

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Rico Washington, #331437,)
Applicant,)

Case No.: 2022-CP-42-02649

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Rico Washington on July 18, 2022. Respondent made its return, requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2008, the Spartanburg County Grand Jury indicted Applicant for first degree lynching (2008-GS-42-02063). Michael Brown, Esquire represented Applicant. On September 22, 2008, Applicant pled guilty as indicted. The Honorable Paul M. Burch, circuit court judge, sentenced Applicant to imprisonment for term of 27 years. Applicant did not appeal his plea or sentence.

First PCR Action (2017-CP-42-02156)

Applicant subsequently filed his first PCR application on June 19, 2017:

1. "Ineffective Assistance / White v. State 208 S.E.2d 35 (1974)"
 - a. "Counsel did not file for direct appeal"
2. "Ineffective Assistance / Hill v. Lockhart 474 U.S. 52-56"
 - a. "Counsel ill advised me to plea did not disclose Brady material"
3. "Ineffective Assistance / Failed to provide Brady Material"
 - a. "Counsel failed evaluation of mentally capability"

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Respondent filed its return, requesting the Court summarily dismiss this matter because Applicant's *White* claim is without merit, and because the application was untimely and barred by the doctrine of laches on March 19, 2019. The Honorable Grace Gilchrist Knie, circuit court judge, signed the conditional order of dismissal on May 14, 2019. The final order of dismissal was filed on July 16, 2019.

Applicant filed his notice of appeal on January 6, 2020, which was dismissed for failure to provide a sufficient explanation under Rules 203(d)(1)(B)(iv) and 243(C), SCACR, and for failure to provide proof of service on opposing counsel, as required by Rules 243(b) and 203(d)(1)(B)(i), SCACR. The remittitur was issued on February 25, 2020.

First Habeas Corpus Action: (1:20-cv-01375-SAL)

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code Section 2254 on May 21, 2020. Applicant set forth the following grounds for relief:

1. The defendant did not knowingly or intelligently waive his right to appeal.
2. Counsel failed to inform the defendant of his right to go to trial.
3. Counsel failed to give defendant discovery material/to discuss trial strategy.
4. Counsel was ineffective because he failed to ensure that the interpreter was qualified by law enough to aid the defendant to understand the proceedings.

On May 21, 2020, Magistrate Judge Shiva V. Hodges issued the report and recommendation that Applicant's petition be dismissed without prejudice and without requiring Respondent to file a return for failure to prosecute and because his habeas petition was untimely filed with no showing that equitable tolling was warranted. *Rico Washington v. Warden Michael Stephon*, Case No. 1:20-cv-01375-SAL (D.S.C. filed May 21, 2020). On June 12, 2020, the Court Judge adopted the Magistrate's report and recommendation dismissing Applicant's petition without prejudice. *Rico Washington v. Warden Michael Stephon*, Case No. 1:20-cv-01375-SAL (D.S.C. filed June 12, 2020).

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II. Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Counsel did not file a direct appeal.
 - a. Counsel failed to protect client's rights.
2. Ineffective assistance of counsel.
 - a. Counsel was ineffective for advising Applicant to plead.
3. Inconclusive evidence to convict the applicant.
 - a. The State lacked evidence to convict applicant.

Before this Court are the Spartanburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, and prior PCR, PCR appeals, and habeas action records.

III. 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 Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to

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all 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 statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, South Carolina Code Annotated Section 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."

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. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

The application shall be summarily dismissed because it is successive to Applicant's previous PCR application. 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). Section 17-27-90 of the South Carolina Code states:

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.

Under this statute, successive PCR applications are forbidden unless an applicant can

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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, 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.* 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR application; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR application. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR application.

Res Judicata

The application is similarly 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 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.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

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

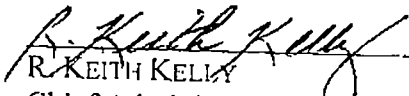
IV. Conclusion

Pursuant to South Carolina Code Annotated Section 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Seventh Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 16th day of September, 2022.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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