

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Keeon Butler, #243002,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

CASE NO. 2025-CP-10-00527

CONDITIONAL ORDER OF DISMISSAL

FILED

MAR 16 2026

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Keeon Butler (Applicant) on January 29, 2025. Respondent made it return and moved to dismiss the application as untimely and successive. After consideration, Respondent's motion is granted.¹

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections serving a cumulative thirty-five-year sentence. During its August 2012 term, the Charleston County Grand Jury indicted Applicant for Armed Robbery (2012-GS-10-04586) and Possession of a Firearm during the Commission of a Violent Crime (2012-GS-10-03824). Guy Vitetta, Esquire, represented Applicant. On May 19, 2014, Applicant proceeded to a jury trial before the Honorable Roger M. Young, Sr. Following the State's presentation of evidence, Applicant elected to discontinue his trial and enter a nolo contendere plea to both offenses for a negotiated sentence of thirty-five years in exchange for the State's withdrawal of its notice of intent to seek life without

¹ Respondent's return was due to be filed within 60 days of service. See Rule 12(a), SCRCPC ("[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, this Court accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the trial court, and the trial court may extend the time for filing).

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parole. In accordance with the plea agreement entered into by the State and Applicant, Judge Young sentenced Applicant to consecutive terms of thirty years' imprisonment for armed robbery and five years' imprisonment for the weapons charge.

Applicant served a pro se notice of appeal on August 1, 2014. In response, the State filed a motion to dismiss the appeal based on the Applicant's failure to file a timely notice of appeal. By Order filed on November 19, 2014, the South Carolina Court of Appeals granted the State's Motion and dismissed the appeal. The Remittitur was issued on December 5, 2014.

First Post-Conviction Relief Action (2014-CP-10-04993)

On August 18, 2014, Applicant filed his first application for post-conviction relief, alleging:

1. Ineffective assistance of counsel: "failing to protect rights, failed to suppress, failed to argue motions, failed to properly cross-examine and report perjury to court, of both witnesses and victims. Counsel failed to call defense witness Keith Novak to the stand to refute witness testimony although he was served with a subpoena. Counsel failed to have defendant mentally evaluated. Counsel failed to establish alibi."
2. Involuntary guilty plea: "Counsel failed to explain terms of no contest plea. Counsel failed to protect rights of defendant and challenge excessive plea offer."
3. Counsel failed to file for direct appeal: "Counsel stated at the conclusion of the hearing that it was his intent to file appeal against all objections and denied motions but did not submit an appeal to the court. Counsel knew defendant desired to exercise rights to appeal."

Respondent made its return on November 5, 2015, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 20, 2016, at the Charleston County Courthouse before the Honorable Perry H. Gravely. Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Assistant Attorney General J. Rutledge Johnson, Esquire, represented Respondent. Applicant testified on his own behalf. Following the evidentiary



hearing, Judge Gravely denied and dismissed the application on the record. A formal order denying and dismissing the application was filed on March 30, 2016.

Applicant appealed the denial of his post-conviction relief application. Through counsel, Appellate Defender Robert M. Dudek, a Petition for a Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) and an accompanying Appendix were submitted on Applicant's behalf on October 26, 2016. The petition for writ was denied on June 16, 2017.

Second Post-Conviction Relief Action (2017-CP-10-01313)

On March 14, 2017, Applicant filed his second application for post-conviction relief alleging:

1. "I never pled guilty."
2. "I was never read rights."
3. "Judge and lawyer never explained."

The Honorable Deadra L. Jefferson dismissed this application by written order November 20, 2017. Applicant did not appeal.

CURRENT PCR APPLICATION

On January 29, 2025, Applicant filed his current application for post-conviction relief alleging:

1. After discovered evidence
 - a. Counsel failed to convey plea offer by solicitor.
 - b. Counsel failed to appeal

As relief, Applicant requests a new plea hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, arguing no genuine issues of material fact necessitated an evidentiary hearing. Because no questions of law or fact necessitated 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 procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief); *Re: Appointment of Counsel in Post Conviction Relief Cases Before the Circuit Court*, S.C. Sup. Ct. Order filed Oct. 6, 2008, ("If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will ensure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations."); Rule 71.1(d), SCRCF (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing). This Court has reviewed the application and records in this case and finds there are no genuine issues of fact to warrant a hearing. Set forth below are this Court's findings:

Barred by Statute of Limitations

This Court finds this action should be summarily dismissed for failure to comply with the statute of limitations. "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...." S.C. Code Ann. § 17-27-45(A). The statute of limitations applies 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 statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

Applicant's current PCR application was filed after the expiration of the statutory filing period. Applicant was convicted and sentenced on May 19, 2014. On December 5, 2014, the

remittitur was issued from the direct appeal. Accordingly, Applicant was required to file this Application on or before December 5, 2015. Applicant did not file this Application until January 29, 2025. Accordingly, this Court dismisses the application as untimely.

Barred as Successive

This Court finds Applicant's application is summarily dismissed as successive. Applicant could have raised this allegation in his first PCR. 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, 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." Thus, any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Aice v. State, 305 S.C. 450, 409 S.E.2d 394 (1991). 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).

This claim contained in Applicant's current PCR could have been raised in his first PCR. Since Applicant failed to raise this claim in his first PCR but did not, he is procedurally barred from raising it in a subsequent action. Applicant has failed to plead a sufficient reason factually or legally why the allegation in his current PCR could not have been raised in his first PCR. Therefore, this Court finds this allegation is successive and barred under section 17-27-90. Accordingly, this Court summarily dismisses the application as successive.

Res Judicata

The Court finds that this action should be summarily dismissed by the doctrine of *res judicata*. Pursuant to the Act, 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). "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. Conway, 334 S.C. 30, 512 S.E.2d 106 (1999) (citation omitted). *Res judicata* also bars any issues that were raised or could have been raised in the former action. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n S.C., 294 S.C. 9, 362 S.E.2d 176 (1987)). "To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Id.

In his current action, Applicant alleges that counsel failed to convey plea offer by solicitor and that counsel failed to appeal. The same or similar allegations were made in Applicant's first PCR application (2014-CP-10-4993) in 2014. Applicant had a PCR hearing on January 20, 2016, in which Judge Gravely denied and dismissed all of Applicant's allegations. All of Applicant's



current allegations stem from the same conviction challenged in his prior action. Although Applicant did not raise all of his current allegations previously, he could have raised them in his previous PCR action. Applicant had a full opportunity to litigate these allegations in state court and his failure to do so prevents him from raising them now. Accordingly, this Court finds this application is barred by the doctrine of *res judicata*.

Newly Discovered Evidence

Applicant's claim of newly discovered evidence lacks merit and is summarily dismissed. The Act states 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, 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 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 requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(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. Applicant's newly conceived allegation that counsel did not communicate a plea offer is not newly discovered evidence.

Under Jamison, Applicant has failed to meet the high threshold required for newly discovered evidence. See id. ("It will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt"). Accordingly, this Court finds Applicant has not set forth a *prima facie* showing of newly discovered evidence that would entitle him to an evidentiary hearing.

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:

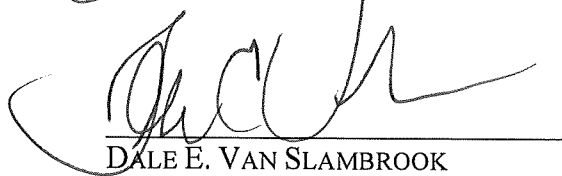
Office of the Attorney General
PCR Division – Ninth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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 6 day of March, 2026.



DALE E. VAN SLAMBROOK

Chief Administrative Judge – Common Pleas
Ninth Judicial Circuit

Monica C., South Carolina

