 18, 2014. This application was filed on July 13, 2022, well beyond the statutory filing period. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior

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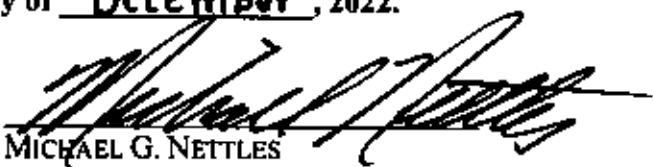
PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this 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). Applicant has failed to make such a showing based on the information set forth in his responses, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it is untimely, successive, and barred by the doctrine of *res judicata*. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice.

This court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 30 day of December, 2022.

  
MICHAEL G. NETTLES  
Chief Administrative Judge  
Fourth Judicial Circuit

Florence, South Carolina

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