

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3600391

Alonzo Richardson

South Carolina State Of

RECEIVED

DEC - 5 2013

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: S.C. Supreme Court
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - 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; (formal order to follow) Statement of Judgment by the Court:
Conditional Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/ Eugene C. Griffith, Jr.
Circuit Court Judge

2154

Judge Code

10/3/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 3, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **October 3, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Alonzo Richardson Allendale CI Po Box 1151 Fairfax, SC
29827

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ Jackie S. Bowers

Court Reporter

Jackie S Bowers - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Alonzo Richardson, #292383,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS)
EIGHTH JUDICIAL CIRCUIT)

2012-CP-36-0391)

FILED)
NEWBERRY COUNTY)
2013 OCT 3 AM 10 59)
JACQUE S. BOWERS)
CLERK OF COURT)

RECEIVED
CONSTITUTIONAL ORDER OF DISMISSAL

DEC - 5 2013

S.C. Supreme Court

This matter comes before this Court by way of an application for post-conviction relief filed July 25, 2012 and received by Respondent on September 24, 2013. The Respondent made its Return and Motion to Dismiss on Sept. 25, 2013.

PROCEDURAL HISTORY

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the December 2001 term of Newberry County Grand Jury for Assault and Battery with intent to kill (2001-GS-36-479). He was represented on the charges by Chad Jenkins, Esquire. The Applicant proceeded to trial in absentia on January 15, 2003, and was found guilty as indicted. The sentence was unsealed on April 7, 2003. The Honorable James W. Johnson, Jr. sentenced him to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed and an appeal was perfected. Robert M. Dudek, Esquire, filed a brief on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967).

502

The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Richardson, Op. No. 2005-UP-101 (S.C Ct. App. Filed February 10, 2005). The Remittitur was sent on March 15, 2005.

2005-CP-36-0131

The Applicant subsequently filed an application for post-conviction relief (PCR) on April 8, 2005. The State filed its Return on August 12, 2005. An evidentiary hearing was convened on January 19, 2006, at the Newberry County Courthouse, at which the Applicant was present and represented by M. Rita Metts, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective Assistance of Counsel and
2. Subject Matter Jurisdiction

The Honorable Wyatt T. Saunders denied and dismissed the application with prejudice by written Order on March 3, 2006. Robert M. Pachak, Esquire, filed a Petition for a Writ of Certiorari on the Applicant's behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2s 201 (1988). The South Carolina Supreme Court denied the Applicant's Petition. The Remittitur was sent on July 6, 2007.

9:07-cv-2136-DCN

The Applicant filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina. The Magistrate issued a Report and Recommendation on January 11, 2008, recommending that the action be dismissed. The Applicant responded to the Report and Recommendation on January 25, 2008. On February 4, 2008, the Honorable David C. Norton adopted the Report and Recommendation and granted the State's Motion for Summary Judgment, denying the Applicant's Habeas Corpus claim.

08-6272

The Applicant then filed a Notice of Appeal from the denial of his Federal Habeas Corpus on February 11, 2008, in the United States Court of Appeals for the Fourth Circuit. The Court of Appeals denied the Certificate of Appealability on April 24, 2008. Applicant then filed a Petition for Rehearing *En Banc* on May 12, 2008. The Court of Appeals denied this petition on June 13, 2008.

08-5546

The Applicant then filed a Petition for a Writ of Certiorari to the United States Supreme Court on July 22, 2008. This petition was denied on October 6, 2008.

2008-CP-36-0496

The Applicant subsequently filed his second post-conviction relief application on October 24, 2008. The State made its Return and Motion to Dismiss on March 12, 2009. The Honorable D. Garrison Hill denied and dismissed the application with prejudice by written Order on July 28, 2009.

The Applicant raised the following issues in his second PCR:

1. Ineffective Assistance of Counsel
2. Ineffective Assistance of PCR Counsel; and
3. "The Judge's jury charge on malice and intent was unconstitutional violating the 14th Amendment."

10-209

The Applicant then filed a "Motion under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief under 28 U.S.C. §§ 2254 or 2255" with the United States Court of Appeals for the Fourth Circuit on June 29, 2010. The Courts of Appeals denied Applicant's motion by written Order on July 9, 2010.

2010-CP-36-0349

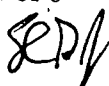
The Applicant subsequently filed his third post-conviction relief application on July 28, 2010. The State made its Return and Motion to Dismiss on November 16, 2011. The Honorable Eugene C. Griffith, Jr. denied and dismissed the application with prejudice by written Order on December 9, 2011. The Applicant raised the following issues in his third PCR:

1. "The charge confused the Jury when there was no evidence of A.b.I.k. or malice aforethought presented to think it could be found in the use of a weapon prejudicing defendant from receiving lesser charge."

Additionally, and in response to the Conditional Order of Dismissal, Applicant argued State v. Belcher, 385 S.C. 596, 685 S.E.2d 802 (2009) (holding a jury charge that malice may be inferred by the use of a deadly weapon is no longer good law in South Carolina where there is evidence that might mitigate, excuse, or justify a homicide) was applicable to his case. This Court found his claim was erroneous.

In his current and fourth application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant brings this application to this court pursuant to Aice & 17-27-90; and Applicant has the burden of showing that the new ground could not have been raised in first application; se Supreme Court Rule 50(3) and if Applicant meets his burden a hearing must be afforded, SEE Case v. State 289 SE2d 413(sic), failure to do so would amount to a gross miscarriage of justice SEE Butler v. State 397 SE2d 87 (SC 1990)(sic)."
 - a. "The Judge's malice charge in Richardson(sic) case cannot be considered as harmless under the Belcher analysis used in State v. Miller, (Opinion NO. 4965, April 25, 2012[]) and this same analysis should be retroactively applied to Richardson(sic) case to grant new trial."
 - b. "When there was no evidence of malice found it confused and mislead(sic) the jury to think that malice is found in the use of a deadly weapon forcing the jury to find Richardson guilty of the greater crime while at the same time depriving Richardson of the lessor offense prejudicing Richardson."



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish 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. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

SEM

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 . S.C. 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 judgement 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 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). The Applicant was convicted of the offense(s) he challenges in this Application in 2003. The Remittitur was sent after an unsuccessful appeal on March 15, 2005. The Applicant was therefore required to file his application before March 16, 2006. This Application was filed on July 25, 2012, which was well after the statutory filing period had expired.

A motion for summary judgement 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). 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 the moving party is entitled to judgement as a matter of law."

This Court further finds that the doctrine of *res judicata* bars the Applicant's claims. *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 in 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.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in both the state and federal courts. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, this Court summarily dismisses these claims as barred by *res judicata*.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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. The Applicant shall file any reasons he may have with the Newberry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 26th day of Sept, 2013.



EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina

