

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Quasean David Marshall #371676,)
)
Applicant,)

Case No.: 2023-CP-23-2605

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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Brice Garrett COC GUL SC

Applicant filed the captioned application for post-conviction relief on May 24, 2023, which he amended on November 29, 2023. Respondent has moved for summary dismissal alleging the records attached to the return and motion conclusively show that the application is barred as improperly successive, untimely, and by *res judicata* and waiver. Having reviewed the application, and the return and motion, this Court makes the following findings:

Procedural History

A Greenville County grand jury indicted Applicant in February 2016 for murder and first-degree burglary. (Return Attachment 1). Cassandra Parks Gorton, Esq., represented Applicant on the charges. On March 1, 2017, Applicant appeared before the Honorable Letitia H. Verdin and pled guilty to burglary as indicted and voluntary manslaughter. (Return Attachment 2, Tr. 4). Judge Verdin sentenced Applicant to imprisonment for twenty-four years on each charge, to be served concurrently. (Return Attachment 2, Tr. 28; *see also* Return Attachment 3, sentencing sheets). Judge Verdin denied a motion to reconsider the sentence on March 28, 2017. The plea and sentences were affirmed on appeal, and the Court of Appeals issued the remittitur on December 31, 2018. (Return Attachments 4 and 5).

Applicant filed his first application for post-conviction relief on April 9, 2019. R. Mills Ariail, Jr., Esq., represented Applicant in the action. A hearing on the application was scheduled

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for March 6, 2023, at the Greenville County Courthouse before the Honorable Daniel D. Hall. At the beginning of the hearing, Applicant advised Judge Hall that he wished to withdraw the application. Applicant was sworn and Judge Hall questioned Applicant to ensure that the waiver of post-conviction remedies was voluntarily and knowingly made. See *Brannon v. State*, 345 S.C. 437, 439, 548 S.E.2d 866, 867 (2001) (the court is required “to ascertain the voluntariness of” a request to withdraw). Judge Hall issued a written order on May 12, 2023, dismissing the action with prejudice. (Return Attachment 6). Applicant could not appeal the voluntary dismissal. See *Rush v. State*, 368 S.C. 144, 145, 628 S.E.2d 42, 43 (2006) (“Since it was [the PCR applicant] who sought the withdrawal, he may not appeal the order that resulted when his request was granted.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. § 17-27-70(c), this Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. “Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). This is such a case.

The Application is Improperly Successive

The application should be summarily dismissed because it is improperly successive to Applicant’s previous post-conviction relief application. The PCR Act 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.

S.C. Code Ann. § 17-27-90.

Under this statute, successive 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 ground raised in a subsequent application is limited to those grounds that “*could not* have been raised . . . in the previous application.” *Id.* at 450 (emphasis added). If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in an earlier application, whether state or federal. *Land v. State*, 274 S.C. 243, 245, 262 S.E.2d 735, 737 (1980) (“applicant [has] the burden of proving that a new ground for relief could not have been raised in the previous application”); *Foxworth v. State*, 275 S.C. 615, 618 274 S.E.2d 415, 416 (1981) (“The language of Section 17-27-90 is not restricted to State proceedings but rather refers to ‘any other proceeding’”).

Applicant has already had the opportunity to seek post-conviction relief. He is due no more. See *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“All applicants are entitled to a full and fair *opportunity* to present claims in one PCR application.”) (emphasis added); *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991) (“as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive

application”). Applicant fails to show any cognizable basis for establishing “sufficient” reason to allow the successive action. To the extent that Applicant now claims his request to withdraw his prior PCR action was not intelligently and knowingly made, not only is his argument refuted by the plain record, it is also not timely. Any challenge to Judge Hall’s inquiry, or Judge Hall’s findings of facts, should have been made by a timely post-trial motion, if made at all. See *Rush*, at 145, 628 S.E.2d at 43 n. 1 (“If there was any error in the findings of fact or conclusions of law in the order, these errors should have been raised by a timely motion under either Rule 52 or 59, SCRC.P.”). Applicant did neither. Consequently, the procedural bar should be applied without exception.

The Application was Not Timely Filed

S.C. Code § 17-27-45(A) provides:

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 appeal, whichever is later.

Applicant’s conviction became final at “the sending of the remittitur” from the direct appeal on December 31, 2018. This action filed in May of 2023 is well-outside the one-year period. Applicant has failed to timely file, and the procedural bar should be applied without exception.

The Application is Barred by 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 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 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.* Because any cognizable claims attempted here

could have been raised in the first PCR action, the claims raised here are also barred by *res judicata*.

The Application is Barred by Waiver of the Right to Post-Conviction Relief

Applicant advised Judge Hall that he wished to withdraw the application. Notably, Applicant had the assistance of counsel for his PCR action. Applicant was sworn and responded to Judge Hall directly as Judge Hall questioned him to ensure that the waiver of post-conviction remedies was voluntarily and knowingly made. See *Brannon, supra*. Applicant's responses convinced Judge Hall that he was making a voluntary and knowing waiver. (See Return Attachment 6). Judge Hall issued a written order on May 12, 2023, dismissing the action with prejudice. (Return Attachment 6). Further, Judge Hall found that "Applicant understands that his application represents his 'one bite' at the apple of post-conviction relief." (Attachment 6, at 1). Applicant failed to make a timely post-trial motion to call any finding or conclusion into question. See *Rush*, at 145, 628 S.E.2d at 43 n. 1 ("If there was any error in the findings of fact or conclusions of law in the order, these errors should have been raised by a timely motion under either Rule 52 or 59, SCRPC."). The voluntary and knowing waiver of the known right to pursue post-conviction relief bars further action. See generally *Spoone v. State*, 379 S.C. 138, 144, 665 S.E.2d 605, 608 (2008) (affirming enforcement of waiver of PCR remedies as part of plea agreement). Thus, the voluntary and knowing waiver of PCR remedies in the first PCR action also works to bar this successive action attempt.

CONCLUSION

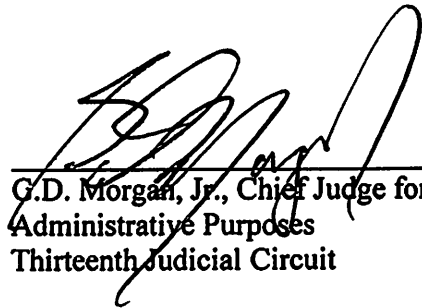
Pursuant to S.C. Code Ann. § 17-27-70(b), and for all the reasons set out above, this Court intends to dismiss this application for post-conviction relief with prejudice unless Applicant provides specific factual or legal reasons that the application should not be dismissed

for those reasons. Applicant is granted twenty days from the date of service of this order upon him to provide reasons that this order should not become final. Applicant shall file any reasons he may have with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Melody J. Brown
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 12th day of March, 2024.

Greenville, South Carolina.


G.D. Morgan, Jr., Chief Judge for
Administrative Purposes
Thirteenth Judicial Circuit

Copy mailed to MB
Attorney General / Marjorie Marshall
on 3 / 1 / 24 / 2024.