

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Bobby Joe Barton, #163629,)
)
)
 Applicant,)

Case No.: 2021-CP-23-03093

v.)

FINAL ORDER OF DISMISSAL
(with prejudice)

State of South Carolina,)

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Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed on June 29, 2021, by Applicant Bobby Joe Barton. Respondent made its return and 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*.

After consideration of the application, return and relevant documents attached thereto, this Court filed a Conditional Order of Dismissal on April 10, 2024, finding that the action should be summarily dismissed as improperly successive, untimely, and barred by *res judicata*. Applicant was granted twenty (20) days to respond and show cause as to why the Conditional Order should not become final. As evidenced by the attached Certificate of Service, Applicant was served with the Conditional Order on April 25, 2024. (Attachment 1).

Applicant filed a Motion for Extension of Time to respond to the Conditional Order on May 9, 2024, and an additional Motion for Extension of Time on May 21, 2024. Applicant filed a reply on June 3, 2024, with additional minor corrections filed on June 14, 2024.

This Court has reviewed its prior Conditional Order along with Applicant's response and finds Applicant has failed to show cause as to why the Order should not become final. Applicant has failed to show any applicable exception to the aforementioned procedural bars.

The fact remains that Applicant has previously had a PCR action, and a PCR action appeal. (See Conditional Order, pp. 2-3). To timely file a successive application, S.C. Code Ann. § 17-27-45 (C) requires an applicant file within one year of “actual discovery” of previously unknown facts “that require[] vacation of the conviction or sentence,” or within one year “after the date when the facts could have been ascertained by the exercise of reasonable diligence.” Here, Applicant alleges throughout his reply that his trial counsel was untruthful in certain responses in the prior PCR action. That does not go to any fact at trial, for guilt or sentencing. The provisions of (C) are not triggered and Applicant has failed to show otherwise.

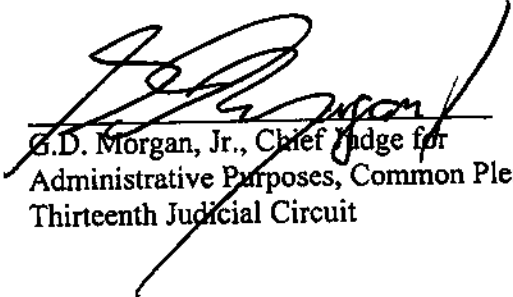
Further, he could have made these allegations during the prior PCR. In fact, on p. 5 of the reply Applicant alleged that he spoke to PCR counsel about the truthfulness of the testimony “after the hearing” in 2016. On p. 7, he indicates requesting records to attempt to support his allegations. On p. 10, he claims he attempted to have the matter heard in 2016. To the extent Applicant alleges there was an inaccuracy in the PCR transcript, that was not a separate issue further raised in briefing in the appeal. (See Conditional Order, pp. 2-3). To the extent he claims his allegations for relief presented in his prior PCR action should not have been rejected, that is not sufficient cause to excuse the procedural bars. Notably, Applicant seeks a new PCR hearing based on testimony given during the PCR hearing. (See Reply, pp. 20 and 22). Again, this does not go to guilt or innocence so the provisions of (C) are not triggered. Similarly, to the extent Applicant complains of ineffective assistance of PCR counsel, such allegations are not sufficient to avoid the procedural bar. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991).

Consequently, Applicant has failed to show that his claims fall under any exception of the aforementioned procedural bars and the application must therefore be dismissed.

THEREFORE, this Court reasserts all its specific findings in the Conditional Order of Dismissal and concludes that the application must be summarily dismissed as improperly successive, untimely, and barred by *res judicata*.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, and the findings made in this order, the application for post-conviction relief is **DENIED** and **DISMISSED** with prejudice.

IT IS SO ORDERED this 20th day of June, 2024.


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

Greenville, South Carolina

ATTACHMENT TO FINAL ORDER
Certificate of Service (Conditional Order of Dismissal)

****NOTICE****

This Court gives notice that Applicant must file and serve a notice of appeal **within 30** days of the receipt of this order to secure appellate review. See Rule 203(b)(1), SCACR. Applicant's attention is directed to Rule 243, SCACR, for further procedures regarding an appeal.

Copy mailed to Attorney <u>general and Applicant</u> on <u>6/21/2024</u> .
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