

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) IN THE NINTH JUDICIAL CIRCUIT  
)

David M. Chapman, #185661

) Case No. 2021-CP-10-00646  
)

) Applicant,  
)

) v.  
)

) **CONDITIONAL ORDER**  
) **OF DISMISSAL**  
)

) State of South Carolina,  
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) Respondent.  
)  

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FILED  
2025 AUG 15 AM 10:27  
JULIE J. APPELSTON  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by David M. Chapman (Applicant) on February 11, 2021. Respondent made its return<sup>1</sup> and requested the action be summarily dismissed. After consideration, this Court **GRANTS** Respondent’s motion.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-five-year sentence. In August 2003, the Charleston County Grand Jury indicted Applicant for murder (2003-GS-10-5739). In September 2003, the Charleston County Grand Jury indicted Applicant for strong armed robbery (2003-GS-10-5748) and first-degree burglary (-5747). The indictments arose following the robbery and death of Claude Breland.

<sup>1</sup> Respondent’s return was due to be filed within 60 days of service. See Rule 12(a), SCRPC (“[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, and in light of no demonstrable prejudice to Applicant due to the delay, this Court accepts Respondent’s return 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.).

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Pursuant to a negotiated plea agreement, on August 30, 2004, Applicant appeared before the Honorable Doyet A. Early, III, and pled guilty as indicted to strong armed robbery and first-degree burglary, and as to the murder indictment, the lesser-included offense of voluntary manslaughter. Melisa White Gay, Esquire, represented Applicant. Assistant Solicitor Douglas Bruce DuRant represented the State. Pursuant to the negotiated sentence, Judge Early sentenced Applicant concurrently to thirty-five years for burglary, thirty years for voluntary manslaughter, and fifteen years for strong armed robbery.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Joseph L. Savitz, III, through the filing of an Anders<sup>2</sup> brief. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders. State v. Chapman, Op. No. 2007-UP-297 (filed June 8, 2007). Applicant filed a petition for rehearing, which was denied. The remittitur was sent October 3, 2007.

***First Federal Habeas Corpus Petition (8:07-03482-DCN-BHH)***

On October 18, 2007, Applicant filed a petition for habeas corpus in federal district court. Respondent filed a return and motion for summary judgment. On June 13, 2008, the Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued a report and recommendation that Respondent's motion for summary judgment be granted. On July 23, 2008, the Honorable David C. Norton, United States District Judge, granted summary judgment and denied and dismissed the petition. Applicant did not appeal.

***First PCR Application (2008-CP-10-05221)***

On September 12, 2008, Applicant filed his first PCR application alleging:

1. Actual innocence.
2. Trial court erred in failing to suppress Applicant's statement.
3. Defective indictment.
4. Indictment not properly before the trial court.

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<sup>2</sup> 386 U.S. 738 (1967).

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5. Applicant sentenced under a repealed statute.
6. Double jeopardy.
7. Judge erred in advising Applicant that he must admit that he caused the victim's death before the judge would accept Applicant's plea.

On September 25, 2009, a hearing convened before the Honorable Kristi L. Harrington. Jacqueline Drescher, Esquire, represented Applicant. Matthew J. Friedman, Esquire, represented Respondent. Applicant testified on his own behalf, and plea counsel Melisa Gay also testified. On October 14, 2009, Judge Harrington issued an order denying and dismissing Applicant's application.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender LaNelle C. DuRant through the filing of a Johnson<sup>3</sup> petition. The South Carolina Court of Appeals denied the petition. The remittitur was issued on July 1, 2013.

***State Habeas Corpus Petition (2014-001117)***

On May 22, 2014, Applicant filed a Petition for Extraordinary Writ the Supreme Court of South Carolina alleging:

1. "Indictments were defective and voided as a matter of law and the Trial Court failed to have subject matter jurisdiction and personal jurisdiction."
2. "Applicant [claims ... ] Actual Innocence."

On June 26, 2014, the Supreme Court denied the petition.

***Second Federal Habeas Petition (2:14-3513-DCN-WWD)***

On August 28, 2014, Applicant filed a second petition for habeas corpus in the federal district court setting forth the same grounds for relief raised in his May 2014 petition to the South Carolina Supreme Court. On September 22, 2014, the Honorable Wallace W. Dixon, United States Magistrate Judge, issued a report recommending the petition be dismissed. On

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<sup>3</sup> 294 S.C. 310, 364 S.E.2d 201 (1988).

October 31, 2014, the Honorable David C. Norton accepted the report and recommendation and dismissed the petition. Applicant did not appeal.

***Motion for Successive Federal Habeas Corpus Petition (No. 14-484)***

On December 8, 2014, Applicant filed a petition in the United States Fourth Circuit Court of Appeals seeking authorization for district court consideration of a successive application. On January 7, 2015, the Court denied that motion.

***Motion for Relief Pursuant to Rule 60(b), SCRPC (2011-CP-10-4406)***

On June 22, 2011, Applicant filed a motion pursuant to Rule 60(b), SCRPC, alleging:

1. Fraud upon the Court:
  - a. The State committed fraud on the court by alleging in the indictment that Applicant murdered the victim.
  - b. Detective R. Smith committed fraud on the court in his affidavit supporting arrest warrant H-395063 by alleging Applicant murdered the victim.
  - c. Applicant was never served with assault and battery with intent to kill warrant.
2. Involuntary guilty plea (duress):
  - a. The trial judge pressured Applicant to plead guilty.
  - b. Applicant's plea did not meet Boykin v. Alabama<sup>4</sup> requirements.
3. Insufficient evidence and actual innocence:
  - a. The victim died of natural causes.

Respondent filed a return and motion to dismiss. On September 1, 2016, Applicant filed a motion for default judgement. Respondent filed an amended return and motion to dismiss. On April 18, 2017, the Honorable Deadra L. Jefferson issued an order dismissing Applicant's motions.

***Third Federal Habeas Corpus Petition (2:19-cv-2688-DCN-MGB)***

Applicant filed a third petition for habeas corpus in federal district court. On

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<sup>4</sup> 395 U.S. 238 (1969).

September 30, 2019, the Honorable Mary Gordon Baker, United States Magistrate Judge, issued a report and recommendation that the petition be summarily dismissed. On October 23, 2019, the Honorable David C. Norton accepted the report and recommendation, denied and dismissed the petition, and denied a certificate of appealability. Applicant did not appeal.

### CURRENT PCR APPLICATION

On February 11, 2021, Applicant filed this PCR application<sup>5</sup> alleging:

1. Ineffective Assistance of Counsel:
  - a. Counsel failed to challenge “the written testimony in the Affidavit, by the affiant. Pursuant to Section 16-3-5 a person causing injury which results in death at three years later not be Prosecuted For Homicide. In the Affidavit the affiant alleged Mr. Breland death cause to blunt trauma to the head and due to an assault. The writing in Mr. Claude statement on March 19, 2003 does not specif[y] where was he hit on his body parts. The certificate of death shows: cause of death, pending. [Applicant] asserts he did not hit the victim with any object.”
  - b. Applicant pled guilty because counsel assured him he would not receive more than fifteen years for burglary. Pursuant to Section 16-11-312(c)(2), counsel misadvised Applicant that his guilty plea would be equivalent to if “the jury in a trial had recommended him to the mercy of the court. Code 1976 § 17-25-130.”
2. “Newly Discovered Evidence, medical”
3. “Record was Never presented at Guilty plea Hearing”
  - a. Unlawful arrest: “Chapman’s murder conviction should be reversed because trial court has a function to state a specific finding of facts under Federal Rules of Criminal Procedure: Rule 23(c).”
  - b. The plea court erred in finding Applicant’s burglary plea “was lawful under the elements absence proof by the evidence of witnesses, rather than proof by written instrument.”<sup>6</sup>
  - c. Applicant’s plea to burglary should be reversed “because the witness

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<sup>5</sup> Applicant first attempted to file this application around January 1, 2019, but it was refused by Order from the Chief Administrative Judge because “no cause of action [was] listed.” Applicant attempted again on November 1, 2019, and January 16, 2020, to file the application, but it was not filed due to Applicant’s failure to pay a filing fee. Thereafter, Applicant filed a “Motion for Leave to Proceed Forma Pauperis Rule 3 SCRPC” in the South Carolina Court of Appeals. The case was transferred to the Supreme Court of South Carolina. On February 11, 2021, the Supreme Court issued an order granting Applicant’s motion to proceed *in forma pauperis*.

<sup>6</sup> This is allegation 3 in Applicant’s “Attached Sheet to Post-Conviction Application and Memorandum of Law,” which the State construes as an allegation of plea court error.

to the signature signed the warrant-affidavit knows the writing is false testimony under oath.”<sup>7</sup>

For relief, Applicant seeks to have his conviction and sentence vacated.

On January 30, 2023, Applicant filed a notice and motion for summary judgment wherein he effectively argued summary judgment should be granted due to the States’ default.<sup>8</sup>

On March 30, 2023, Applicant filed a “Motion Supplement Amend to Post-Conviction Relief) alleging:

1. Actual innocence.
2. Newly-discovered evidence: the cause of death to the victim was a punctured lung rather than a broken neck.

In support of his newly-discovered evidence claim, he attached a letter addressed from Southeastern Medical Legal Consulting to plea counsel on November 25, 2003. Applicant averred he received this letter on January 16, 2021.

On August 21, 2023, Applicant filed an amended application alleging:

1. Newly-discovered evidence:
  - a. The medical report created by Carol O’Quinn, RN, CLNC, “is 1) material; 2) has not been previously presented and heard by a court with jurisdiction to grant the relief required and sought; and 3) requires vacation of the conviction or sentence in the interest of justice. SC ST § 17-27-20.”
  - b. “The Report’s credible, substantial contradiction of the cause of death alleged at trial by the State inherently requires vacatur and remand.”
2. Involuntary guilty plea:
  - a. “The Applicant asserts that he pled guilty SC ST § 16-3-50 “Voluntary Manslaughter” under the misinformation

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<sup>7</sup> This is part of allegation 4 in Applicant’s “Attached Sheet to Post-Conviction Application and Memorandum of Law,” which the State construes as an allegation of plea court error.

<sup>8</sup> As set forth herein, this application is procedurally barred as untimely and successive; thus, Applicant’s motion is denied. See Rule 55(e), SCRCP (“No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . unless the claimant establishes his claim to relief by evidence satisfactory to the Court.”).

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from the State that the victim died as a result of injuries allegedly inflicted by him, i.e. a broken neck suffered during an alleged robbery purportedly perpetrated by the Applicant.”

3. The State committed a Brady violation.

On July 21, 2025, Applicant served on Respondent a Motion for Appointment for Counsel and Motion for Funds for Expert Testimony.<sup>9</sup>

Before this Court are the Charleston County Clerk of Court records of the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s PCR and habeas corpus records, and Applicant’s appellate records.

### **MOTION TO DISMISS**

Respondent moved for summary dismissal pursuant to section 17-27-70(b) of the South Carolina Code asserting no genuine issues existed that would necessitate an evidentiary hearing. Because no questions of law or fact necessitate a hearing, Respondent requested this Court NOT appoint counsel and instead issue a Conditional Order of Dismissal indicating the Court’s intent to dismiss the application and its reasons for doing so. See S.C. Code Ann. § 17-27-70(b) (establishing procedures 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); See Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008 (“If the Attorney General asserts that the [PCR] application is barred as being successive or being untimely, under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for the Administrative Purposes for the Court of Common Pleas in the circuit.”);

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<sup>9</sup> As set forth herein, this application is procedurally barred as untimely and successive; thus, Applicant’s motions for counsel and funding are denied.

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Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). This Court has reviewed the application and the record in this case and finds there are no genuine issues of material fact. Therefore, summary dismissal is appropriate. Set forth below are the Court's findings:

### ***Statute of Limitations***

This action shall be summarily dismissed for failure to comply with the statute of limitations in the Act. A PCR application “must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur....” S.C. Code Ann. § 17-27-45(A). Here, Applicant was sentenced on August 30, 2004, and the remittitur from the direct appeal was issued on October 3, 2007. This application had to be filed by October 4, 2008. Applicant first attempted to file this application on or around January 1, 2019—more than ten years after the filing deadline expired. Thus, this application is barred by the statute of limitations and shall be dismissed.

### ***Newly-Discovered Evidence***

Applicant has failed to allege a prima facie claim of newly-discovered evidence; thus, this claim shall be summarily dismissed. A person may institute a PCR action 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). An application alleging newly-discovered evidence “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.” § 17-27-45(C).

A guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485-86 (2013). An

applicant alleging after-discovered evidence following a guilty plea must show:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Here, Applicant has failed to show any newly-discovered evidence. The letter attached to his filings was addressed to his plea counsel and dated November 11, 2003—approximately eight months prior to Applicant’s plea. Thus, Applicant could have obtained (and did in fact obtain) this report with due diligence prior to his guilty plea. Further, nothing in the report—which set forth Victim’s medical records related to his injuries and death—refuted that Applicant’s actions caused Victim’s death. The report thus does not meet the high threshold for newly-discovered evidence, and Applicant is not entitled to a hearing on this issue.

***Successive***

This action shall be summarily dismissed as successive to Applicant’s prior PCR application. 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,

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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.

§ 17-27-90. Successive PCR applications are barred unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Id. PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). “Finality 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 394. Thus, 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).

Here, Applicant’s current allegations were or could have been raised in his prior PCR application. Applicant failed to establish a sufficient reason why he could not have raised his current allegations in his prior application and has thus failed to meet his burden of showing the allegations could not have been previously raised. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) (“Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than ‘one bite at the apple as it were.’”). Therefore, this application is dismissed as successive.

#### CONCLUSION

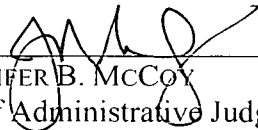
WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code, this Court

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 (20) 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, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Danielle Dixon, Esquire  
PCR Division – Ninth Circuit  
PO Box 11549  
Columbia, SC 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 (20) days from the date of the service of this Order, 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 7 day of August, 2025.

  
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JENNIFER B. MCCOY  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina

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ALAN WILSON  
ATTORNEY GENERAL

August 13, 2025

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401

***Re:* David M. Chapman, #185661 v. State of South Carolina**  
**Case No. 2021-CP-10-00646**

Dear Ms. Armstrong:

Enclosed please find the original Conditional Order of Dismissal signed by The Honorable Jennifer B. McCoy, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon  
Assistant Attorney General

DD/vh  
Enclosure

cc: David M. Chapman, #185661