STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
David Farrell Sullivan, #288953, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2024–CP–42–02878 **CONDITIONAL ORDER OF DISMISSAL**

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by David Farrell Sullivan (Applicant) on July 15, 2024. Respondent, the State of South Carolina, made its return and moved to summarily dismiss this application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, barred by the doctrine of *res judicata,* for failure to show lack of subject matter jurisdiction, 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]

[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 presently confined in the South Carolina Department of Corrections (SCDC) for unrelated charges. Applicant was indicted at the September 2002 term of the Spartanburg County Grand Jury for Criminal Domestic Violence of a High and Aggravated Nature (CDVHAN) (2002-GS-42-1612). Clay T. Allen, Esquire, represented Applicant.

On November 19–20, 2002, Applicant proceeded to a jury trial before the Honorable John C. Few. Applicant was found guilty as indicted. Judge Few sentenced Applicant to imprisonment for a term of ten (10) years.

A timely Notice of Appeal was filed on Applicant's behalf, and an appeal was perfected. On January 10, 2005, the South Carolina Supreme Court[2] affirmed Applicant's conviction and sentence. State v. Sullivan, 362 S.C. 373, 608 S.E.2d 422 (2005). Applicant filed a Petition for Rehearing with the South Carolina Supreme Court and that was denied by Order on February 17, 2005. The Remittitur was returned to the lower court on February 17, 2005.[3]

FIRST PCR ACTION: 2006-GS-42-0496

Applicant filed his first PCR action on June 12, 2006, and alleged the following grounds for relief:

1. Ineffective Assistance of Trial Counsel[4]
2. Illegal Sentence
3. Prosecutorial Misconduct
4. Trial Court Error
5. Lack of Subject Matter Jurisdiction

[2] On October 6, 2004, the Supreme Court issued an Order certifying the appeal for its review.
[3] Applicant filed a Petition for a Writ of Habeas Corpus on March 14, 2005 (06:05-cv-00730-HFF). This action was dismissed in the district court on January 19, 2006, for failing to exhaust state remedies. Applicant filed a Notice of Appeal to the Fourth Circuit Court of Appeals on February 14, 2006. The Fourth Circuit Court of Appeals dismissed Applicant's appeal in a per curiam opinion on March 10, 2006.
[4] This Court has a copy of the original application and all amendments.

On March 7, 2006, Applicant filed an "Amended Supplemental Brief in Support for Post-Conviction Relief." On June 12, 2006, Applicant filed a "Memorandum of Law in Support of Petitioner's Motion for Summary Judgment." On or around June 15, 2006, the State made its Return requesting an evidentiary hearing. On July 19, 2006, Applicant filed a "Pro Se Memorandum of Law for Post-Conviction Relief; Subject Matter Jurisdiction Supplemental." On October 20, 2006, Applicant filed an "Applicant's Allegation Of "Substantive" Due Process And "Procedural" Due Process Violations Implicit In: "Vindictiveness;" By Virtue Of: Violation Of S.C. Code Of Laws § 17-15-170 Bond Estreatment Constituting Fourth Amendment Liberty Deprivation That "Substantially Disadvantaged" Applicant In Pretrial Detention: "Ex Post Facto" Prohibition-By Application Of Code Retroactive/Retrospective Law S.C. Code § 16-25-65(A) (Supp.2003) For Offense Committed In 2001; Conflicting Statutes § 16-25-65 § 17-25-30 Is Violation Of "Public Duty Rule."

On December 7, 2006, an evidentiary hearing convened before the Honorable J. Derham Cole. Applicant was present and represented by Franklin Milton Mann, Jr., Esquire. Assistant Attorney General S. Prentiss Counts represented the State. On July 30, 2007, Judge Cole denied Applicant's PCR application with prejudice by filed Order. This Order was served on all parties, including Applicant, on August 1, 2007.

Applicant did not appeal.

CURRENT ACTION BEFORE THIS COURT

On July 15, 2024, Applicant *untimely* filed his *second* application for PCR, which he alleges the following:[5]

[5] For brevity, the allegations are summarized from the numerous pages filed with the application.

1. Lack of Subject Matter Jurisdiction
   a. Defective indictment
   b. Indictment alleged "assault and battery"
2. Prosecutorial Misconduct
3. Violation of S.C. rules of professional conduct
4. Ineffective Assistance Counsel
   a. Failure to investigate and litigate the law

Applicant seeks relief in the form of "reverse trial court decision, set aside conviction, and vacate unlawful sentence."

Before this Court is Respondent's Return and Motion to Dismiss, the Spartanburg County Clerk of Court records regarding the subject's convictions; Applicant's SCDC records; Applicant's available records from his direct appeal; Applicant's available records from his previous PCR action, 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.[6] 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 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

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

allegations that his Trial Counsel was ineffective, prosecutorial misconduct, and subject matter jurisdiction. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant proceeded to a jury trial and was found guilty and sentenced on November 20, 2002. Applicant pursued a direct appeal. The Remittitur was returned on February 17, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before February 18, 2006. Applicant did not file this PCR application until July 15, 2024, *eighteen years, four months, and twenty-seven days* beyond the statute of limitations.

Accordingly, 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 PCR action. 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).

Applicant's current allegations *were or could have been* raised in the proceedings based on Applicant's prior application 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.

Therefore, the Application shall be summarily dismissed as successive to Applicant's previous PCR applications.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

Additionally, Respondent moved to summarily dismiss this application as 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 has argued the substance of his allegations in his first PCR action, the belated

direct appeal of his first PCR action, and within his federal and state habeas actions.

Applicant had a full opportunity to litigate any and all his allegations in his *first* and *second* PCR actions. The prior PCR Courts issued final judgments on the merits of the same or similar issues Applicant raises in this successive action. 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.*

SUMMARILY DISMISSAL FOR FAILURE TO SHOW LACK OF SUBJECT MATTER JURISDICTION

Applicant may challenge the subject-matter jurisdiction of the trial court at any time. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). However, "circuit courts obviously have subject-matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Therefore, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court, the indictments at issue were true-billed by a Grand Jury, and thus the circuit court had proper subject-matter jurisdiction.

Further, 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, the Applicant was indicted by the Richland County Grand Jury of Murder and Possession of a Weapon by a Felon. Those indictment s were true-billed and signed by the foreman of the Grand Jury. Applicant's indictments contains all the necessary elements of the offense, and further cite the applicable statutes. On October 30, 2017, Applicant proceeded to trial before Judge Hood and a jury. Following a multi-day trial, Applicant was found guilty of the

originally indicted offenses.

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). Respondent submits the indictment is a notice document, and any challenges to its sufficiency "shall be taken by demurrer or on motion to quash . . . before the jury shall be sworn and not afterwards." S.C. Code § 17-19-20 (2003). Therefore, in post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so by alleging his trial counsel failed to properly move to quash the indictment in accordance with § 17-19-90 of the South Carolina Code.

Applicant has made no such allegation in this case, and therefore, the portion of Applicant's claim objecting to the subject-matter jurisdiction of the circuit court shall be summarily dismissed because Applicant has not raised any issue of material fact which would require an evidentiary hearing on this issue. See S.C. Code Ann. § 17-27-70(c) (authorizing 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.").

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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg 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 24th **day of** March **, 2025.**

GRACE GILCHRIST KNIE
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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2025 MAR 25 AM 9:38
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX