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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Rico J. Washington, #331437,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-42-02649

) **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Rico Washington on July 18, 2022. Respondent moved to summarily dismiss the application on September 12, 2022, because it is untimely, barred by the doctrine of *res judicata*, and successive.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated September 16, 2022, provisionally dismissing the application, but affording Applicant twenty days from service of the conditional order of dismissal to provide sufficient reasons as to why the conditional order of dismissal should not be finalized. Applicant was personally served with this conditional order of dismissal on October 18, 2022, as evidenced by the attached affidavit of personal service.

On October 10, 2022, Applicant filed a document entitled "memorandum in support of post-conviction relief." In this memorandum, Applicant claims he is entitled to a court-appointed attorney because he has material facts not previously presented to the court. Applicant claims his current allegation was not raised in his prior PCR action. Applicant claims he is entitled to a White hearing. Applicant amended his application, stating that trial counsel was ineffective for:

1. Failure to ensure that Applicant has qualified interpreters and to

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- correct number of interpreters as required by law.
2. Failure to give, or show, Applicant discovery material to communicate, discuss and strategize the case.
3. Mised Applicant into plea instead of proceeding to trial.
4. Failure to investigate whether Applicant's Due Process rights being protected.
5. Failure to inform, explain and show Applicant what a direct appeal is and to protect his right to a direct appeal.
6. Failure to inform Applicant of his right to go to trial.
7. Cumulative errors.

Applicant concluded by stating he is entitled to equitable tolling of the statute of limitations. He claims he is entitled to equitable tolling because he is hearing impaired, indigent, and has learning disabilities. Applicant claims his plea was not voluntary or intelligent. Applicant also claimed he did not obtain all his discovery from the criminal case until 2017. He states that he believes he should not have pled in light of the discovery obtained. He stated he was not given his discovery materials until Counsel brought them to the prison after he pled.

Applicant has attached a surplus of documents to his response, including 2009-2010 letters regarding retaining a PCR attorney from an organization in Ohio, correspondence regarding a disciplinary complaint he filed against Counsel, inmate letters on behalf of Applicant requesting equitable tolling, Rule 5 discovery request documents, correspondence with the clerk of court requesting documentation, and correspondence with court reporters requesting transcripts.

This Court has reviewed the response and its attachments and finds it insufficient to warrant an evidentiary hearing. Consequently, this application must be summarily dismissed with prejudice.

This shall be summarily dismissed on the grounds of *res judicata*. Applicant had a full opportunity to litigate all his allegations in his prior actions. Specifically, Applicant raised his claims concerning failure to file an appeal and ineffective assistance of counsel in both his prior PCR and habeas actions. The finality of the previous Court rulings should be respected, and the

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application shall be summarily dismissed as barred by the doctrine of *res judicata*.

Additionally, this Court finds that the application is barred for untimeliness. Applicant pled guilty on September 22, 2008. The application was therefore due on September 23, 2009. This application was filed on July 18, 2022, well beyond the statutory filing period. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and procedurally barred.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, consequently, is not entitled to an evidentiary hearing. Thus, this Court reasserts its findings in the conditional order of dismissal that the current PCR application must be dismissed because it is untimely, barred by the doctrine of *res judicata*, and successive. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

[CONCLUSION PAGE FOLLOWS]

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IT IS THEREFORE ORDERED that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice.

This court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 26th day of July, 2024.



THE HONORABLE GRACE GILCHRIST KNIE
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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