STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Alonzo C. Jeter, III, Plaintiff, *v.* State of South Carolina, Alan McCrory Wilson, Chelsey F. Marto, Joseph Derham Cole, Mark J. Hayes, II, Ralph Keith Kelly, Brandy W. McBee, Tonnya K. Kohn, Jean Hoefer Toal, Donald W. Beatty, Defendants.	IN THE COURT OF COMMON PLEAS IN Civil Action No. 2024CP4001737 **ORDER OF DISMISSAL**

This matter has come before this Court pursuant to Motions to Dismiss filed by the Defendants State of South Carolina and Alan McCrory Wilson (State and AG) and the remaining Defendants (Individual Defendants). Plaintiff's Complaint asks this Court to issue an order with multiple provisions for the scheduling of post-conviction relief proceedings and the appointment of counsel in them. Defendants contend that, pursuant to Rules 12(b)(1) and (6), SCRCP, this Court lacks subject matter jurisdiction, and Plaintiff has failed to state facts sufficient to constitute a cause of action.

This Court held a hearing regarding these motions via WebEx on July 13, 2024. Counsel appeared in support of their motions, and Plaintiff, *pro se*, was present also. At the hearing, Mr. Jeter claimed that he did not receive sufficient notice of the hearing to prepare. This Court gave him additional time to submit any other material he wanted the Court to consider. He has now done so, and the documents he has submitted do not change the result in this case. Mr. Jeter's action still fails for the following reasons.

BACKGROUND

Plaintiff has not brought this action in accordance with an application for post-conviction relief. Although he refers to a prior application, *Jeter v. State*, 2019CP1100457, that action has ended. It was dismissed on August 30, 2021, by the Honorable Derham Cole, for successiveness, for res judicata and for failure to establish a prima facie case of newly discovered evidence. On April 29, 2022, the court denied Plaintiff's Motion to Alter or Amend made on multiple grounds including the failure to appoint counsel or to grant him an evidentiary hearing. The Supreme Court dismissed his appeal and denied rehearing on October 28, 2022.

STANDARD OF REVIEW

Pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint for lack of subject matter jurisdiction. "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.' " *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (quoting *Bank of Babylon v. Quirk*, 192 Conn. 447, 472 A.2d 21, 22 (1984)). Lack of subject matter jurisdiction may be raised at any time and may be raised for the first time on appeal. *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 557, 703 S.E. 2d 499, 506 (2010). "The question of subject matter jurisdiction is a question of law." *Id.* at 551, 703 S.E.2d at 503 (quoting *Porter v. Labor Depot*, 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct. App. 2007))." *Gantt v. Selph*, 423 S.C. 333, 337–38, 814 S.E. 2d 523, 525–26 (2018).

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRCP. *See Williams v. Condon*, 347

S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 378-79, 635 S.E.2d 538, 538 (2006); *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013).

I

THIS COURT LACKS SUBJECT MATTER JURISDICTION OF THIS CASE (Rule 12(b)(1))

"South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached. *See Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Crocker v. Barr*, 303 S.C. 1, 397 S.E.2d 665 (Ct.App. 1990) (Goolsby, J., concurring), rev'd on other grounds, 305 S.C. 406, 409 S.E.2d 368 (1991)." *Lennon v. South Carolina Coastal Council*, 498 S.E.2d 906, 908, 330 S.C. 414, 417-18 (S.C.App., 1998). Plaintiff has alleged no justiciable controversy that this Court has subject matter jurisdiction to address because he lacks standing.

A

PLAINTIFF LACKS STANDING

> The principle of standing under the United States Constitution is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The Supreme Court has provided a three-part test to establish standing: First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61 (internal citations omitted).

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008).

Plaintiff fails to meet these standards because he has not raised this issue pursuant to a current application for post-conviction relief. His prior action has ended. Therefore, he has no "injury in fact," and even if he did, it would not be "likely" to be "redressed by a favorable decision" because this Court lacks the authority to overrule the Supreme Court's rules or orders. *See infra.* Of course, none of the Defendants may be compelled to disregard the rules and orders of the Supreme Court. Although several defendants are judges, including the Chief Justice, they cannot be compelled to overturn rules and issue scheduling orders—via a declaratory judgment suit. *See, eg. City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 103 (2002)("Issuance of a particular decision by a judge is typically a matter of discretion and, therefore, not proper for mandamus.").

B

THIS COURT LACKS AUTHORITY TO ISSUE STATEWIDE SCHEDULING ORDER OR OVERRULE THE RULES AND ORDERS OF THE SUPREME COURT

Scheduling and the appointment of counsel are governed by the Uniform Post-Conviction Relief Act, S.C. Code Ann. §17-1-10, *et seq.*, including §17-27-70 which provides for summary dismissal when appropriate, and Rule 71.1, SCACR which provides that counsel should be appointed only when a hearing is required. In particular, Plaintiff challenges an order of former Supreme Court Chief Justice Toal of October 6, 2008, for the appointment of counsel. Neither the PCR Act nor an order of the Supreme Court give the circuit court the authority to issue a statewide scheduling order, to schedule matters outside a pending PCR proceeding or to overturn the 2008 Order of the Chief Justice.

This Court can certainly take notice that the Supreme Court of South Carolina is the highest court in this state. As such, no circuit court has the authority to overrule its precedent. The "court

[of appeals] lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court. See S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.")." *State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012), aff'd as modified, 408 S.C. 198, 758 S.E.2d 715 (2014). Although *Cheeks* based its holding on an express constitutional provision, clearly the same rule applies to the circuit courts. In fact, a party cannot even argue against precedent in an oral argument to an appellate court absent permission. Rule 217, SCACR. In particular, the Supreme Court has express authority to issue administrative orders for the Court system, S.C. Const. art. V, § 4[1], and to issue rules for the purpose of post-conviction proceedings, §17-27-110.

Because this Court lacks authority to overturn rules and administrative orders of the Supreme Court or to issue statewide scheduling orders, it lacks subject matter jurisdiction of this case.

II

PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION AGAINST ANY OF THE DEFENDANTS

A

This Action Is Barred By Res Judicata And Any Applicable Statutes Of Limitation (Rule 12(b)(6))

Because Plaintiff either raised or could have raised issues in this proceeding in the 2019 case he references, he is barred now from asserting them in the instant suit. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or

[1] As stated in art. V, §4: "The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system.. . . . The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. . . ."

occurrence that was the subject of a prior action between those parties. *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'").

This action is also time barred as to the conviction that was the subject of the 2019 application. S.C. Code Ann. § 17-27-45 "(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.").[2]

B

Plaintiff Has Not Otherwise Stated a Cause of Action Against the Defendants

The same failures of Plaintiffs Complaint noted above also underscore that he has failed to state a cause of action against any of the Defendants. Plaintiff states no valid claim for relief against any of the defendants for the above reasons. Therefore, this action must be dismissed. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011)("The question [for a Rule 12(b)(6) motion] is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief.").

[2] The Uniform Post-Conviction Procedure Act takes the place of all other remedies to challenge the validity of a conviction or sentence. S.C. Code Ann. §17-27-20(B) ("Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them."). Therefore, to the extent that this case would have the effect of challenging or undermining the validity of his criminal conviction, this action should be dismissed pursuant to Rule 12(b)(6). Of course, this suit is also time barred under the PCR Act.

CONCLUSION

For the foregoing reasons, the Motions to Dismiss are granted and this case is dismissed.

AND IT IS SO ORDERED.

Kristi Curtis
Circuit Court Judge

~~August~~ Sept. 5, 2024, 2024