

STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

Weldon W. Stewart, Jr., #295095,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-34-00282  
)

) **CONDITIONAL ORDER OF DISMISSAL**  
) **AND DENIAL OF MOTION FOR**  
) **DISCOVERY IN SUCCESSIVE**  
) **PCR ACTION**  
)

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Weldon W. Stewart, Jr. (Applicant) on October 30, 2023. In response, Respondent made its return<sup>1</sup> and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence 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

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<sup>1</sup> Respondent's return to the application was due to be filed within sixty days of receipt. See Rule 12(a), SCRCF ("[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.).

the following:

**PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and destruction, desecration or removal of human remains (2002-GS-34-01918). Wade R. Crow, Esq. appeared as stand-by counsel for Applicant, who proceeded *pro se*. Daniel L. Blake, Esq. of the Fourth Circuit Solicitor's Office, prosecuted the case. On July 28, 2003, Applicant proceeded to trial on the murder charge<sup>2</sup> before the Honorable Paul M. Burch and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter on August 1, 2003. Judge Burch sentenced Applicant to imprisonment for consecutive terms of thirty (30) years for voluntary manslaughter and nine (9) years for desecration of human remains.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was issued on May 28, 2005.

***FIRST PCR APPLICATION: 2006-CP-34-00125***

Applicant filed his *first* application for post-conviction relief on April 16, 2006 (2006-CP-34-00125). He alleged the following grounds for relief in his application, as summarized by the State:

1. Ineffective assistance of appellate counsel, in that appellate counsel:

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<sup>2</sup> Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

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- a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
- b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
- c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
- d. Failed to argue the trial judge allowed hearsay testimony.

Respondent made its return on July 28, 2006, and an evidentiary hearing into the matter was convened on November 15, 2006, before the Honorable John M. Milling. Applicant was present at the hearing and represented by Delton W. Powers, Jr., Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and was the only witness to testify. By written order dated January 8, 2007, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant thereafter timely filed a *pro se* response to the Johnson petition, which raised the following issues:

1. "Did the PCR court err in failing to find Appellate ineffective for failing to argue the trial judge erred in jury instruction on voluntary manslaughter?"
2. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge erred in admitting a photograph of the decedent's body into evidence?"
3. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge err in allowing Staton Wright to provide hearsay testimony?"

The Supreme Court of South Carolina denied Applicant's petition by unpublished order. Stewart

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v. State, S.C. Sup. Ct. Order filed March 18, 2009. The Remittitur was issued on April 3, 2009.

**FEDERAL HABEAS PETITION: 8:09-842-SB-BHH**

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?"
  - a. "The trial court failed to instruct the jury on the requested jury instruction on voluntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial."
2. "Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?"
  - a. "Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony."

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Respondent filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that Respondent's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on

February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4<sup>th</sup> Cir. 2011).

**2015 GENERAL SESSIONS MOTION FOR NEW TRIAL**

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

1. Juror Misconduct
2. Qualifications of the forensic pathologist that testified in the trial of this matter.
3. Dissociative Amnesia

(Motion Tr. 4, ll. 15-21). Applicant thereafter abandoned the third ground and proceeded only on the first two. (Motion Tr. 4-5; Tr. 36, ll. 15-20). Peggy Alford, Lori Stewart, and Applicant testified at the hearing. After hearing the testimony, Judge Burch orally denied Applicant's motions from the bench. (Motion Tr. 40-43).

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**2018 GENERAL SESSIONS MOTION FOR NEW TRIAL**

Applicant filed another motion for a new trial on or about May 7, 2018. In that motion, Applicant alleges grounds substantively identical<sup>3</sup> to those raised in the present application for relief. The 2018 motion appears to remain pending on the Marlboro County Public Index

**SECOND PCR ACTION AND SUBSEQUENT APPEAL: 2018-CP-34-00121**

In his *second* untimely post-conviction relief application, Applicant alleges he is being held

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<sup>3</sup> The motion's text is, as best as the undersigned can compare, perfectly identical through the first 19 pages to the brief submitted with the 2018 PCR action.

unlawfully for the following reasons (excerpted verbatim):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
  - a. "Between the months of September and December 2014, Ms. [Loretta] Stewart discovered evidence which added credibility to Petitioner's claims. She conducted professional background checks on the pathologists who performed the 'forensic autopsy' on Victim. She discovered that the lead pathologist, Russell Harley (Pathologist), lacked certification in forensic pathology and that the second pathologist was a mere student in training who followed the guidance of Pathologist in conducting the autopsy on Victim. Ms. Stewart also reviewed court documents revealing that Pathologist made pretrial statements to Daniel Blake (Solicitor) expressing Pathologist's uncertainty about the accuracy of his conclusions in reference to Victim's cause of death."
  - b. "The trial testimony of Pathologist established that his conclusions were based on the presence of a skull fracture and brain hemorrhage. Ms. Stewart's search to comprehend the significance of Pathologist's pretrial statements led to her finding publications from forensic experts on thermal injuries. Through the information found in these publications, she discovered that the pretrial statements of Pathologist revealed that Pathologist could not rule out the possibility that the skull fracture and brain hemorrhage occurred after Victim's death as a result of the fire."
  - c. "[T]hough Solicitor did mention Pathologist's statements during a pretrial hearing, Solicitor never disclosed to Petitioner any information in reference to the possibility that the skull fracture and brain hemorrhage were thermal injuries. Ms. Stewart confirmed, by reviewing Court documents, that Solicitor concealed the exculpatory nature of Pathologist's pretrial statements by claiming that these statements established the possibility that victim died as a result of burning. She further noted that Solicitor failed to correct the misstatements made by Pathologist at trial

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indicating that the skull fracture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."

2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."
  - a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is [a] common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."
  - b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.
3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."
  - a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him."

On July 12, 2019, the State filed its Return and Motion to Dismiss. A hearing was held on August 22, 2019, before the Honorable Brooks P. Goldsmith on Applicant's motion for discovery and Respondent's motion to dismiss. Applicant was represented by retained counsel, Tommy A.

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Thomas, Esquire. Assistant Attorney General Johnny E. James, Jr., represented the State. At the conclusion of the hearing, Judge Goldsmith denied Applicant's motion for discovery and granted the State's motion to dismiss. Mr. Thomas placed a motion to reconsider on the record and the State reasserted its defenses. Judge Goldsmith denied the motion to reconsider. On December 9, 2019, Applicant filed his motion for reconsideration. Judge Goldsmith denied Applicant's motion by filed order on January 9, 2020.

Applicant filed a timely Notice of Appeal. On June 20, 2020, Mr. Thomas filed a motion to be relieved as Applicant wished to proceed in his appeal *pro se*. On July 10, 2020, Mr. Thomas filed the Explanation Pursuant to Rule 243(c), SCACR. On August 10, 2020, the South Carolina Supreme Court dismissed the appeal for failing to show a n arguable basis for asserting the determination of the lower court was improper. Mr. Thomas filed a Motion to Reinstate on August 24, 2020. That motion was denied by filed order on October 19, 2020. The Remittitur was returned to the circuit court on October 19, 2020.

**FEDERAL HABEAS PETITION: 21-278**

Applicant subsequently filed a *pro se* Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255. In his motion, Applicant set forth the following grounds for relief:

1. Alleged newly discovered evidence of a Brady violation that the State concealed evidence establishing that the injuries the State claimed killed Victim were not produced until after Victim's death.
2. The State knowingly presented false testimony from the State pathologist, Dr. Russell Harley, that Victim's injuries conclusively established death by blunt force trauma, which the State alleges the State failed to correct, and that the State suppressed evidence showing the testimony of the pathologist was false.
3. The State concealed evidence found in the crime scene notes written by SLED Agent Al Stuckey containing observations

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made by the crime scene investigator while on the scene, which strongly contradicted the State's case against Applicant.

On December 1, 2021, the State filed its response to Applicant's motion. On December 7, 2021, Applicant filed his reply to the State's response to the motion. On March 9, 2022, the United States Court of Appeals for the Fourth Circuit appointed Dawinder Sidhi to represent Applicant.

On July 25, 2022, Applicant filed his Opening Brief in support of his motion and argued the following:

1. Dissociative Amnesia is a Bona Fide Mental Disorder Exhibited by Mr. Stewart.
  - A. Dissociative Amnesia Has Been Long Recognized by the Medical Community.
  - B. Dissociative Amnesia Has Been Long Recognized by the Courts.
  - C. Mr. Stewart Exhibits Dissociative Amnesia.
  - D. The Recovered Memories Constitute Newly Discovered Evidence Under Section 2244.
2. No Reasonable Factfinder Would Convict Mr. Stewart and the Evidence Establishes His Actual Innocence.
  - A. The Repressed Memories Establish an Alternative Version of Events that Undermines the State's Theory.
  - B. The Repressed Memories Establish Movant's Actual Innocence.
3. The Newly Discovered Evidence Could Not Have Been Discovered Through the Exercise of Due Diligence.
4. The Exclusion of the Newly Discovered Evidence Constituted a Constitutional Error

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On August 29, 2022, the State filed its Response Brief Opposing Motion for Authorization Pursuant to 28 U.S.C. § 2244. On September 14, 2022, Applicant filed his reply to the State's response. On January 26, 2023, oral arguments were held before the Fourth Circuit Court of Appeals Judges Roger L. Gregory, Pamela A. Harris, and A. Marvin Quattlebaum, Jr. Applicant was represented by Ciara Barone and Walker Fortenberry. Senior Assistant Deputy Attorney General Melody Jane Brown represented the State.

On August 21, 2023, by published opinion, the Fourth Circuit Court of Appeals denied

Applicant's motion to file a successive federal habeas. In re Stewart, 78 F.4th 690 (4th Cir. 2023)..

**CURRENT ACTION BEFORE THIS COURT**

On October 30, 2023, Applicant *untimely* filed his *third* application for PCR in which he alleges the following:

1. Trial Court Lacked Subject Matter Jurisdiction
  - a. [Applicant] has discovered new evidence establishing the strong probability that C.A., the deceased person in this case, committed suicide a year after being forced by her mother to undergo a partial birth abortion. [Applicant] believes C.A. committed this act by secretly ingesting something, while she distracted him by asking him to get her something to drink. If C.A. committed suicide, then [Applicant] did not commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.
2. Actual Innocence
  - a. It is unconstitutional for [Applicant], an innocent man, to be subjected to the punishment of a person who has been "duly convicted." As such, [Applicant]'s incarceration violates USCA Const Amend. 13 § 1.
3. Mental Incompetence
  - a. [Applicant] was tried while he was suffering from dissociative amnesia, a mental disorder that severely impaired his factual recall of events. Therefore, [Applicant] was unable to assist with his defense, or to provide crucial details that would have exonerated him. [Applicant]'s trial, which was held while he was in this incompetent mental state, was fundamentally unfair.

Attached to Applicant's PCR application was a "Motion to Proceed *Pro Se* with Appointed Standby Counsel."

Applicant seeks relief in the form of "[Applicant]'s sentences for voluntary manslaughter and desecration of human remains to be vacated, the Court to order for [Applicant]'s record to be expunged, and [Applicant]'s full rights to be restored to him as a United States citizen."

Before this Court is Respondent's Return and Motion to Dismiss; the Marlboro County

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Clerk of Court records regarding the subject's convictions; Applicant's records from SCDC; Applicant's guilty plea transcript and trial transcript ; Applicant's appellate records; Applicant's records from his prior PCR actions; Applicant's records from his prior federal habeas actions; and the records of the current PCR action.

**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 §§ 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 this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.<sup>4</sup> 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.

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<sup>4</sup> S.C. Code Ann. § 17-27-10 to -160.

- (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 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 multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty, had a trial, and was sentenced on August 1, 2003. Applicant did pursue a direct appeal, and the Remittitur was returned on May 23, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-

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conviction relief on or before December 2, 2021. Applicant did not file this PCR application until May 24, 2006, *seventeen years, five months, and six 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 because it is successive to Applicant's previous *two* 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 raised earlier 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 with 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

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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 applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Accordingly, this Court finds this application is successive and procedurally barred pursuant to S.C. Code Ann. § 17-27-90, and shall be dismissed.

***SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA***

Additionally, this application is 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 of 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 any and all his allegations in his *first* and *second* PCR actions. The prior PCR Courts and the issued final judgments on the merits of the same or similar issues Applicant raises in this successive action.

This Court finds the finality of the previous court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

***SUMMARY DISMISSAL BASED ON SUBJECT MATTER JURISDICTION***

Respondent moved to dismiss Applicant's allegation that the trial court lacked subject matter jurisdiction as a matter of law. This Court agrees.

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A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, Applicant was indicted by the Richland County Grand Jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity because the indictments in question are sufficient on their face.

Accordingly, this Court finds, pursuant to S.C. Code Ann. § 17-27-70 (2003), that there is no issue of material fact relating to this allegation, and it shall be dismissed as a matter of law.

**SUMMARY DISMISSAL BASED ON THE EQUITABLE DOCTRINE OF LACHES**

The application shall also be dismissed as barred by the equitable doctrine of laches. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for

diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant seeks post-conviction relief nearly two decades after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories, and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims.

Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of laches.

***SUMMARY DISMISSAL BASED ON NEWLY-DISCOVERED EVIDENCE***

This Court finds Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to PCR, is without merit.

The Uniform Post-Conviction Procedure Act states that a person may institute a PCR action

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"if there exists evidence or material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed 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(C). Otherwise, a PCR must be filed within one year of sentencing or, if a direct appeal is filed, within one year of the remittitur. S.C. Code Ann. § 17-27-45(A).

In his current application, Applicant claims that he discovered on March 7, 2023, that counsel did not file a Rule 5, SCRCrimP, for his discovery. However, Applicant's contention that counsel did not have his discovery is wholly refuted from the guilty plea and first PCR action records. A party requesting a new trial based on newly-discovered evidence must show that the evidence:

1. Is such as would probably change the result if a new trial had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

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Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be

received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

Initially—and critically—this Court finds Applicant's allegations are not newly-discovered and these allegations have been raised before the courts in his previous PCR actions and federal *habeas* action to which those courts ruled on those matters. Turning to the Clark factors, Respondent argues Applicant fails this test because, with due diligence, Applicant could have discovered his claim before his trial, after his trial, and before his first PCR action. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion."). This Court agrees with Respondent and finds that Applicant fails the Clark test.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a *prima facie* showing of newly-discovered evidence. Because his claims do not meet the high threshold of newly-discovered evidence, they are barred by the one-year statute of limitations set forth in S.C. Code Ann. § 17-27-45(A).

Accordingly, this Court finds Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed.

**APPLICANT'S MOTION FOR DISCOVERY**

Applicant has also requested to invoke the discovery process and, more specifically, has requested the court issue an order allowing him to obtain access to MUSC autopsy files in this case. Applicant also requests leave to conduct a "full spectrum of discovery" in this case.

The Uniform Post-Conviction Procedure Act allows for discovery in a non-capital PCR

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case with good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

Respondent opposed this motion, noting that the underlying successive application is procedurally barred on numerous grounds. Furthermore, Respondent asserts this issue has been extensively litigated, and Applicant has not shown good cause to invoke the discovery process on his meritless claims.

This Court agrees that Applicant has failed to show good cause. However, as discussed *supra*, Applicant's claims lack merit, and therefore, Applicant cannot establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed. Accordingly, this Court denies his motion to conduct discovery.

#### 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 the 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

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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. If it does not, else it never provides an answer at all. Surely it is an unpleasant prospect to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should also 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. Leake, 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.

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CONCLUSION

This Court finds Applicant has failed to establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed. Further, 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 Marlboro County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
PCR Division – 4<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Marlboro 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 5<sup>th</sup> day of August, 2024.

  
~~THE HONORABLE~~ GEORGE M. MCFADDIN, JR.  
Chief Administrative Judge  
Fourth Judicial Circuit

Sumter, South Carolina

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