

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

Christopher Lane, #307401,) CASE NO. 2025-CP-21-1039

Applicant,)
2025 SEP -5 P 4:05

v.

DORIS POULOS O'NARA
CCCP & GS
FLORENCE COUNTY, SC

State of South Carolina,)

Respondent.)

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Christopher Lane (Applicant) on April 7, 2025. Respondent, the State of South Carolina, made its Return and moved to summarily dismiss this application as untimely, barred by the statute of limitations, successive to Applicant's prior PCR actions, barred by the doctrine of *res judicata*, and for failing to comply with the Uniform Post-Conviction Procedures Act¹, and for failure 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:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In June 2003, the Florence County Grand Jury indicted Applicant for Murder, Kidnapping, and Conspiracy (2003-GS-21-00715). Applicant was represented by Paul V. Cannarella, Esquire (Trial Counsel). On January 31, 2005, Applicant proceeded to a jury trial before the Honorable James E. Brogdon, Jr. Applicant

¹ S.C. Code Ann. § 17-27-10 *et seq.* (2014).

was found guilty of Murder and Kidnapping but acquitted of Conspiracy. On February 4, 2005, Judge Brogdon sentenced Applicant to fifty (50) years for Murder and to thirty (30) years for Kidnapping, with all sentences to run concurrently.

Applicant filed a timely notice of appeal. David Craig Brown, Esquire, perfected Applicant's appeal and submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant raised the following issues on appeal:

1. Whether the trial court erred in ruling that the State had proven by a preponderance of the evidence that Applicant's statement was voluntarily and freely given without threat or coercion.
2. Whether such confession should be up to the jury to determine whether the State proved beyond a reasonable doubt that such confession was freely, voluntarily, knowingly, and intelligently given.

The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Lane, Op. No. 2007-UP-302 (S.C. Ct. App. filed June 8, 2007). The Remittitur was returned to the lower court on June 27, 2007.

FIRST PCR APPLICATION AND SUBSEQUENT APPEAL: 2008-CP-21-1088

Applicant filed his *first* PCR application on June 4, 2008, alleging he was being held in custody unlawfully due to the ineffective assistance of his trial counsel. Respondent made its Return on September 23, 2008, and an evidentiary hearing on the matter was convened on September 9, 2009, at the Florence County Courthouse before the Honorable Thomas A. Russo. Applicant was present and represented by counsel, Charles T. Brook, III, Esquire (PCR Counsel). At the hearing, Applicant testified on his own behalf. Applicant's trial counsel also testified. By order filed October 5, 2009, Judge Russo denied and dismissed the application with prejudice.

Applicant filed a timely notice of appeal and Appellate Defender Robert M. Pachak filed a Johnson² Petition on Applicant's behalf. In a written order filed on October 20, 2011, the South Carolina Supreme Court denied Applicant's petition for writ of certiorari. The Remittitur was issued on November 8, 2011.

FEDERAL HABEAS ACTION: 0:12-912-RBH-PJG

On May 14, 2012, Applicant filed a Petition for Writ of Habeas Corpus in the U.S. District Court for the District of South Carolina and raised the following grounds for relief:

- | | |
|-------------------|--|
| Ground One: | Ineffective Assistance of Counsel |
| Supporting Facts: | Counsel allowed [Applicant] to go to trial on a fraudulent murder indictment without attempting to quash indictment. Counsel did not object to the erroneous unauthorized sentence handed to [Applicant]. Counsel did not object to Prosecutor['s] erroneous conduct at trial. |
| Ground Two: | Due Process A Fair trial |
| Supporting Facts: | The [Applicant] was convicted on less than proof beyond a reasonable doubt of every element of the charged crime; [Applicant's] conviction was obtained in violation of a state statute which in turn denied [Applicant] his fundamental rights; [] Prosecution failed to disclose the defense impeachment materials to [Applicant's] defense[.] |
| Ground Three: | Due Process, Fair Trial 6th Amendment |
| Supporting Facts: | [Applicant's] conviction resulted from jury instruction that was fundamentally defective such that [Applicant] is actually innocent on the charge he was convicted[.] [Applicant's] conviction was tainted by jury instruction which diluted the reasonable doubt standard of proof[.] |

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

Respondent made its Return and Memorandum of Law in Support of Summary Judgment on August 20, 2012. On February 7, 2013, the Honorable Paige J. Gossett, United States Magistrate Judge, issued a Report and Recommendation recommending that the Respondent's motion for summary judgment be granted and Applicant's Petition be dismissed as untimely. Applicant made no objections to the Report, and in a written Order dated February 28, 2013, the Honorable R. Bryan Harwell, United States District Judge, accepted the Report and Recommendation and dismissed the Petition. Judge Harwell further ordered that a certificate of appealability be denied.

Applicant subsequently filed a Notice of Appeal and *pro se* brief to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit issued an unpublished opinion dismissing Applicant's appeal on May 29, 2013. Lane v. McCabe, Op. No. 13-6404 (4th Cir. 2013).

LETTER TO SUPREME COURT

On January 23, 2015, Applicant sent a letter to Justice Beatty of the South Carolina Supreme Court alleging that his conviction was based upon fraud, and requesting his conviction be reversed and sentence vacated. The State made its Return on February 17, 2015. The Supreme Court issued an Order dated March 5, 2015, dismissing the matter pursuant to Key v. Currie, 305 S.C. 115, S.E.2d 356 (1991), for lack of an extraordinary reason to entertain the matter under the Court's original jurisdiction.

SECOND PCR APPLICATION: 2015-CP-21-892

Applicant filed his *second* PCR application on March 26, 2015. Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Fraud;
2. Actual innocence;
3. Prosecutorial misconduct;
4. Every element was not met; and

5. Void judgment.

Respondent made its return on July 16, 2015, requesting Applicant's application be summarily dismissed. The Honorable Michael G. Nettles issued a Conditional Order of Dismissal dated on July 17, 2025, giving Applicant twenty (20) days to respond with specific factual or legal reasons why the dismissal should not become final. Applicant failed to respond to either the Respondent's motion to Dismiss or the Court's Conditional Order of Dismissal. By Order filed February 29, 2016, the Honorable Thomas A. Russo denied and dismissed the application with prejudice.

MOTION FOR NEW TRIAL

On January 17, 2017, Applicant filed a *pro-se* motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP. A hearing on the matter was convened on August 1, 2018, at the Florence County Courthouse. By Order dated August 21, 2018, the Honorable Thomas A. Russo denied Applicant's motion for a new trial. Applicant then filed a Motion for Reconsideration on August 30, 2018, which was denied by the Court in an Order dated September 27, 2018.

CURRENT ACTION

On April 15, 2025, Applicant filed his *third* and current application³ for PCR in which he alleges the following:

1. Illegal arrest;
2. False imprisonment;
3. Due process violation;
4. Malicious prosecution;
5. Ineffective assistance of counsel: improper jury instruction; and
6. Actual innocence.

³ Applicant attached two pending General Sessions motions to his application: (1) Motion for an Emergency Hearing, filed in August 2023, and (2) Motion for a New Trial Pursuant to SCCrimP Rule 29(b) and S.C. Civil Procedure Rule 60(b)(1)(3).

Applicant seeks relief from the court for his "conviction to be overturned, sentence vacated, remanded back to court for a new trial without all of the errors and with a properly instructed jury, [and] to be immediately released because [he] was illegally arrested and Solicitor admitted [he] [did not] commit the crimes."

Attached to this return and incorporated by reference are the Florence County Clerk of Court records regarding the Applicant's convictions; Applicant's record from the South Carolina Department of Corrections; Applicant's available direct appeal records; the records from Applicant's previous PCR actions; records from Applicant's Habeas Corpus Action; and the record of the current PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

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 that 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 STATUTE OF LIMITATIONS

Respondent moved that this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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). For convictions prior to July 1, 1995, an applicant will have one year from the date the statute became effective to file an application for post-conviction relief. Id. at 468, 469 S.E.2d at 606. 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 dispositions 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 multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on February 4, 2005. Applicant filed a direct appeal, and the Remittitur was returned to the lower court on June 27, 2007. Because his conviction was after the enactment of section 17-27-45, Applicant needed to file his application on or before June 27, 2008, pursuant to Peloquin v. State. This application was filed on April 7, 2025, *sixteen years, nine months, and eleven days* after the expiration of the statutory filing period.

Accordingly, this Court finds the application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be summarily dismissed as barred by the statute of limitations.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent also moved to summarily dismiss Applicant's claims regarding ineffective assistance of counsel because it is successive to the previous application(s) for post-conviction relief. 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). Importantly, 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.

Pursuant to S.C. Code Ann. § 17-27-90, successive PCR actions 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. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). In Aice, the South Carolina Supreme Court held that PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Id. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality 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.

Expressly, 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. Notably, the 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 current allegations *were or could have been* raised in Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. 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.' A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application."). Here, Applicant is unable to show that

these claims could not have been raised in his previous applications, as his claims were known prior to his plea and easily could have and should have been raised in his initial post-conviction relief action.

Accordingly, this Court finds Applicant has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR application(s).

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

Additionally, this Court finds this application 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, 427 S.E.2d 918 (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.; 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 prior *two* PCR actions and failed to do so. 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 Courts' rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

Before the Court will hold an evidentiary hearing, Applicant must make *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 such a showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this Court finds that this matter shall be

summarily dismissed with prejudice.

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. 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

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific factual or legal reasons 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 Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Post-Conviction Relief Division – 12th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 26 day of August, 2025.


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

Florence, South Carolina

FILED
2025 SEP -5 P 4:05
DORIS POULOS O'HARA
CCJP & GS
FLORENCE COUNTY, SC