STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Eddie D. Geiger, #189709, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–40–00337 **CONDITIONAL ORDER OF DISMISSAL**

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Eddie D. Geiger (Applicant) on January 18, 2024. In response, Respondent made its return[1] and moved to summarily dismiss the action as untimely, barred by the statute of limitations, successive to Applicant's previous application, barred by the doctrine of *res judicata*, for failure to state a cognizable claim for relief pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq*. (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismisses the action based on the following:

[1] Respondent's return to the application was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts these returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the April 2004 term of the Richland County Grand Jury for: assault with intent to commit criminal sexual conduct – 1st degree (2004-GS-40-2701). Douglas Strickler, Esquire, represented the Applicant. Fifth Circuit Assistant Solicitors K. Luck Campbell, Esquire, and Dietrich Lake, Esquire, prosecuted the case.

On October 10–13, 2004, Applicant proceeded to a jury trial before the Honorable Clifton Newman. The jury convicted Applicant as indicted. Judge Newman sentenced Applicant to life without parole.

Applicant filed a timely Notice of Appeal. Appellate Defender Tara S. Taggart, Esquire, perfected Applicant't appeal. The South Carolina Court of Appeal affirmed Applicant's conviction and sentence by published opinion. State v. Eddie Geiger, Op. No. 4151 (Ct. App. filed September 25, 2006). The Remittitur was returned to the lower court on October 11, 2006.

FIRST PCR ACTION AND SUBSEQUENT APPEAL: 2007–CP–40–1288

Applicant filed his first PCR action on February 27, 2007. In that application, Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Due Process Violations

An evidentiary hearing was held on June 23, 2008, before the Honorable William P. Keesley. In a written order signed September 5, 2009, Judge Keesley denied relief and dismissed the application. On October 8, 2008, Applicant made a motion pursuant to Rule 59(e), SCRCP, to alter or amend. On February 19, 2009, Judge Keesley denied the motion to reconsider. Applicant then moved to have outside counsel appointed to him, but this was also denied.

A petition for writ of certiorari was filed by M. Celia Robinson, Esquire of the South Carolina Division of Appellate Defense, on December 4, 2009. The State filed its return on February 18, 2010. The petition was denied by the South Carolina Supreme Court on August 18, 2011, and the Remittitur returned on September 7, 2011.

***FEDERAL HABEAS ACTION:* 4:12-CV-0603-TMC-TER**

Applicant filed a *pro se* petition for federal habeas corpus relief on March 2, 2012, seeking relief on the following grounds:

1. Did the lower court err in denying relief despite appellate counsel's failure to petition for rehearing in order to correct the court of appeals misstatement of the evidence which was cited by the appellate court as grounds for the denial of an ABHAN charge and as the basis for the court's decision to affirm petitioner's conviction?
2. Did the lower court err in denying relief despite trial counsel ineffectively failing to advise petitioner as to the pros and cons of offering testimony despite counsel's failing to explain to the petitioner that, without his testimony his attempts to argue self-defense and ABHAN would be seriously compromised?
3. Did the lower court err in denying relief despite trial counsel ineffectively failing to request a charge on the law of self-defense?
4. Did the lower court err in denying relief despite trial counsel ineffectively failing to use the sexual assault report to impeach the victims' testimony?
5. Did the lower court err in denying relief despite trial counsel ineffectively failing to argue for a lesser included offense instruction on ABHAN by pointing out that the instruction was supported by the victim's own testimony?
6. Did the lower court err in denying relief despite counsel negligently misstating the evidence during cross examination where trial counsel's misstatement served to rehabilitate the victims' credibility and thereby prejudiced the defense?
7. Did the lower court err in denying relief despite trial counsel providing ineffective assistance of counsel that he failed to object or to persuasively cite authority to support his objection to the admission of the hearing testimony of hospital workers and police officers which exceeded the limits of the exception to the rule against hearsay and which improperly corroborated and

bolstered the otherwise weak and contradictory testimony of the victim?

Respondent filed a return and motion for summary judgment on August 13, 2012, as well as a supplemental return and motion for summary judgment on March 26, 2013. Applicant was advised of the summary judgment procedure, and the possible consequences for failing to respond yet did not file a response. The United States Magistrate Judge, Thomas E. Rogers, III, in a report and recommendation dated September 23, 2013, recommended that the petition be dismissed for failure to prosecute pursuant to Fed. R. Civ. Proc. 41(b), with prejudice. The recommendation was adopted by the Honorable Timothy M. Cain in an order dated October 16, 2013, and the petition was dismissed with prejudice, while the summary judgment was denied as moot. A certificate of appealability was also denied.

Applicant filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit on March 6, 2013. The Court sent a letter on April 9, 2013, regarding the fact that his notice seemed to be a request to dismiss his appeal. Applicant attempted to correct this mistake with a letter filed on April 25, 2013, stating he wished to proceed. On April 19, 2013, the Court issued a Rule 45 notice informing Applicant that he had until May 6, 2013, to file his informal opening brief, which he ultimately filed on May 13, 2013[2]. The appeal was dismissed for being improper[3] in a *per curiam*, unpublished opinion that was decided September 3, 2013, and the mandate for this order was issued on September 25, 2013.

***SECOND PCR ACTION AND SUBSEQUENT APPEAL:* 2014–CP–40–02557**

Applicant filed his second PCR action on April 21, 2014. In that application, Applicant

[2] The brief was dated May 6, 2013, by Applicant.
[3] The Court held that the order Applicant sought to appeal from was not a final order and, therefore, the Court did not have jurisdiction.

alleged the following grounds for relief:

1. Ineffective assistance of PCR counsel
   a. Allowed Applicant to miss the window to file a notice of appeal.
   b. Withheld information from Applicant
2. Ineffective assistance of trial counsel
   a. Failed to advise the Applicant that if he did not testify on his own behalf at trial, he likely would not be able to receive a charge on the lesser included offense of assault and battery of a high and aggravated nature.
   b. Failure to point out inconsistencies between the victims' various accounts of the incident.

An amended application was filed on July 10, 2014, adding the ground of Due Process violation because the State failed to produce Lauren Mobley, Esquire, second chair attorney of his defense team, as a witness during the initial PCR proceedings. The State filed a return requesting summary dismissal of all of Applicant's post-conviction relief applications on August 24, 2015. The Honorable Allison Renee Lee, as Chief Administrative Judge for the Court of Common Pleas of the Fifth Judicial Circuit, set all of Applicant's motions for hearing during a term of post-conviction relief hearings before this court in January of 2017.

On January 31, 2017, at the Richland County Courthouse before the Honorable Jocelyn Newman, a motions hearing was held, at which Applicant appeared *pro se* and the State was represented by Assistant Attorney General Jessica E. Kinard. Before the court was the State's motion of merger and motion to dismiss and Applicant's motions to strike defense and/or answer; motion to amend pursuant to SCRCP Rule 15; motion for appointment of counsel; and motion for production of documents pursuant to Rule 34, SCRCP. Judge Newman denied and dismissed the application with prejudice by filed Order on August 17, 2017.

CURRENT ACTION BEFORE THIS COURT

In his *third* and current PCR action, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
   a. "Trial counsel was ineffective for failing to point out inconsistencies between the victim's various accounts of the incident which led to your arrest readily demonstrated by documents provided by the State in the discovery process."

2. "PCR counsel did not competently represent Applicant":
   a. "Applicant was denied his procedural or adequate independent state law right although he expressed his desire in advance of PCR appeal to preserve unaddressed 6th Amendment incorporated allegations [pursuant to SCRCP 59(e)]; This ground was not raised in first PCR because it occurred before PCR appeal in that PCR proceedings."

Before this Court and incorporated herein are the Richland County Clerk of Court records regarding the subject's conviction and sentence, Applicant available records from his first PCR action and appeal, Applicant's trial transcript; Applicant's available records from his federal habeas action, Applicant's available records from his second PCR action, and the records of the current PCR action.

FINDING 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 §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss the application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[4] Specifically, the Act requires as follows:

> (A). 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 an appeal, whichever is later.
>
> (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
>
> (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held that the statute of limitations shall apply to 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 the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by

[4] S.C. Code Ann. § 17-27-10 to -160.

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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on numerous allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on October 14, 2004. Applicant did pursue a direct appeal, and the Remittitur was returned on October 11, 2006. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before October 12, 2007. Applicant did not file this PCR application until January 19, 2024, *sixteen years, three months, and seven days* beyond the statute of limitations.

Accordingly, this Court finds this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss this application as successive to Applicant's previous PCR applications. 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 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 post-conviction relief 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, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then 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).

Here, Applicant offers no new grounds for which a successive application may be based. Applicant's allegation of ineffective assistance of trial counsel relating to inconsistent victim testimony was raised in his second PCR application filed April 21, 2014. As for Applicant's allegation relating to his desire to "preserve unaddressed issues", he asserts that allegation could not have been brought in his first PCR hearing. However, that very same allegation appeared in an amendment he made to his second application, filed January 26, 2017.

Accordingly, Applicant has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR application(s).

SUMMARY DISMISSAL BASED ON FAILURE TO STATE A COGNIZABLE PCR CLAIM

Respondent moved to summarily dismiss the application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy….

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). In his application for post-conviction relief, Applicant alleges ineffective assistance of PCR counsel. Applicant offers no attack upon the conviction itself. Therefore, the application shall be dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

The Respondent further submitted that the doctrine of *res judicata* bars the Applicant's

claims. *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.

As mentioned above, Applicant has previously asserted both current allegations in prior PCR actions. Furthermore, the prior PCR Court issued a final judgement on the merits of the very same issues on August 9, 2017. The public interest in finality of judgments requires that litigation must eventually come to an end. Accordingly, this Court dismisses these claims as barred by *res judicata* pursuant to Rule 12(b)(6), SCRCP.

FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of

much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

CONCLUSION

Pursuant to S.C. Code Ann. § 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 21 **day of** August**, 2024.**

JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Richland, South Carolina