STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
William G. Richbourg, #250006, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–40–4977 **CONDITIONAL ORDER OF DISMISSAL**

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by William G. Richbourg (Applicant) on September 22, 2023. In response, Respondent made its return and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, successive to Applicant's previous PCR applications, barred by the doctrine of *res judicata*, barred by the doctrine of *laches*, and for failing to comply with 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 and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the April 1997 term of the Richland County Grand Jury for one count of Assault and Battery with Intent to Kill (ABWIK) (97-GS-40-18302) and two counts of Armed Robbery (97-GS-40-18303; -18304). Applicant was then indicted at the July 1997 term of the Richland County Grand Jury for one count of ABWIK (97-GS-40-24216), two counts of Armed Robbery (97-GS-40-24217; -24233), and one count of Failure to Stop for a Blue Light (97-GS-40-24234). Applicant was subsequently indicted in the May 1998 term of the Richland County Grand

Jury for one count of Strong Armed Robbery (98-GS-40-32308). Applicant was represented by Elizabeth Fullwood, Esquire, and Will Bryant, Esquire, both of the Richland County Public Defender's Office.

On May 28, 1998, Applicant appeared before the Honorable M. Duane Shuler and pled guilty as indicted to all charges. Judge Shuler sentenced Applicant to confinement for a period of thirty years for each count of Armed Robbery, twenty years for each count of ABWIK, ten years for Strong Arm Robbery, and three years for Failure to Stop for Blue Light. All sentences were ordered to be run concurrently.

Applicant did not appeal his convictions or sentences.

FIRST PCR ACTION: 2009–CP–40–6007

Applicant subsequently filed an application for PCR on August 21, 2009, in which he alleged the following grounds for relief:

1. Overcrowded Prison System

Respondent made its return and motion to dismiss on July 7, 2010. On July 15, 2010, the Honorable Alison Renee Lee issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, while giving Applicant twenty days to show why the Conditional Order of Dismissal should not become final. Applicant was served with the Conditional Order of Dismissal on August 13, 2010. Applicant did not respond to the Conditional Order of Dismissal. On September 30, 2010, Judge Lee issued the Final Order of Dismissal by filed order.

Applicant did not appeal this PCR action.

CURRENT ACTION BEFORE THIS COURT

On September 22, 2023, Applicant *untimely* filed his *second* application for PCR in which he alleges the following:[1]

1. Ineffective Assistance of Trial Counsel – Direct Appeal[2]
2. Ineffective Assistance of Trial Counsel – Time Served Pretrial
3. Sex Offender Registry Matters

Applicant seeks relief in the form of "allow a belated direct appeal; run Calhoun Co. sentence concurrent; apply credit for time served; declare on record no sex offenses for kidnapping."

Before this Court is Respondent's Return and Motion to Dismiss; the Richland County Clerk of Court records regarding the subject's convictions; Applicant's records from SCDC; Applicant's records from his first PCR action; 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 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,

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[1] On October 18, 2023, Applicant filed a third PCR application (2023-CP-40-5544) with the same allegations as his second application. On October 31, 2023, Respondent filed its Motion for Merger to merge -5544 with this current action.

[2] Applicant filed an addendum that goes into more detail. The addendum is attached for the Court's review.

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 to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[3] 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 that the statute of limitations shall apply to all

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

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 is alleging he is entitled to post-conviction relief based on multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty and was sentenced on May 28, 1998. Applicant did not pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before May 29, 1999. Applicant did not file this PCR application until September 22, 2023, *twenty-four years, and three months, and twenty-four days* beyond the statute of limitations.

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 to summarily dismiss the application because it is successive to the previous application(s) 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). Importantly, S.C. Code

Ann. § 17-27-90 provides:

> 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 S.C. Code Ann. § 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). In Aice, the South Carolina Supreme Court held that 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 394.

Expressly, 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. Notably, the 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).

Here, Applicant's current allegations *were or could have been* raised in Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. 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 is unable to show that these claims could not have been raised in his initial application, as his claims were known 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 prior post-conviction relief actions.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

Additionally, this 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 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).

Applicant had a full opportunity to litigate any and all his allegations in his prior PCR action. The prior PCR Courts issued final judgments on the merits of the same or similar issues Applicant raises in this successive action. This Court finds the finality of the previous court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF LACHES

Respondent further moved to summarily dismiss this action based on the equitable doctrine of *laches*. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id.

Where a PCR applicant fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734–35 (2007) ("*Laches* connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner."). "Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute *laches*." Whitehead, 352 S.C. at 219, 574 S.E.2d at 202. Recognizing the importance of finality in litigation, Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. § 17-27-45(A).

Applicant filed this PCR action *twenty* years after he was convicted. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held). Applicant's delay has greatly prejudiced the State (as well as Applicant). Absent some explanation or justification for the delay in seeking PCR, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Witness memories and physical evidence will have naturally faded and degraded. State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims.

Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of *laches.*

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. . . . [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 (citations omitted).

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, 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.

401 U.S. 667, 691 (1971) (Harlan, J., concurring 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 relitigate his convictions and sentences through this 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 – 5th Circuit
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 8th **day of** December**, 2023.**

THE HONORABLE JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina