

STATE OF SOUTH CAROLINA )  
 COUNTY OF MARLBORO )  
 )  
 )  
 George A. Cousins, #350976, )  
                                   Applicant, )  
 )  
                                   v. )  
 )  
 State of South Carolina, )  
                                   Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE FOURTH JUDICIAL CIRCUIT

Case No.: 2022-CP-34-00176

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief application filed by Applicant George A. Cousins on July 13, 2022. 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 Marlboro County Clerk of Court. In January 2011, the Marlboro County Grand Jury indicted Applicant for murder (2011-GS-34-0050) and possession of firearm during commission of a violent crime (2011-GS-34-0051). Richard Jones, Esquire represented Applicant. Assistant Attorney Generals Heather Weiss and Kelly Hall, Esquire prosecuted the case. On May 24, 2012, Applicant pled guilty to the lesser-included offense of voluntary manslaughter and straight up to possession of a firearm before the Honorable Paul M. Burch, circuit court judge. Judge Burch sentenced Applicant to thirty years' imprisonment for voluntary and five years' imprisonment for weapons possession, sentences running concurrently.

Applicant made a motion to reconsider the sentence, which was heard on April 8, 2013, before Judge Burch. Applicant was represented by Stuart Axelrod, Esquire, and Assistant Attorney General Ashley McMahan represented the State. Judge Burch reconsidered the voluntary manslaughter sentence and lowered it from thirty years' imprisonment to twenty-seven

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years' imprisonment. The order granting the motion was filed on May 17, 2013.

***First PCR Action: (2014-CP-34-00127)***

Applicant subsequently filed his first PCR application, through PCR Counsel Tristan Shaffer, on May 12, 2014, alleging:

1. Involuntary guilty plea:
  - a. Applicant pled with the assurance of Counsel that he would get approximately 15 years' imprisonment.
2. Ineffective assistance of counsel:
  - a. Applicant was assured by Counsel that he would be sentenced to approximately 5 years' imprisonment and based his decision to waive his right to a trial on this advice.
3. Violation of Due Process

Respondent made its return on December 5, 2016. An evidentiary hearing in the matter was convened on July 18, 2017, at the Dillon County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Johnny E. James, Esquire, of South Carolina Attorney General's Office, represented Respondent. On November 16, 2017, the Honorable Roger E. Henderson issued the order of dismissal denying Applicant's PCR application.

A timely notice of appeal was filed and on June 11, 2018, Victor Seeger, Esquire filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent made its return on September 21, 2018. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. On October 9, 2019, by written order the South Carolina Court of Appeals denied the petition. The remittitur was issued on October 28, 2019.

***First Habeas Corpus Action: (8:19-cv-03021-TMC-JDA)***

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code Section 2254 on October 22, 2019. Applicant set forth the following grounds for relief:

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1. Petitioner requested his discovery Rule 5 from his public defender Richard Jones seven or eight times.
2. I was guaranteed by plea counsel if I plead guilty I would receive fifteen (15) years one time deal.
3. Ineffective assistance of counsel.
4. Due process violation.
5. Okay first day I was arrested July 18, 2010 the person was still alive. I was never read my Miranda rights. Officer Timothy D. Shaw his report I responded to 129 North Stanton Avenue in Tatum in Marlboro County in reference to a 911 call about a shooting. When I arrived on scene I advised the dispatcher to tell the caller to meet me on the front porch. Petitioner on the front porch he opened the door to the front of his house. I stopped Petitioner and told him that I needed to cuff him for his safety and mine check him weapons no Miranda rights were read.
6. When I received my motion for discovery Rule 5 was on August 30, 2012 Lieber CI prison.
7. In the instant case Petitioner's guilty plea was induced by misadvice of counsel. Plea counsel promised him he would receive fifteen years.
8. When I finally received my discovery Rule 5 it was incomplete. Officer's report time of death.

On December 18, 2019, Respondent filed a motion to strike and on March 2020,

Respondent filed a return and memorandum to the petition and a motion for summary judgment.

On March 4, 2020, the Court issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309

(4th Cir. 1975), advising Petitioner of the summary judgment/dismissal procedure and the

possible consequences if he failed to adequately respond to the motion. On February 13, 2020,

the Clerk docketed Petitioner's motion for an evidentiary hearing and to appoint counsel.

Respondent filed a response in opposition on February 27, 2020, and the Clerk docketed

Petitioner's reply on March 9, 2020. On March 9, 2020, the Clerk docketed Petitioner's motion

to amend and supplement pleadings, and Respondent filed a response in opposition on March 23,

2020. And finally, the Clerk docketed Petitioner's motion to expand the record on April 29,

2020, and Respondent filed a response in opposition on May 8, 2020. The Clerk docketed

Petitioner's responses in opposition to the motion for summary judgment on April 1, 2020; April

27, 2020; April 29, 2020; and May 6, 2020. On June 1, 2020, Magistrate Judge Jacquelyn D.

Austin issued the report and recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. *Cousins v. Warden Kendall*, Case No. 8:19-cv-03021-TMC-JDA (D.S.C. filed June 1, 2020). Applicant's filed multiple objections to the report. On July 28, 2020, the Court Judge adopted the Magistrate's report and recommendation granting Respondent's motion for summary judgement and dismissed Applicant's petition. *Cousins v. Warden Kendall*, Case No. 8:19-cv-03021-TMC-JDA (D.S.C. filed July 28, 2020).

A notice of appeal was filed in the United States Court of Appeals for the Fourth Circuit and denied by unpublished opinion filed March 17, 2022. The judgement was filed on March 17, 2022, and the mandate filed June 1, 2022.

## **II. Current Action before this Court**

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

1. Ineffective assistance of counsel:
  - a. Improper legal advice.
2. Induced plea:
  - a. Applicant was induced by Counsel to plea to a 15-year sentence.
3. Violation of Fifth, Sixth, Fourteenth Amendment, Due process:
  - a. Nor shall any state deprive any citizen of the U.S. of life, liberty, or property.

Before this Court are the Marlboro County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the plea and motion to reconsider the sentence transcripts, the PCR application, and prior PCR, PCR appeal, and habeas action 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:

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**Statute of Limitations**

The 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 686 (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). In addition, South Carolina Code Annotated Section 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.”

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. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

**Res Judicata**

The application is similarly 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

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S.E.2d 786 (Cl. 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 (Cl. 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. 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*.

#### *Successiveness*

The application shall 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 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.

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

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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).

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 has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR application. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant’s previous PCR application.

#### IV. Conclusion

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


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


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Applicant is cautioned that his response to this order must be actually received by the Marlboro County Clerk of Court and opposing counsel within twenty days, 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 day of August, 2022.

  
MICHAEL G. NETTLES  
Chief Administrative Judge  
Fourth Judicial Circuit

  
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