

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 James Carl Miller, )  
 S.C.D.C. No. 167675, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2012-CP-23-7604

**FINAL ORDER OF DISMISSAL**

FILED - CLERK OF COURT  
 GREENVILLE, S.C.  
 PAUL A. MICHAEL, CLERK  
 2013 AUG -7 PM 4:16

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 7, 2013 and filed May 14, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated June 11, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Objection to the Respondent's Motion to Dismiss and Conditional Order of Dismissal" and filed May 21, 2013, the Applicant argues "his federal constitutional rights were violated by state appointed Post Conviction Relief ('PCR') counsel

during a critical stage of the proceedings.” The Applicant argues “there was no hearing of any kind on the issue of mental competence at the time of the commission of the act.” The Applicant argues trial counsel was ineffective because he conceded guilt in his closing argument. The Applicant argues the trial judge erred in instructing the jury that it could infer malice from the use of a deadly weapon.<sup>1</sup>

This Court has reviewed the Applicant’s response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on May 1, 1990 and the South Carolina Supreme Court affirmed his convictions and sentences on June 24, 1991. As this action was filed on December 5, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant’s fourth application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on June 17, 1992. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court’s Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with

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<sup>1</sup> The Applicant reasserted these arguments in a document captioned “Applicant’s Objection to the Respondent’s Return and Motion to Dismiss” and dated June 13, 2013.

prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**AND IT IS SO ORDERED** this 6 day of AUG., 2013.

*D. Garrison Hill*

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D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

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

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Cpl. J. Lee (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )

COUNTY OF Greenville )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 11<sup>th</sup> day of June 2012, I served the **Conditional Order of Dismissal**, on **Inmate James Carl Miller, SCDC Inmate #167675**, by delivering personally and leaving a copy of the same at **Perry Correctional Institution, Pelzer, SC**. Deponent is not a party to this action.

s/ Cpl. Jonathan Lee  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 11<sup>th</sup> day of June, 2013

Notary Public (L.S.)

Notary Public for South Carolina

My Commission Expires: 4-26-2020

**ADMISSION OF SERVICE**

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Perry Correctional Institution), Pelzer, SC, Greenville County, SC this 11<sup>th</sup> day of JUNE, 2013.

s/ James Miller  
Inmate  
SCDC Inmate #: 6-11-13  
#167675

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2012CP2307604

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2013 AUG - 7 PM 4: 16

**James C Miller vs. South Carolina State Of**

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  
SCRC (Vol. Nonsuit);  Rule 43(k), SCRC (Settled);  Rule 12(b), SCRC;  Rule 41(a), SCRC;  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_  
 Rule 40(j) SCRC;  Bankruptcy:
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 7th day of August, 2013.

Court Reporter:

**PRESIDING JUDGE - D Garrison Hill**

This judgment was entered on the 7th day of August, 2013, and a copy mailed first class this 7th day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

James C Miller 167675 Perry Correctional  
Institution 430 Oaklawn Rd Pelzer, SC 29669

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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 James Carl Miller, )  
 S.C.D.C. No. 167675, )  
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 Applicant, )  
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 v. )  
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 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2012-CP-23-7604

**CONDITIONAL ORDER OF DISMISSAL**

2013 MAY 14 PM 3:05

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant was indicted by the Greenville County Grand Jury for murder (1990-GS-23-2607, count 1) and possession of a weapon during the commission of a violent crime (1990-GS-23-2607, count 2). He was represented by Dorothy A. Manigault, Esquire.

After the State called the case to trial, the Applicant was found guilty. On May 1, 1990, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to consecutive terms of life imprisonment for murder and five (5) years for the weapons charge.

A notice of appeal was filed at the South Carolina Supreme Court. The Supreme Court affirmed the Applicant's convictions and sentences. State v. Miller, Op. No. 91-MO-171 (S.C. Sup. Ct. filed June 24, 1991).

**First PCR Application**

The Applicant filed a PCR application on August 10, 1990 (1990-CP-23-3525). An

evidentiary hearing was convened on June 17, 1992 at the Greenville County Courthouse. The Applicant was present and represented by Daniel Farnsworth, Esquire. The Honorable Thomas W. Cooper, Jr. denied relief by order dated August 25, 1992.

A notice of appeal was subsequently filed at the South Carolina Supreme Court. The Supreme Court denied the petition for writ of certiorari on August 26, 1993.

#### **First Federal Petition for Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (6:95-615-2AK). The Respondent submitted a motion for summary judgment on April 17, 1995. The Honorable William M. Catoe, Jr., United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated June 28, 1995. On August 1, 1995, the Honorable William B. Traxler, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

#### **State Petition for Writ of Habeas Corpus**

The Applicant filed duplicate petitions for writ of habeas corpus in the circuit court on January 13, 1998 (1998-CP-23-0070, -0076). The Honorable John W. Kittredge dismissed the petition by order dated July 26, 1998. A subsequent hearing was held before the Honorable Wyatt T. Saunders on April 23, 1999, at which point the Applicant was represented by Robert Childs, Esquire. Judge Saunders issued an order dated May 10, 1999 dismissing both actions.

A notice of appeal was filed at the South Carolina Court of Appeals. The appeal was perfected by Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense. The Court of Appeals affirmed Judge Kittredge's order. State v. Miller, Op. No. 2000-UP-506 (S.C. Ct. App. filed June 28, 2000).

### Second PCR Application

The Applicant filed a PCR application on September 15, 2000 (2000-CP-23-5248). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Jury instructions shifted the burden of proof to the Applicant.

A hearing was held before the Honorable John C. Few. The Applicant was represented by Joel S. Brandon, Esquire. By order filed May 3, 2002, Judge Few denied the application.

A notice of appeal was filed at the South Carolina Supreme Court. Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson<sup>1</sup> petition. The South Carolina Supreme Court denied the petition for writ of certiorari on June 12, 2003.

### Third PCR Application

The Applicant filed a PCR application on April 9, 2003 (2003-CP-23-2435). The Applicant raised the following issue:

1. Trial counsel misadvised about parole eligibility.

An evidentiary hearing was held on December 4, 2003 at the Greenville County Courthouse. The Applicant was present and represented by Rodney W. Richey, Esquire. The Honorable J. Michael Baxley granted the State's motion to dismiss by order dated February 6, 2004.

A notice of appeal was filed at the South Carolina Supreme Court. The appeal was perfected by Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense. The Supreme Court reversed and remanded the case for an evidentiary hearing on the parole

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

eligibility issue. Miller v. State, Op. No. 2005-MO-037 (S.C. Sup. Ct. filed July 25, 2005).

A second hearing was held on March 2, 2006. The Applicant was present and represented by Rodney W. Richey, Esquire. The Honorable Edward W. Miller issued an order of dismissal dated March 24, 2006.

A notice of appeal was filed at the South Carolina Supreme Court. The appeal was perfected by Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense. The Supreme Court denied the petition for writ of certiorari on December 5, 2007.

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**Second Federal Petition for Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (6:03-2385-23AK). The Respondent submitted a motion for summary judgment on October 20, 2003. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated February 27, 2004. On April 26, 2004, the Honorable Patrick M. Duffy, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of appellate counsel:
  - a. Failure to appeal PCR denial.
2. Ineffective assistance of trial counsel and appellate counsel:
  - a. Martinez v. Ryan, 132 S. Ct. 1309 (2012).
3. Ineffective assistance of trial counsel:
  - a. Conceded guilt.
  - b. Did not request a competency hearing.
  - c. Failed to offer expert testimony.
  - d. Failed to object to trial judge's instruction that the jury could infer

malice from the use of a deadly weapon.

### III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

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.

The Applicant was convicted of the offenses he challenges in this application on May 1, 1990 and the South Carolina Supreme Court affirmed the convictions and sentences on June 24, 1991. This application was filed on December 5, 2012, which was well beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

### IV.

This Court further finds the current application should also be dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737

(1980). South Carolina Code Ann. § 17-27-90 (2003) 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications, the application is dismissed.


V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville

County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

May 7, 2013.



\_\_\_\_\_  
D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

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

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2307604

FILED  
MAY 14 2013  
CLERK OF COURT  
GREENVILLE COUNTY

James C Miller vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ACTION DISMISSED (CHECK REASON):
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_

- ACTION STRICKEN (CHECK REASON):
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this 14th day of May, 2013.

Court Reporter: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 14th day of May, 2013, and a copy mailed first class this 14th day of May, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

James C Miller 167675 Perry Correctional  
Institution 430 Oaklawn Rd Pelzer, SC 29669

✓ Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensmeyer - Greenville County Clerk Of Court  
- Clerk of Court