

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2025-CP-07-013

**AMENDED
CONDITIONAL ORDER
OF DISMISSAL**

State of South Carolina,

Respondent.

I. PROCEDURAL HISTORY

2 Respondent's return was due to be filed within ninety 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 day s if it arises out of a trial."). Now, having completed the return and considering no demonstrable prejudice to Applicant due to the delay, Respondent respectfully asks this Court to accept 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 and "respondent shall file with its answer the record or portions thereof are material to the questions raised in the application"); 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 circuit court, and the circuit court may extend the time for filing).

On February 23-27, 2009, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. The jury convicted Applicant as indicted, and Judge Mullen sentenced him to five years for the weapon charge and life for the remaining offenses.

Applicant filed a notice of appeal, which was perfected by Appellate Defender LaNelle Durant. The Supreme Court certified the appeal for its review pursuant to Rule 204(b), SCACR. Thereafter, the Supreme Court issued an order affirming. The remittitur was sent March 10, 2011.

First PCR Application (2011-CP-07-2946)

On July 14, 2011, Applicant filed his first PCR application raising various claims of ineffective assistance of counsel, ineffective assistance of appellate counsel, Brady/Rule 5/Kyles v. Whitley violation, and prosecutorial misconduct. On April 2, 2013, an evidentiary hearing convened before the Honorable Perry M. Buckner. On September 23, 2016, Judge Buckner issued an order denying and dismissing Applicant's claims with prejudice.

Applicant filed a notice of appeal. Chief Appellate Defender Robert M. Dudek filed a petition for writ of certiorari. The Supreme Court of South Carolina issued an order denying certiorari, and the remittitur was sent May 28, 2019.

II. CURRENT PCR APPLICATION

On May 30, 2025, Applicant filed this untimely, successive PCR application alleging:

1. Newly Discovered evidence: Applicant received a 2025 DNA re-analysis of the sexual assault examination kit from the May 26, 2006 assault anonymously by mail, which excludes him as the contributor of any DNA found on the victim. This result reflects a different outcome from the 2009 trial, where the prosecution used the kit to link me to the crime. The evidence is material, was unavailable at trial due to its anonymous receipt in 2025, and would likely have changed the verdict by proving my innocence on the criminal sexual conduct charge, casting doubt on the related charges.
2. Due process violation – prosecution withheld exculpatory evidence: The prosecution withheld initial DNA test results from the

sexual assault examination that were inconclusive, which are material and only discovered in 2025 through anonymous mailing, prejudicing my defense by preventing a challenge to the forensic evidence used to convict me.

3. Ineffective assistance of counsel: Counsel failed to request independent DNA testing of the sexual assault kit despite noting doubts about the prosecution's forensic evidence during trial. The deficient performance prejudiced my defense under Strickland as an exclusionary result in 2009 would likely have led to an acquittal or plea negotiation, given the case's reliance on forensic evidence.

Applicant attached to his application a SLED "Sexual Assault Examination Protocol Information and Examination Form" dated May 26, 2006, that gathers information from victim Amy Davidson about a sexual assault. The form does not contain *any* DNA analysis.

Before this Court are the Beaufort County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of Applicant's first PCR action (and its appeal).

III. 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.”); 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:

A. Statute of Limitations

This action shall be summarily dismissed for failure to comply with the statute of limitations. 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 February 27, 2009, and the remittitur from the direct appeal was issued on March 10, 2011. This application thus had to be filed by March 11, 2012. Applicant filed this application on May 30, 2025—more than thirteen years after the filing deadline expired. Thus, this action is barred by the statute of limitations.

B. Newly-Discovered Evidence

Applicant has failed to allege a prima facie claim of newly-discovered evidence, and this claim should thus 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 party requesting a new trial based on after-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.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983).

Here, Applicant has failed to show any newly-discovered evidence. The SLED Sexual Assault Examination Protocol Information and Examination Form is dated May 26, 2006—more than two years before Applicant’s trial. Further, nothing about this form exonerates Applicant. Rather, the form merely gathered information from the victim of this sexual assault about the assault itself. Contrary to Applicant’s assertion, the form does not contain a re-analysis of DNA evidence gathered at trial. Further—and critically—the State did not introduce any DNA evidence from the Sexual Assault Kit at trial.³ The report does not contain any DNA analysis and is not material to the issue of guilt or innocence. Likewise, there is no reasonable probability this information sheet would change the result of trial. The report thus does not meet the high threshold for newly-discovered evidence, and Applicant is not entitled to a hearing on this issue.

C. 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

³ The State *did* admit evidence that Applicant’s DNA was found on a pair of gloves.

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.” 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 allegations related to trial counsel 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 Court should summarily dismiss the application as successive.

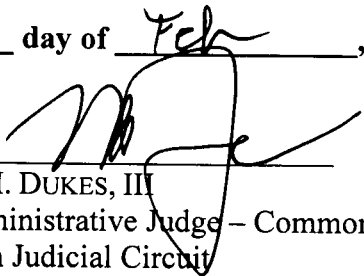
IV. CONCLUSION

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

Office of the Attorney General
Kylee Kanealey, Esquire
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 Beaufort 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 24 day of Feb, 2026.


MARVIN H. DUKES, III
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

BR, South Carolina