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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2022-CP-18-00890

John B. Robinson, .....Petitioner,

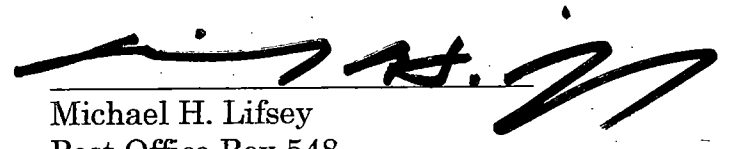
v.

State of South Carolina, .....Respondent.

**NOTICE OF APPEAL**

Petitioner, John B. Robinson, appeals the order of the Honorable Paul M. Burch dated February 23, 2024, and filed April 10, 2024. Petitioner received written notice of entry of this order on April 12, 2024.

4/12, 2024



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STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
)   
John B. Robinson, SCDC #280311, )  
)   
Applicant, )   
v. )   
)   
State of South Carolina, )   
)   
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2022-CP-18-00890

**ORDER OF DISMISSAL**

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DORCHESTER COUNTY

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by John B. Robinson (“Applicant”) on June 3, 2022. The State of South Carolina (“Respondent” or “the State”) filed its Return on September 14, 2022, moving to summarily dismiss Applicant’s application. On October 6, 2022, Applicant filed a *pro se* objection to the State’s motion and requested counsel. On February 5, 2024, a hearing on the State’s motion convened before the Honorable Paul M. Burch. Applicant was present and represented by Michael H. Lifsey. Assistant Attorney General Bryan T. Hall represented the State.

This Court finds Applicant’s application barred by the statute of limitations and barred as successive. This Court further finds there is no genuine issue of material fact that would necessitate an evidentiary hearing, and Applicant is not entitled to relief. Thus, Respondent’s motion to dismiss is GRANTED, and this application is DENIED AND DISMISSED WITH PREJUDICE.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”). In March 2001, the Dorchester County Grand Jury indicted Applicant for murder (2001-GS-18-00325). From December 3-5, 2001, Applicant proceeded to a jury trial before the Honorable Luke N. Brown, Jr. Maite Murphy of the First Circuit Solicitor’s Office prosecuted the

case. Applicant was represented by Gene W. Dukes, Esquire. Applicant was convicted as indicted. Judge Brown sentenced Applicant to forty (40) years imprisonment.

### **Direct Appeal**

Applicant timely filed a notice of appeal and was represented by Deputy Chief Appellate Defender Joseph L. Savitz, III, who perfected Applicant's appeal by filing an *Anders*<sup>1</sup> brief, raising the following issue:

Whether the trial judge erred by refusing to direct a verdict acquitting [Applicant] of murdering his girlfriend.

The South Court of Appeals dismissed the appeal and granted counsel's request to be relieved. *State v. Robinson*, Op. No. 2003-UP-371 (S.C. Ct. App. filed May 22, 2003). The Remittitur was sent on June 25, 2003.

### **First PCR Application (2004-CP-18-00861) and Subsequent Appeal**

On May 21, 2004, Applicant filed his first PCR application, raising the following allegations: ineffective assistance of counsel, lack of subject matter jurisdiction, plain error, and prosecutorial misconduct. An evidentiary hearing convened on January 9, 2007, before the Honorable James C. Williams, Jr. Applicant was present and represented by Charles T. Brooks, III, Esquire. On March 8, 2007, Judge Williams denied Applicant's PCR application and dismissed with prejudice.

Applicant filed a timely notice of appeal from the PCR court's denial. On appeal, Applicant was represented by Appellate Defender Kathrine H. Hudgins, who raised the following issue in a petition for writ of certiorari:

Did the PCR judge err in refusing to grant a continuance in order for PCR counsel to secure funding for and hire an investigator to explore issues of third-party guilt when the trial attorney admitted

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

that he did not independently investigate the purported alibi of a third party?

The Supreme Court denied Applicant's petition, and the Remittitur was sent on August 11, 2008.

**Petition for Habeas Corpus (6:09-cv-1977-RBH-WMC)**

On August 14, 2009, Applicant filed a Petition for Habeas Corpus in the United States District Court for the District of South Carolina. *Robinson v. Anthony Padula, Warden of Lee Correctional Institution*, C/A No. 6:09-1977-RBII-WMC. Applicant raised allegations of ineffective assistance of counsel, prosecutorial misconduct, and plain error. The district court granted Respondent's motion for summary judgment by Order, finding Petitioner's claims were without merit. Applicant appealed to the Fourth Circuit Court of Appeals, who mandated the judgment.

**Second PCR Application (2014-CP-18-00406) and Subsequent Appeal**

On March 7, 2014, Applicant filed a second PCR application, raising the following issues (*paraphrased*):

1. Erroneous jury charge on malice inferred from use of a deadly weapon.<sup>2</sup>
2. Violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).
3. Newly discovered evidence in *State v. Rogers*, 405 S.C. 520, 748 S.E.2d 247 (Ct. App. 2013).

Respondent filed its Return and moved to summarily dismiss the application as barred by the statute of limitations, successive to Applicant's prior PCR action, and barred by *res judicata*. On June 19, 2014, the Honorable Diane S. Goodstein issued a conditional order of dismissal, provisionally denying and dismissing the application. Applicant filed several objections to the conditional order of dismissal.

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<sup>2</sup> Pursuant to *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

On December 11, 2017, an evidentiary hearing was held before the Honorable Kristi L. Harrington. On December 19, 2017, Judge Harrington denied and dismissed the application with prejudice. Applicant filed a notice of appeal. The Supreme Court dismissed Applicant's petition for a writ of certiorari. *Robinson v. State*, S.C. Sup. Ct. Order dated March 22, 2018. The Remittitur was sent on April 9, 2018.

### **Third and Current PCR Application (2022-CP-18-00890)**

In his third and current PCR application, Applicant raises the following allegation: newly discovered evidence for failure of the Great Seal Affixed to 1993 Act No. 184, 1995 Act No. 7, and 1996 Act No. 317.

### **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds Applicant's PCR application is barred as successive and barred by the statute of limitations. Further, assuming facts in the light most favorable to Applicant, this Court finds there is no genuine issue of material fact which would necessitate an evidentiary hearing, and Applicant is not entitled to relief as a matter of law pursuant to S.C. Code Ann. § 17-27-70(B)-(C) (2014); *Lemon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005).

#### **Barred by Statute of Limitations**

This Court finds Applicant's PCR application is barred by the statute of limitations. Applicants must file PCR applications within either one (1) year of conviction or one (1) year of the remittitur being sent to the lower court from appeal, whichever is later. S.C. Code Ann. § 17-27-45(A). For allegations of newly discovered evidence, applicant must file a PCR within one (1) year after the date of actual discovery of the facts or after the date when the facts could have been ascertained by the exercise of reasonable due diligence. *Id.* § 17-27-45(C).

This PCR was filed untimely. Applicant was convicted on December 5, 2001. The

Remittitur from Applicant's first direct appeal was sent on June 25, 2003. This PCR action was filed on June 3, 2022, outside of the one (1) year statute of limitations. This PCR was also filed outside of the statute of limitations for newly discovered evidence. It has been approximately twenty-three (23) years since Applicant's conviction, and Applicant could have discovered the missing Great Seal by an exercise of reasonable due diligence. Thus, this application is barred by the statute of limitations.

#### **Barred as Successive**

This Court finds Applicant's PCR application is barred as successive. All grounds for relief must be raised in the original, supplemental, or amended application. *Id.* § 17-27-90. Any ground not raised is waived and may not be the basis for a subsequent application unless the court finds sufficient reason why the ground raised could not or was not raised in the original application. *Id.* Courts disfavor successive applications, and the burden is on the applicant to establish why any new ground raised in a subsequent application could not have been raised in previous applications. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981). This Court finds Applicant has failed to provide a sufficient reason why the allegations in his current PCR application could not be raised in his previous two (2) applications. Thus, this application is barred as successive.

#### **No Genuine Issue of Material Fact on Great Seal Allegation**

This Court finds no genuine issue of material fact that would necessitate an evidentiary hearing on Applicant's Great Seal allegation. The South Carolina Constitution states no bill or joint resolution shall have the force of law until it has had the Great Seal of the State affixed to it. S.C. Const. Art. III, § 18. The South Carolina Supreme Court has held that absolute literal compliance is not essential to validate legislation, substantial compliance with a constitutional provision is sufficient. *See Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821 (1903). Proper codification

of an act will cure a constitutional defect and is part of the general statutory law of the state. See *S.C. Tax Comm'n v. York Elec. Co-Op., Inc.*, 275 S.C. 326, 270 S.E.2d 626 (1980).

This Court rejects Applicant's argument that his conviction and sentence are unconstitutional. The statutes under which Applicant was indicted, and subsequently convicted, were properly codified and substantially complied with constitutional provisions. As a result, any constitutional defect was cured. Thus, there is no genuine issue of material fact, and Applicant has failed to show that he is entitled to relief.


### III. CONCLUSION

Based on the foregoing, this Court finds Applicant's application is barred by the statute of limitations, barred as successive, and no genuine issue of material fact exists.

#### **THEREFORE, IT IS ORDERED:**

1. This PCR application is hereby denied and dismissed with prejudice.
2. Applicant must be remanded to and remain in the custody of the State.

**AND IT IS SO ORDERED ON THIS** 23rd day of February, 2024.

  
PAUL M. BURCH 2048  
Presiding Judge  
First Judicial Circuit

Chesterfield, South Carolina