

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	2015-CP-26-2371
Raymond Edward Chestnut,	)	
F.B.O.P. No. 13465-171	)	
	)	
v.	)	CONDITIONAL ORDER OF DISMISSAL
	)	
State of South Carolina	)	
	)	
Defendant.	)	
	)	

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 CLERK OF COURT
 15th JUDICIAL CIRCUIT
 HORRY COUNTY

This matter comes before the court by way of seven applications for post-conviction relief filed by Raymond Edward Chestnut (Applicant) on March 27, 2015, May 12, 2015, May 15, 2015, July 16, 2015, December 28, 2015, and February 23, 2016, thereafter merged by Order filed June 13, 2016 ("the Application"). Respondent made its Return, requesting the Application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the Federal Bureau of Prisons in Lewisburg, Pennsylvania on unrelated convictions. Due to the voluminous nature of Applicant's procedural history, the following restatement thereof is divided into three sub-sections addressing his five (5) pleas, six (6) direct appeals, and seven (7) prior collateral actions, in that order.

PROCEEDINGS AT ISSUE

December 2002 Plea – 2002-GS-26-4656, -4739

On October 29, 2002, the Myrtle Beach Police Department ("MBPD") charged Applicant with Enticing a Child from Attendance in School (H-345201). On November 16, 2002, considering a wholly separate occurrence involving Applicant, the MBPD charged Applicant with Purse Snatching (H-345227). Orrie E. West, Esq., represented Applicant on the charges.

On December 9, 2002, Applicant waived presentment (2002-GS-26-4656, 2002-GS-26-4739; respectively) and entered a plea of guilty as charged. The Honorable John L. Breeden, Jr. sentenced Applicant to two (2) years confinement, suspended on two (2) years of probation on each charge, to occur concurrently.

March 2003 Plea – 2003-GS-26-802

On January 8, 2003, the MBPD charged Applicant with Contributing to the Delinquency of a Minor (H-346040). Michael E. Suggs, Esq. represented Applicant on the charge. On March 28, 2003, Applicant waived presentment (2003-GS-26-802) and entered a plea of guilty as charged. The Honorable John L. Breeden, Jr. sentenced Applicant to a term of three (3) years incarceration suspended upon the service of ninety (90) days confinement, followed by three (3) years probation.

December 2003 Plea – 2003-GS-26-3312

On August 10, 2003, the MBPD charged Applicant with Unlawful Possession of a Pistol (H-346931). G. Scott Bellamy, Esq. represented Applicant on the charge. On December 18, 2003, Applicant waived presentment (2003-GS-26-3312) and entered a plea of guilty as charged. The Honorable Stephen H. John sentenced Applicant to pay a fine of \$250.

August 2004 Plea – 2004-GS-26-2651, -2652

On January 22, 2004, the MBPD charged Applicant with Assault with Intent to Kill (G-283761). On January 26, 2004, the MBPD further charged Applicant with Unlawful Conduct Towards a Child (G-283773). The Horry County Grand Jury thereafter indicted Applicant during the June 2004 term for Unlawful Conduct Towards a Child (2004-GS-26-2652) and during the July 2004 term for Assault With Intent to Kill (2004-GS-26-2651). William Thomas Floyd, Esq., represented Applicant on the charges. On August 3, 2004, Applicant entered a plea

of guilty to Unlawful Conduct Towards a Child and Assault of a High and Aggravated Nature. The Honorable Jackson V. Gregory, upon recommendation by the State, sentenced Applicant to three years confinement, suspended to time served and three years of probation for the AHAN, and a suspended sentence of three years for unlawful conduct towards a child.

June 2005 Plea – 2004-GS-26-4448

On August 16, 2004, the MBPD charged Applicant with Possession of Crack Cocaine (H-613567). The Horry County Grand Jury thereafter indicted Applicant during the November 2004 term for the same (2004-GS-26-4448). Michael E. Suggs, Esq. represented Applicant on the charge. On June 6, 2005, Applicant entered a plea of guilty to the charge as indicted. The Honorable John L. Breeden, Jr. revoked Applicant's probation and sentenced Applicant to a concurrent term of eighteen (18) months confinement.

DIRECT APPEAL HISTORY

App. Case No. 2013-001768

Applicant filed a notice of appeal to all but one of his pleas on August 21, 2013 (2013-001768), but did not submit a notice for the December 2003 plea. Nonetheless, Applicant provided the South Carolina Court of Appeals a copy of the December 18, 2003 sentencing sheet along with the rest in a September 23, 2013 filing. The Court of Appeals dismissed the appeal as untimely on November 26, 2013 and specifically referenced the December 2003 plea along with all the others when it did so. Applicant filed a petition for rehearing, which was denied February 26, 2014. The Remittitur issued on April 8, 2014.

App Case No. 2014-000691

This case was filed in the South Carolina Supreme Court and, according to the South Carolina Court of Appeals, is "ended". No further information regarding this matter is within the knowledge of Respondent.

App. Case No. 2015-000042

Applicant filed a second notice of appeal of his plea to Possession of Crack Cocaine 2004-GS-26-4448 on January 7, 2015. The South Carolina Court of Appeals sent Applicant a deficiency letter dated February 26, 2015, requesting sentencing sheets and a statement of when Applicant received written notice of judgment. On March 9, 2015, Applicant filed a copy of the final order of one of his post-conviction relief proceedings (2012-CP-26-1814, six actions merged), declared he received it on February 5, 2015, and requested appointment of counsel. Applicant filed five (5) further notices of appeal from various decisions which at this time do not appear to have been assigned their own appellate case number, but which were classified under 2015-000042. They are as follows:

- June 8, 2015 – Notice of Appeal from underlying conviction, including the May 22, 2015 order by the Honorable Benjamin H. Culbertson denying Applicant's "Motion to Vacate Conviction."
- July 13, 2015 – Notice of Appeal from June 25, 2015 order by Judge Culbertson denying Applicant's "Motion for a New Trial."
- July 27, 2015 – Notice of Appeal from July 13, 2015 order by Judge Culbertson denying Applicant's "Motion to Vacate Conviction" regarding 2003-GS-26-3312.
- August 10, 2015 – Notice of Appeal from a May 16, 2007 order by the Honorable James F. Fraley regarding 2001-JU-26-154, 2001-JU-26-700.
- August 13, 2015 – Notice of Appeal from underlying conviction.

The Court of Appeals provided Applicant with a "Status Update of All Cases" on September 14, 2015, which stated "[Applicant's] request for appointment of counsel is pending before the

Court.” Court records do not indicate any further action has been taken with respect to this matter since that time.

App. Case No. 2015-001194

Applicant filed on June 4, 2015 a notice of appeal, referencing by caption 2003-GS-26-802 and 2004-GS-26-4448, from “the letter of the Law Clerk to the Honorable Steven H. John dated April 20, 2015”. The South Carolina Supreme Court dismissed the appeal the same day, noting that nothing in the South Carolina Code or in court rules permit an appeal to be taken from a letter signed by a judicial law clerk, and issued the remittitur on June 22, 2015.

App. Case No. 2015-001885

Applicant filed on July 27, 2015 a notice of appeal from the July 13, 2015 order by the Honorable Benjamin H. Culbertson denying Applicant’s “Motion for a New Trial” in 2003-GS-26-3312. That same day, Applicant filed a motion for appointment of counsel. The Court of Appeals denied Applicant’s motion by Order filed September 10, 2015. Applicant failed to file any brief and the Court of Appeals dismissed this matter by Order dated June 8, 2016. The Remittitur issued on June 24, 2016.

App. Case No. 2015-001888

Applicant filed on August 14, 2015 a notice of appeal from his plea to Possession of Crack Cocaine (2004-GS-26-4448), along with a “Request for a Fast and Speedy Trial”. The South Carolina Court of Appeals promptly dismissed this appeal by Order filed September 10, 2015. Applicant filed a motion to reinstate his appeal on September 21, 2015, which the Court denied by Order filed September 30, 2015. The remittitur issued December 10, 2015.

App. Case No. 2015-002233

Applicant filed on October 7, 2015 a notice of appeal from the Order filed September 21, 2015 by the Honorable Benjamin H. Culbertson denying Applicant's "motion to vacate sentence" in 2004-GS-26-4448. Applicant failed to file any brief and the Court of Appeals dismissed this matter by Order dated June 8, 2016. The Remittitur issued on June 24, 2016.

PRIOR POST-CONVICTION RELIEF ACTIONS

2012-CP-26-813

Applicant filed his first application for Post-Conviction Relief on February 2, 2012 (2012-CP-26-0813), seeking relief from his August 2004 plea to Assault of a High and Aggravated Nature. Respondent made its return and motion to dismiss on or about March 8, 2012. The Honorable Steven H. John entered a Conditional Order of Dismissal on March 27, 2012. Applicant filed a *pro se* objection to the conditional order on April 11, 2012. The application was thereafter dismissed, with prejudice, on June 4, 2012.

2012-CP-26-1814 (Six Actions Merged)

Applicant filed a set of three (3) separate applications for Post-Conviction Relief on March 6, 2012 (2012-CP-26-1814, -1815, -1816), seeking relief from his August 2004 (both charges), June 2005, and March 2003 pleas. Regarding 1814, Respondent made its return and motion to dismiss on or about April 24, 2012. Judge John entered a Conditional Order of Dismissal on May 12, 2012. Applicant filed a *pro se* objection to the conditional order on May 30, 2012.

Regarding 1815, Respondent made its return and motion to dismiss on May 29, 2012. Judge John entered a Conditional Order of Dismissal on June 11, 2012. Applicant filed a *pro se* objection to the conditional order on July 5, 2012.

Regarding 1816, Respondent made its return and motion to dismiss on May 25, 2012. Judge John entered a Conditional Order of Dismissal on June 11, 2012. Applicant filed a *pro se* objection to the conditional order on July 6, 2012.

Applicant filed a second set of three (3) separate applications for Post-Conviction Relief on April 11, 2012, seeking relief from his December 2002 plea (2012-CP-26-2915, -2916) and his December 2003 plea (2012-CP-2917). Respondent made its returns and motions to dismiss to all three applications on May 25, 2012. Judge John entered Conditional Orders of Dismissal on June 11, 2012. Applicant filed *pro se* objections to the conditional orders on July 6, 2012.

The Honorable Benjamin H. Culbertson appointed counsel, Tristian M. Shaffer, Esq., to represent Applicant on all of the above six applications by Order dated April 9, 2013. Judge Culbertson also issued an Order on April 24, 2013, giving newly-appointed counsel an opportunity to respond to the conditional orders.¹ Counsel filed a timely reply to the conditional orders, asserting Applicant was entitled to a direct appeal from the underlying convictions. Judge Culbertson issued an Order dated October 3, 2013 dismissing all of Applicant's claims with the exception of the allegation he did not knowingly and voluntarily waive his right to a direct appeal.

Respondent made its amended return to each pending application on or about February 5, 2014. By order dated December 22, 2014, and filed January 6, 2015, the Honorable Larry B. Hyman merged all of Applicant's outstanding applications into a single docket number, **2012-CP-26-1814**. Respondent filed a second amended return on or about January 26, 2015.

¹ Undeterred by the appointment of counsel, Applicant continued to bombard the Court with *pro se* filings throughout the process. The Court informed Applicant's counsel: "I have repeatedly cautioned Mr. Chestnut against direct communications with the Court, but my admonitions have fallen on deaf ears. I would appreciate any assistance you may give the Court in stemming the flood of mail from Mr. Chestnut." Chestnut v. State, Order Dated December 4, 2014. As Applicant was actively seeking to have Mr. Schaffer removed as counsel at the time of that Order, it is self-evident that Mr. Schaffer's capacity to help the Court in this regard was non-existent for reasons beyond his control.

An evidentiary hearing into the remaining issue was convened on February 2, 2015 before the Honorable G. Thomas Cooper, Jr. Applicant appeared at the hearing via his appointed *guardian ad litem*,² Cooper C. Lynn, Esq. and was represented by Tristan M. Shaffer, Esq. Joshua L. Thomas, Esq., of the South Carolina Attorney General's Office, represented Respondent. Judge Cooper denied and dismissed, with prejudice, the merged application in an order dated March 17, 2015. Applicant filed a Rule 59(e) motion on May 26, 2015; Judge Cooper denied the motion by order dated March 17, 2015 and filed March 25, 2015.

App. Case No. 2015-000891

Tristian M. Shaffer, Esq., on behalf of Applicant, filed a notice of appeal from 2012-CP-26-1814 on April 22, 2015. By letter dated June 18, 2015, the Clerk of Court informed Mr. Schaffer that his explanations for appeal were inadequate and that he was therefore required to provide the Court with a Dennison response. The Clerk of Court again demanded such a response on July 9, 2015 and Mr. Schaffer assured one was forthcoming.

By Order Dated September 4, 2015, the Supreme Court indicated that it never received the response demanded. By letter dated September 14, 2015, the Clerk of Court indicated to Applicant that the status of his appeal was "ended." However, by Order Dated September 25, 2015, the Supreme Court again denied Applicant's motion to relieve counsel. By Order Dated September 28, 2015, the Supreme Court indicated a deadline of October 19, 2015 for any *pro se* explanations under Rule 203(d)(1)(B)(iv) and 243(c), SCACR. Applicant moved for an extension on October 14, 2015 and was granted, in part, by Order Dated October 21, 2015.

On November 24, 2015, the Supreme Court dismissed the appeal. The Remittitur was returned on December 10, 2015.

² Pursuant to Rule 17(c), SCRCP ("person imprisoned outside this State shall appear by guardian ad litem in an action by or against him[.]")

II. APPLICANT'S ALLEGATIONS

In his *seven* new post-conviction relief applications, Applicant alleges he is being held unlawfully for the following reasons and requests the following relief:

2015-CP-26-2371 – Filed March 27, 2015 (from 2003-GS-26-802)

1. "Trial court lacked jurisdiction to convict plaintiff."
 - a. "Section 16-13-150³] states in sum that a person must be at least 18 years old to be charged and convicted under this section. Plaintiff was 17 years old, which he should not have been prosecuted for the charge of contributing to the delinquency of a minor."
2. "Vacate Conviction"

2015-CP-26-2371 – Amendment filed July 6, 2016

1. "Unlawful contributing to delinquency of a minor conviction in violation of due process"
 - a. "Conviction for contributing to delinquency of a minor being used to adversely affect my current federal sentence. When I plead guilty to contributing to delinquency of a minor neither the court or my attorney informed nor were I aware that this conviction could potentially be used to affect/enhance any other sentence."

2015-CP-26-3512 – Filed May 12, 2015 (from 2004-GS-26-4448)

1. "Lack of subject-matter jurisdiction to accept guilty plea."
 - a. "The indictment failed to contain the necessary elements of the offense by not stating the schedule of the controlled substance; the indictment is fraudulent and did not concur with at least 12 jurors; convicted for a felony offense when the charge was a misdemeanor."
2. Vacate Conviction

³ Upon reason and context, Respondent believes Applicant intended to refer to S.C. Code Ann. § 16-17-490.

2015-CP-26-3512 – Amendment filed July 6, 2012

1. “Unlawful conviction for possession of crack cocaine in violation of due process.”
 - a. “Conviction for the possession of crack cocaine being used to adversely affect my current federal sentence.”
 - b. “When I plead guilty to possession of crack cocaine, I was neither informed by the court or my attorney nor aware that this conviction could be used to enhance any other sentence. As a result of my possession of crack cocaine conviction my current federal sentence was enhanced by 10 years.”

2015-CP-26-3666 – Filed May 15, 2015 (from 2003-GS-26-3312)

1. “Lack of subject-matter jurisdiction to accept guilty plea.”
 - a. “The indictment failed to state sufficiently the elements of the offense by not naming what type/kind of pistol. Guilty plea and indictment states different subsections. Guilty plea states 16-23-30(c), but indictment states 16-23-30(e).”⁴
2. “Vacate sentence and conviction, and reimburse fine paid.”

2015-CP-26-5375 – Filed July 16, 2015 (from 2004-GS-26-4448)

1. “Lack of jurisdiction in violation of due process of law to accept guilty plea”
 - a. “Denied right to a speedy trial after requested and denied a preliminary hearing after timely requested. Applicant did not waive his right to a speedy trial or preliminary hearing.”
2. “Vacate conviction and grant any other relief appropriate”

2015-CP-26-5376 – Filed July 16, 2015 (from 2002-GS-26-4656, -4739)

1. “Court lacked jurisdiction to accept guilty plea, in violation of South Carolina Constitution, U.S. Constitution, and due process”
 - a. “Indictment was not presented to a grand jury and applicant did not freely or voluntarily waive presentment of the indictment to grand jury”
2. “Vacate conviction and grant any other appropriate relief”

⁴ S.C. Code Ann. § 16-23-30 was revised by the legislature in 2004, 2006, and 2008. The violation in pre-2004 § 16-23-30(e), which referred back to pre-2004 § 16-23-30(c) is reflected in the present S.C. Code Ann. § 16-23-30(B), which refers to present § 16-23-30(A)(3). As an unrelated matter, this recitation of Applicant’s allegation is merely the best estimate of Respondent, as Applicant’s handwriting succumbs to the same “c” & “e” pitfall as the sentencing sheet about which it alleges error.

2015-CP-26-5376 – Filed July 16, 2015 (from 2002-GS-26-4656, -4739)

1. “Unlawful conviction for purse snatching and enticing child from attendance in public school in violation of due process”
 - a. “Convictions for purse snatching and enticing child from attendance in public school being used to adversely affect my current federal sentence.”
 - b. “When I plead guilty to purse snatching and enticing child from attendance in public school neither the court nor my attorney informed me that these convictions could be used to enhance any other sentence.”

2015-CP-26-8910 – Filed December 28, 2015 (from 2004-GS-26-4448)

1. “Ineffective assistance of counsel”
 - a. “Attorney failed to file notice of appeal from underlying conviction upon applicant request following sentencing. Applicant did not freely or voluntarily waive direct appeal.”
2. “Any relief deemed appropriate”

2016-CP-26-1246 – Filed February 23, 2016 (from 2004-GS-26-2651, -2652)

1. Writ of Error Coram Nobis⁵
 - a. “[Excerpted] Petitioner [...] only pleaded guilty without having a full understanding of the consequences of the guilty pleas. Specifically, petitioner was not informed by the court or his attorney, prior to the guilty pleas, that he could receive potential consequences of the guilty plea with respect to future convictions.”
2. Issue a writ of error coram nobis vacating Petitioner’s convictions in case no. 2004-GS-26-2651 and 2004-GS-26-2652, in addition, to holding a hearing on this matter as deem appropriate by the court.

2016-CP-26-1246 – Amendment filed July 6, 2016

1. “Unlawful conviction for AHAN and unlawful conduct towards a child in violation of due process”
 - a. “Convictions for AHAN and unlawful conduct towards a child being used to adversely affect my current federal sentence.”
 - b. “When I plead guilty to AHAN and unlawful conduct towards a child the court nor my attorney informed me that these convictions could potentially be used to enhance any other sentence.”

⁵ This filing was not submitted using the standard Form 5 “Application for Post-Conviction Relief”

Applicant has further submitted a petition for a writ of mandamus with respect to 2015-CP-26-5375 and 2015-CP-26-8910, seeking a response from Respondent to his numerous filings. Respondent has since filed its Return and the Court now finds that demand to be moot.

Respondent incorporates the Horry County Clerk of Court records regarding the subject convictions, the final orders and remittiturs of his direct appeals, the final orders from Applicant's prior PCR applications, and all records of the current merged PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds the Application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

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 statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, 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."

The Applicant pled guilty on dates ranging from December 2, 2002 to June 6, 2005. In none of the cases at issue did Applicant timely appeal. The Applications were not filed until dates ranging from May 12, 2015 to February 23, 2016 – each well after the one-year statutory filing period expired. Appellant even concedes his efforts are untimely in his request for a writ of *coram nobis*: “It is now 2016, which a PCR application would be untimely under the statute of limitations.” [sic] Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

Laches

The Court finds the Application must also be barred under the doctrine of laches. To ensure 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). This requirement “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)). In due consideration of the above requirement, Laches is an equitable doctrine 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.*

The earliest plea from which Applicant seeks post-conviction relief occurred in December 2002 and the latest in June 2005. Every direct appeal has either already been

dismissed or is clearly set to be dismissed as untimely or on other grounds—presumably all would have been dismissed by this time but for the judicial process being burdened and bogged down by Applicant's numerous filings. The earliest filing date among the present applications is March 27, 2015—nearly a decade after the *latest* plea and more than thirteen (13) years after the earliest plea. 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, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g., Bray* at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the Application shall be summarily dismissed as barred by the doctrine of laches.

Exclusivity of UPCPA & Unavailability of Coram Nobis

The Court finds the Application must also be summarily dismissed to the extent they fail to recognize and comply with the Uniform Post-Conviction Procedure Act as the exclusive avenue for challenging the validity of convictions or sentences. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act states:

Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

[Signature]

S.C. Code Ann. § 17-27-20(B). Certain esoteric common law remedies are also abolished by the South Carolina Rules of Civil Procedure:

Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 60(b), SCRCPP. A matter which is cognizable under the UCPA may not be raised by petitions for common law writs. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998). A person is procedurally barred from petitioning the circuit for relief through a common law writ where the matter alleged is one which can be *or could have been* raised in a PCR application. Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998); Gibson v. State, 329 S.C. 37, 42, 495 S.E.2d 426, 429 (1998).

With respect to the indictments 2004-GS-26-2651 and -2652, Applicant submits a petition for a "writ of error coram nobis". Such a petition is no longer a valid procedure in the State of South Carolina for challenging a conviction or sentence. Applicant's failure to comply with the procedural requirements of the UCPA does not obviate the abolition of such writs. Therefore, the Application shall be summarily dismissed as barred under Rule 60(b) and by the exclusivity of the UCPA.

Successive Applications

Additionally, the Court finds the Application must be summarily dismissed because they are 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. 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.

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 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).

Applicant's current allegations 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 applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Thus, the Court shall summarily dismiss the Application as successive to Applicant's previous PCR applications.

Indictment-Jurisdiction Confusion

The Court finds Applicant's allegations with respect to subject-matter jurisdiction are without merit. An indictment is a notice document and any insufficiency in the indictment does

not deprive the circuit court of jurisdiction. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry at 101, 610 S.E.2d at 499. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." Id. Thus, Applicant's arguments that alleged deficiencies in the indictments deprive the Court of subject-matter jurisdiction are without merit.

Furthermore, the indictments charged the crimes substantially in the language of the statute prohibiting the crime, in satisfaction of S.C. Code Ann. § 17-19-20, and were therefore sufficient. For these reasons, Applicant's subject-matter and indictment allegations, and every part of the Application based thereupon, shall be dismissed.

Collateral Consequences

Still further, the Court finds Applicant's allegation that he was not aware "that he could receive potential consequences [...] with respect to future convictions", and his similar allegations in his amendments of July 6, 2016, are similarly without merit. "The imposition of a sentence may have a number of collateral consequences . . . and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences." Williams v. State, 378 S.C. 511, 514-15, 662 S.E.2d 615, 617 (Ct. App. 2008) (*quoting Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)) (emphasis in original). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. Id.

A consequence of which the defendant must be informed is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). "The distinction between 'direct' and

'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1365-66 (4th Cir. 1973).

The fact that a conviction for a violent offense may be used to enhance a subsequent conviction is a collateral consequence of a guilty plea. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). Applicant's allegation in his petition for a Writ of *Coram Nobis* is only that he did not know his pleas could enhance sentencing for future convictions. Indeed, it appears that Applicant's encounter with such enhancement at the Federal level is why he now endeavors mightily to unwind a lifetime record of wrongdoing. As such, this allegation and every part of the Application based thereupon shall be dismissed.

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

Office of the Attorney General
Johnny E. James, Jr., Esquire
Post-Conviction Relief Division
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within twenty (20) days, 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 Sept., 2016.



BENJAMIN H. CULBERTSON
Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

September 15,, 2016

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
PO Box 677
Conway, SC 29528-0677

2016 SEP 19 PM 2:29
Horry County Clerk of Court

**RE: Raymond Edward Chestnut v. State of South Carolina
2015-CP-26-2371**

Dear Ms. Huggins-Ward:

Enclosed please find an Original Conditional Order of Dismissal in the above matter, signed by the Honorable Benjamin H. Culbertson and dated September 9, 2016. Please file the Order and serve a clocked copy on all parties, and provide proof of service.

Sincerely,


Caitlin B. Hastings
Assistant Attorney General

CBH/aam
Enclosure

cc: Raymond Edward Chrestnut, FBOP No. 13465-171 (w/enclosure)