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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Robert Wilson, #272726, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-5343

**CONDITIONAL ORDER OF  
DISMISSAL**

2015-GS-10-1767  
2015-GS-10-1769

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JULIE J. HARRINGTON  
CLERK OF COURT

FILED

This matter comes before this Court by way of a successive application for post-conviction relief filed by Applicant Robert Wilson. In response, Respondent the State of South Carolina moved for the matter to be summarily dismissed as untimely and successive to his prior post-conviction relief action pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90. After a review of all records before this Court, the current application, and Respondent's motion to dismiss, this Court provisionally dismisses this action based on the following:

**I. PROCEDURAL HISTORY**

Robert Wilson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In April 2015, the Charleston County Grand Jury indicted Applicant for two counts of armed robbery (2015-GS-10-1769; 2015-GS-10-1767). Russell D. Hilton, Esquire represented Applicant. Assistant Solicitor David L. Osborne of the Ninth Circuit Solicitor's Office prosecuted the case.

On January 6, 3026, Applicant proceeded to a jury trial in the Charleston County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge. The jury found Applicant guilty as indicted and Judge Harrington sentenced Applicant to imprisonment for

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concurrent terms of thirteen years for each count of armed robbery.

Applicant filed a timely notice of appeal and Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense—Office of Appellate Defense perfected the appeal on Applicant's behalf. On appeal, Applicant argued the trial court erred in prohibiting Applicant to cross-examine a witness about lying to law enforcement. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on November 29, 2017. State v. Wilson, Op. No. 2017-UP-444 (S.C. Ct. App. filed November 29, 2017). The remittitur was returned to the circuit court on December 15, 2017.

Applicant filed his first application for post-conviction relief on April 3, 2018 and Respondent filed its Return on July 6, 2018. Applicant alleged he was being held in custody unlawfully for the following reason:

- 1) "Ineffective Assistance of Counsel"
  - a. "Failure to request continuance, failure to effectively cross-examine witnesses on dismissed charge, failure to move for mistrial"
- 2) "Prosecutorial Misconduct"
  - b. "Nondisclosure of material evidence, conflict of interest"

As requested relief sought, Applicant states he is seeking "sentence vacated, verdict set aside." Applicant voluntarily withdrew his PCR and the presiding Circuit Court Judge signed an order indicating such on February 28, 2019.

## II. CURRENT APPLICATION

Applicant filed his current application for post-conviction relief on October 17, 2019. Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1) "Prosecutorial Misconduct"
- 2) "Ineffective Assistance of Counsel"
- 3) Waiver of prior PCR was not voluntary or knowing



Applicant requested the following relief: "sentence vacated, verdict set aside."

Attached to Respondent's Return and before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript, Applicant's appellate and prior PCR records, and the application.

### **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 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); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRPC (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

#### **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. S.C. Code Ann. § 17-27-10 to -160. 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 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 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.”

Applicant was sentenced on January 6, 2016. The Remittitur was issued on December 20, 2017. The application was therefore due on December 20, 2018. This application was filed on October 17, 2019, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

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In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his conviction is invalid due to alleged failures of trial counsel. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Therefore, the application should be summarily dismissed as barred by the statute of limitations. Accordingly, this application is untimely pursuant to Section 17-27-45 and this Court finds it should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act unless Applicant can provide a sufficient reason why he should be allowed to proceed forward on this untimely action.

Respondent also moved to summarily dismiss the application because it is successive to Applicant's prior post-conviction relief application. This Court agrees this action should be summarily dismissed as successive.

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.

Section 17-27-90 is clear—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 or actions challenging this conviction. 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).

The South Carolina Supreme Court held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, “[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” Id. at 451, 409 S.E.2d at 395. Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised these claims in his prior post-conviction relief action. Accordingly, this Court finds this application should be dismissed as successive to Applicant’s prior post-conviction relief action and intends to dismiss it on this ground unless Applicant can provide sufficient reasons why the successive action should be allowed to proceed forward.

### CONCLUSION

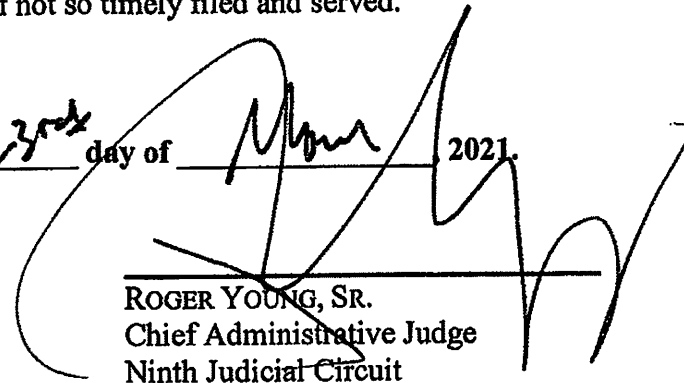
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

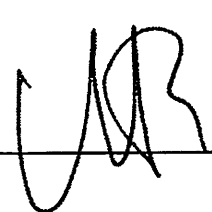
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Office of the Attorney General  
Attn: Benjamin Limbaugh, Esquire  
PCR Division – 9th Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Charleston 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 23<sup>rd</sup> day of March 2021.

  
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ROGER YOUNG, SR.  
Chief Administrative Judge  
Ninth Judicial Circuit

  
\_\_\_\_\_, South Carolina