

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

Larry A. White, #371303,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE TWELFTH JUDICIAL CIRCUIT  
)

) CASE NO. 2024-CP-33-00060  
)

) **CONDITIONAL ORDER OF DISMISSAL**  
)

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CLERK OF COURT

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Larry A. White (Applicant) on January 22, 2024. In response, Respondent made its return<sup>1</sup> and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, successive to Applicant's previous application, barred by the doctrine of *res judicata*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, 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:

<sup>1</sup> Respondent's return to the application was due to be filed within sixty days of receipt. 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 required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts this 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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**PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the July 2017 term of the Marion County Grand Jury for: first-degree burglary; attempted murder; armed robbery; two counts of kidnapping; conspiracy; and possession of a weapon during the commission of a violent crime. (2017-GS-33-00416). Applicant was represented by Bradley C. Richardson, Esquire. Assistant Solicitor Fitzlee McEachin prosecuted the case.

On July 30, 2018, Applicant pleaded guilty to first-degree burglary and attempted murder before the Honorable William H. Seals, Jr. Applicant pleaded guilty with negotiated concurrent fifteen-year sentences on both charges, and his remaining charges were dropped in exchange for his guilty plea. Judge Seals accepted Applicant's guilty plea and sentenced him to serve concurrent terms of fifteen years' imprisonment. Applicant did not appeal his plea or sentence..

***FIRST PCR ACTION AND SUBSEQUENT APPEAL: 2019-CP-33-00281***

Applicant filed his first PCR action on April 22, 2019. In that application, Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel;
  - a. Counsel did not help Applicant to the best of his ability; and
  - b. Counsel withheld evidence from Applicant.

On December 16, 2019, Applicant, through PCR counsel, amended his PCR application, alleging:

1. Involuntary guilty plea:
  - a. Failure to properly investigate the facts and circumstances surrounding the case;
  - b. Failure to conduct an adequate amount of meetings with Applicant to review the discovery; and
2. Ineffective assistance of Counsel for failure to properly file a notice of appeal:

- a. Applicant asserts he is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35, (1974).

An evidentiary hearing convened on December 17, 2019, at the Florence County Courthouse before the Honorable D. Craig Brown. The Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. The court granted Applicant a belated appeal pursuant to White and denied and dismissed all other allegations by written order filed on October 26, 2020.

Applicant filed a timely Notice of Appeal. Appellate Defender Wanda H. Carter perfected the appeal by filing a Petition for Writ of Certiorari and an Anders Brief of Appellant Pursuant to White v. State on May 19, 2021. On August 21, 2021, Thurmond Brooker, Esquire, filed a Notice of Appearance and an Appellant's Brief. On October 1, 2021, Mr. Brooker filed a Consent Order for Substitution of Counsel. On October 1, 2021, Mr. Brooker's motion to be substituted was granted by filed Order. On February 11, 2022, the State filed its Return to Petition for Writ of Certiorari and Brief of Respondent Pursuant to White v. State. The Court of Appeals granted certiorari and affirmed Applicant's convictions and sentences by unpublished opinion. White v. State, Op. No. 2023-UP-316 (Ct. App. filed September 27., 2023). The Remittitur was returned to the circuit court on October 17, 2023.

#### CURRENT APPLICATION

On January 16, 2024, Applicant *untimely* filed his *second* application for PCR in which he alleges the following:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Tainted Indictment/Indictment Facially Invalid
4. Lack of Probably Cause/Invalid Arrest Warrants
5. Prosecutorial Misconduct
6. Newly Discovered Evidence/Equal Protection Violation

Applicant seeks relief in the form of "vacation of sentence."

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Before this Court are the Marion County Clerk of Court records regarding the subject's convictions; Applicant records from his first PCR action and appeal; Applicant's guilty plea transcript; 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 NEWLY DISCOVERED EVIDENCE***

Respondent moved this Court to summarily dismiss the application because Applicant's assertion that he is being held in custody unlawfully due to newly discovered evidence, such that he should be entitled to PCR, is without merit. The Uniform Post-Conviction Procedure Act states that 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). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application 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

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could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). Otherwise, a PCR must be filed within one year of sentencing or, if a direct appeal is filed, within one year of the remittitur. S.C. Code Ann. § 17-27-45(A).

In his current application, Applicant claims that he discovered on March 7, 2025, that counsel did not file a Rule 5, SCRCrimP, for his discovery. However, Applicant's contention that counsel did not have his discovery is wholly refuted by the guilty plea and first PCR action records. A party requesting a new trial based on newly discovered evidence must show that the evidence:

1. Is such as would probably change the result if a new trial was had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

At Applicant's first PCR evidentiary hearing, contrary to his newly discovered claim, Applicant raised the issue with the conspiracy indictment. See App. pp. 35-39.

Turning to the Clark factors, Applicant's claims regarding equal protection do not apply because his codefendant's sentencing has no bearing on his own—and is not material to the issue

of guilt or innocence—thus, this fails number 4. Applicant's claims regarding the indictments fail number 3 because Applicant received those indictments before trial. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

Applicant's claim regarding his competency is not a cognizable newly discovered evidence claim.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a *prima facie* showing of newly discovered evidence. Because his claims do not meet the high threshold of newly discovered evidence, they are barred by the one-year statute of limitations set forth in S.C. Code Ann. § 17-27-45(A).

This Court finds Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed

***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.<sup>2</sup> 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

<sup>2</sup> S.C. Code Ann. § 17-27-10 to -160.

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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.

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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 numerous allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty on July 30, 2018. Applicant did not pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before July 30, 2019. Applicant did not file this PCR application until January 16, 2024, *four years, five months, and seventeen days* beyond the statute of

limitations.

Accordingly, this Court finds 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.

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***SUMMARY DISMISSAL BASED ON SUCCESSIVENESS***

Respondent moved to summarily dismiss this application because it is successive to Applicant's previous *two* PCR applications. 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 raised earlier 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, other than newly discovered evidence, *were or could have been* raised in the proceedings based on Applicant's prior applications 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.

Applicant also raises the issue of competency during his first post-conviction relief hearing. Applicant stated he was incompetent and could not raise the issues because he "lack[ed] the necessary ability or skills and [was] not legally qualified." Specifically, Applicant contends his incompetency arose from the fact that he did not "hav[e] knowledge of the law or access to the institutional law library." This Court agrees with Respondent and finds Applicant's argument is not a legal basis for permitting a successive PCR action. Cf. Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005) (finding "Ignorance of the statute of limitations is not an excuse for late filing . . .").

Accordingly, this Court finds this application is successive and procedurally barred pursuant to S.C. Code Ann. § 17-27-90 and shall be dismissed.

***SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA***

Additionally, this application is 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 had a full opportunity to litigate any and all his allegations in his first PCR action. 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*.

***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. Furr, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 206, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

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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 PAGE FOLLOWS]

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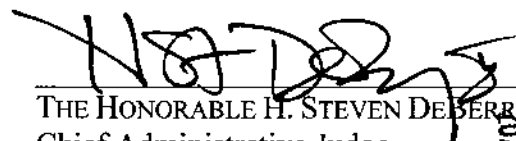
**CONCLUSION**

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

Office of the Attorney General  
PCR Division – 12<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Marion 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 24 day of June, 2024.

  
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THE HONORABLE H. STEVEN DEBERRY, IV  
Chief Administrative Judge  
Twelfth Judicial Circuit

Flanore \_\_\_\_\_, South Carolina

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