STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Kevin Lamar Harbin, #303214, Applicant, V. State Of South Carolina, Respondent.	)	CASE NO. 2024-CP-23-03549 **CONDITIONAL ORDER OF DISMISSAL**

ENTERED COMPUTER

FILED: '26MAR10AM11:05
CDC JAY GRESHAM GVL SC

Applicant, Kevin Lamar Harbin, filed the above captioned application for post-conviction relief on June 10, 2024. Respondent has moved for summary dismissal alleging the records attached to the return and motion show that the application is barred as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, 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). Respondent also moved to restrict future filings. Having reviewed the application, and the return and motion, this Court agrees and makes the following findings:

PROCEDURAL HISTORY

Applicant is presently confined in the Allendale Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for kidnapping (2004-GS-23-6122), strong arm robbery (2004-GS-23-6123), and first-degree criminal sexual conduct (CSC) (2004-GS-23-6124). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 8, 2005, the Applicant was sentenced by the Honorable Larry R. Patterson to concurrent sentences of thirty (30) years for kidnapping, fifteen (15) years for strong arm robbery, and thirty (30) years for first-degree CSC.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense filed an initial brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant, however, indicated he wanted to voluntarily withdraw the appeal. The Court of Appeals dismissed the appeal on January 22, 2007.

2007-CP-23-0280

The Applicant filed his *first* application for post-conviction relief on January 12, 2007 (2007-CP-23-0280). An evidentiary hearing was convened on July 10, 2007, at the Greenville County Courthouse. Rodney Richey, Esq. represented the Applicant. The Applicant raised the following issue in his PCR application:

1. Ineffective assistance of trial counsel.

The Honorable Edward W. Miller denied the application by order dated August 7, 2007. The Applicant filed a notice of appeal at the South Carolina Supreme Court. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari. The petition was denied by the Supreme Court by order dated January 22, 2009.

FEDERAL HABEAS CORPUS ACTION: 6:09-2790-TLW-WMC

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 23, 2009. The Respondent submitted a motion for summary judgment on March 5, 2010. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment on January

27, 2011. The Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourt Circuit. In an opinion filed October 4, 2011, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

2009-CP-23-9578

The Applicant filed a "Petition for State Writ of Habeas Corpus" on November 13, 2009 (2009-CP-23-9578). The Respondent filed a return and motion to dismiss, arguing a petition for writ of habeas corpus must be filed in the South Carolina Supreme Court. The Honorable Edward W. Miller issued a conditional order of dismissal dated March 29, 2010 and filed April 6, 2010. Judge Miller issued a final order of dismissal filed July 1, 2010. A notice of appeal was filed at the South Carolina Court of Appeals. By order dated December 6, 2010, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

2012-CP-23-1847

The Applicant filed another application for post-conviction relief on March 13, 2012, alleging he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
2. "Brady violation and DNA testing Act."
3. "Applicant was denied procedural due process from numerous procedural irregularities (PCR and colletal appeal.)"

The State made its return on July 12, 2012, requesting the Application be summarily dismissed. On July 18, 2012, the court issued a "Conditional Order of Dismissal" and expressed its intent to summarily dismiss the matter unless Applicant advises the court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant was granted twenty (20) days from the date of service of the Order to show the Court he has specific reasons supporting his allegations. Applicant filed a document titled "Applicant's Traverse and Applicant's Reasons the Conditional Order Should Not Become Final" on August 16, 2012. The Court issued its "Final Order of Dismissal" on September 26,2012, finding that Applicant's PCR application was filed well after the statute of limitations and Applicant should have raise all cognizable claims for relief in his previous PCR application from 2007.

CURRENT PCR APPLICATION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds (excerpt verbatim [cleaned up]):

1. Non-compliance with 42 U.S.C.A §13704(A)(2); 34 U.S.C.A §12104(A)(i)
    a. The Violent Offender Incarceration, Truth-In-Sentencing Incentive Grant Act, Applicant's state liberty interest rights denied that derives from Federal law and S.C.D.C.'s failure to comply with statutorily mandated grant conditions of the Truth-In-Sentencing Law presents a conflict analysis. Review of agency's interpretation of its governing statutes is subject to "Chevron Deference, USA Inc. v. Natural Resources 467 U.S. 837 (1984)."
2. Incorrect administration of statutory law § 24-13-150(A)
    a. S.C.D.C.'s misinterpretation and wrong application, on February 7, 2024, after becoming aware of provisions in law for first time, inquiry was made to classification Kiosk Reference Number 24-03395801. In their response I was informed until they are shown error, applicant's maxout date would not change. On March 18, 2024, applicant spoke with chief classification staff member in person and offered a copy of P.C.R. brief to read and she refuses and responded to my Kiosk Request #24-03441115 until I receive a legal document from the court, they will not accept a copy to review. Eighty-five percent of applicants' thirty-year (30) sentence is twenty-five years six months and should have been applied to the actual term of imprisonment imposed. Applicant calculates that June 22, 2024, will be twenty-seven years, which is more than required for sentence imposed.
3. Non-compliance with statutory law §24-13-210(A); 24-13-230(A)
    a. System of good-time credits. S.C.D.C. Policy OP-21.11, supports claim, and the Equal Protection Rights to treat similarly situated inmates the same. Further inference is directed to S.C.D.C. Policy OP-21.07. Section 4.3: Sections 1.1, 1.2, 2.1, 2.3. "In S.C.D.C. v. Carpenter (2020), Carpenter's co-

> defendant Bobby Gene Horne was a no parole offender and receive his credits. In "Bolin v. S.C.D.C. (2016), 'the S.C.D.C. explains that offenders (no parole) can be afforded community supervision, good conduct credits, work credits, education credits, without altering in eighty five percent requirement (providing for good conduct credits at the rate of three days for each month and education or work credits at the rate of six days for every month of employment for no-parole offender's subject to eight-five percent requirement."

(App. at 3 and attachments).

As requested relief, Applicant requests the court for "release from South Carolina Department of Corrections, freedom nothing else." (App. at 6).

Before this court are the Greenville County Clerk of Court Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's records from his direct appeal, Applicant's records from his previous post-conviction relief actions, and the current application.

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 S.C. Code Ann. § 17-27-70(c) and -80, this Court informs the parties of its intent to dismiss the applications 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 is appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Failure to State a Cognizable Claim

Applicants' allegations shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 *et seq.* (2003). The South Carolina Supreme Court has held that "PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence…." Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Claims that only affect the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are not considered collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). An applicant may not seek review of a non-collateral or administrative matter through PCR. Al-Shabazz; Tutt v. State, 277 S.C. 525, 290 S.E.2d 414 (1982).

After Al-Shabazz, only two non-collateral matters are cognizable in PCR: 1) a claim that the applicant's sentence expired (Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158 (2006)) or 2) a claim that the applicant's probation, parole or conditional release has been unlawfully revoked. Id. For credit related claims or claims concerning the conditions of confinement, the proper avenue of relief is through the Administrative Procedures Act (APA). Id., 338 S.C. at 369, 527 S.E.2d at 749-50. *Ex post facto* claims also must be brought through APA rather than PCR. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Therefore, the Court shall summarily dismiss these claims pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Summary Dismissal Based on Statute of Limitations

Respondent moved this Court to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[1] 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 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.

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

[1] S.C. Code Ann. § 17-27-10 to -160.

(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 various allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on September 8, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief one year after sentencing or one year after the sending of the remittitur to the lower court, whichever is later. Applicant did not file this PCR application until June 10, 2024— more than *fifteen years* beyond the statute of limitations.

Accordingly, 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.

Summary Dismissal Based on Successiveness

Respondent moved this Court to summarily dismiss the application because it is successive to Applicant's previous 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 earlier raised in a previous application. <u>Foxworth v. State</u>, 275 S.C. 615, 274 S.E.2d 415 (1981); <u>Arnold v. State</u>, 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 regarding Plea Counsel *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.

Therefore, the Application shall be summarily dismissed as successive to Applicant's previous PCR applications.

Summary Dismissal Based on the Doctrine of Res Judicata

Additionally, Respondent moved this Court to summarily dismiss this application because it 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 and second PCR actions. 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.*

Summary Dismissal Based on the Equitable Doctrine of Laches

Respondent moved this Court to summarily dismiss the application because it is barred by the equitable doctrine of *laches*. To ensure the finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant seeks post-conviction relief more than 15-years after his trial. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an applicant from seeking collateral review of his conviction, significantly where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no legitimate justification for the delay. Because of the delay, witness memories, and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application shall be summarily dismissed as barred by the equitable doctrine of *laches*.

Frustration of Finality

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. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

> 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 TO FOLLOW]

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 (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 with the Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 13th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Greenville County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 9 day of March, 2026.

JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.