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 SPARTANBURG COUNTY  
 2013 OCT -4 AM 8:45  
 M. HOEFTLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Tammy Renee Jones, #283271, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0040

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed January 4, 2013. Respondent made its Return and Motion to Dismiss.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the April 2002 term of the Spartanburg County Grand Jury for murder (02-GS-42-1681), kidnapping, (02-GS-42-1680), and strong armed robbery (02-GS-42-1679). The Applicant was represented by Ricky Harris, Esquire. On November 17, 2003, the Applicant proceeded to trial and was found guilty of kidnapping and strong armed robbery. The Applicant was found not guilty of murder. She was sentenced by the Honorable J. Derham Cole, to confinement for a period of thirty (30) years for kidnapping and fifteen (15) years for strong armed robbery. Those sentences were to be served concurrently.

A timely Notice of Appeal was filed by the Applicant's behalf and Joseph Savitz, Esquire, submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the conviction. State v. Jones, No. 2005-UP-610 (S.C. Ct. App. 2005). The

Remittitur was issued on January 3, 2006.

**2007-CP-42-0545**

The Applicant subsequently filed her first application for post-conviction relief (PCR) on September 6, 2006. The State filed its Return on or about March 30, 2007. An evidentiary hearing was convened at the Spartanburg County Courthouse on November 8, 2007, at which time the Applicant was present in court and was represented by Jacqueline A. Moss, Esquire. The State was represented by S. Prentiss Counts of the South Carolina Office of the Attorney General. The Applicant raised the following issue in her first PCR:

1. Cumulative Prejudice Resulting from Improper Evidence;
2. Violation of Brady Material/Evidence Disclosure and Discovery; and
3. Misconduct of Judge for allowing inconsistent statements.

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The Honorable Roger L. Couch denied and dismissed Applicant's application by Written Order signed January 14, 2008 and filed January 15, 2008. The Applicant subsequently filed a Petition for Writ of Certiorari with the South Carolina Supreme Court. The Court denied the petition by Written Order dated November 6, 2008. The Remittitur was sent down on November 24, 2008.

**Applicant's Current PCR Application**

In her current application for post conviction relief the Applicant alleges that she is being held in custody unlawfully for the following reason:

1. "Declaratory Judgment Act."
  - a. "Kidnapping offense did not include sexual misconduct necessary for sex offender registration. Court

of Common Plea [sic] have [sic] jurisdiction to make finding's [sic] as to the sexual offender registry off[ice].”

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

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## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to her 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 her 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 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 she could not have raised her current allegations in her previous application for post-conviction relief; therefore, she has failed to meet the burden imposed upon her. 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).

### Res Judicata

This Court further finds that the doctrine of *res judicata* bars the Petitioner'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, subject matter jurisdiction, and trial court error in both the state and federal courts. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCF, this Court finds that these claims are barred by *res judicata*.

### Statute of Limitations

This Court further 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 (2003). 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 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 South Carolina Supreme Court has held that the statute of limitations shall apply to

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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 she challenges in this Application on November 17, 2003. The Supreme Court issued the Remittitur on November 24, 2008. The Applicant was therefore required to file her application before November 17, 2004. This Application was filed on January 4, 2013, well after the statutory filing period had expired.

A motion for summary judgment 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 judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute, barred by the doctrine of *res judicata*, and because it is successive to her previous applications.

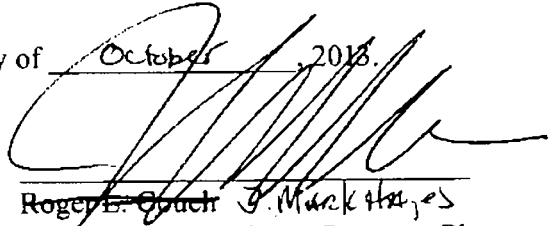
### Summary

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 her to show why this Order should not become final. The Applicant shall file any reasons she may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

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AND IT IS SO ORDERED this 3 day of October, 2013.



~~Roger E. Opuch~~ *G. Mark Hayes*  
Administrative Judge – Common Pleas  
Seventh Judicial Circuit

Spartanburg, South Carolina

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# Spartanburg County

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**M. Hope Blackley**  
Clerk of Court

*Oct. 21, 2013*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

*Tamm Reese Jones*  
Applicant # *283271*

7<sup>TH</sup> JUDICIAL CIRCUIT

CASE # *2013CP42-40*

CERTIFICATE OF SERVICE

*Stee*  
Respondent

I certify that, on this date, I served a copy of the *Conditional Dismissal*  
In this action dated *10-3-2013* on *10-21-13*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*Ann Miller*  
*Stacey White*  
*Tamm Jones*

*10-21-13*  
(Date)

*Cassie Steff*  
(Signature)