

STATE OF SOUTH CAROLINA)
 COUNTY OF MARLBORO)
)
 Darrell Williams, SCDC No. 219730)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTH JUDICIAL CIRCUIT
 Case No. 2020-CP-34-00142
**AMENDED FINAL ORDER
 OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2020. Respondent made its return on or about January 26, 2021, requesting the application be summarily dismissed as successive and falling outside the statute of limitations. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a conditional order of dismissal signed January 28, 2021, and filed February 9, 2021, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said order in which to show why the dismissal should not become final. The order was served on Applicant on May 24, 2021, as evidenced by the attached affidavit of service. On June 21, 2021 this Court issued a final order of dismissal, finding that Applicant had failed to respond to the conditional order.

It has since come to this Court's attention that Applicant had served Respondent with an unfiled document entitled "Motion for Judgment on the Pleadings" on or about March 10, 2021. Therefore, This Court finds it necessary to amend the prior final order of dismissal to address Applicant's claims raised in the "Motion for Judgment on the Pleadings".

In his document Applicant asserts that his application should be treated as timely under S.C. Code Ann. §17-27-45(b) because his September 29, 2010 PCR application was filed within

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one year of the Supreme Court of the United States' decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010). He argues that *Padilla* created a "new rule" and that his 2010 claims brought under *Padilla* were never addressed by the Court, thereby entitling him to a successive application. Ultimately he asserts that his counsel was ineffective for failing to advise him that his concurrent sentences could be treated as multiple convictions to enhance future burglary convictions, which occurred in 2008 when he was sentenced to life imprisonment.

S.C. Code Ann. §17-27-45(b) allows applicants to file an otherwise untimely application for post-conviction relief within one year of a higher court's recognition of a retroactively applicable substantive standard or right not in existence at the time of the state court trial. *Padilla* held that counsel must inform a criminal defendant of the collateral consequence of deportation resulting from a criminal conviction, if applicable. *Padilla* does not apply retroactively. *Chaldez v. United States*, 133 S.Ct. 1103, 1107 (2013); *Hamm v. State*, 403 S.C. 461, 463, 744 S.E.2d 503, 505 (2013); *Lucero v. State*, 414 S.C. 238, 777 S.E.2d 409 (2015). Furthermore, *Padilla* only requires counsel to inform a criminal defendant of collateral consequences that "automatically flow from the conviction." *Hamm*, 403 S.C. at 465, 744 S.E.2d at 504-05 (2013).

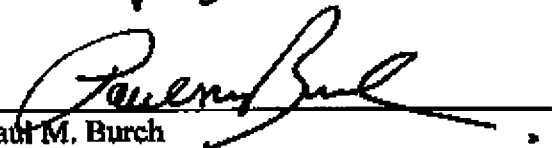
This Court finds that Applicant's explanation is insufficient to excuse his untimely filing. Applicant's current application does not relate back to the date when he filed his 2010 application. Furthermore, that application was dismissed by the Court on November 21, 2013. Furthermore, that application itself was successive, as he had previously brought two applications for post-conviction relief. This Court finds that Applicant has had sufficient opportunity to fully litigate all issues related to his case in his prior actions. Even ignoring these procedural bars, this Court finds Applicant's arguments regarding *Padilla* to be unpersuasive, because holding is not


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retroactively applicable and the enhancement of his 2008 conviction did not automatically flow from his 1995 convictions.

IT IS THEREFORE ORDERED that for the reasons set forth herein, as well as the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 22nd day of July, 2021.


Paul M. Burch
Chief Administrative Judge
Fourth Judicial Circuit

 South Carolina

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2021 AUG -2 A 11:12
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