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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, PCR Action Judge

2025-CP-29-00841

KESHAWN CUNNINGHAM, #379970,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Keshawn Cunningham appeals the denial of his first post-conviction relief application, Case No. 2020-CP-29-0383. The first post-conviction relief action was denied by written order signed on October 14, 2022. Applicant was granted an Austin appeal by the Honorable Diane Schafer Goodstein, Circuit Court Judge, by Order Granting Belated Appeal Pursuant to Austin v. State and Granting Respondent's Motion to Dismiss All Other Claims, filed on August 28, 2026.

Pursuant to the August 28, 2026 Order, Applicant files this Notice of Appeal to secure appellate review of the denial of his first post-conviction relief action.

/s/ Shawana Burris
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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Keshawn Cunningham, #379970,

2020-CP-29-0383

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of Applicant Keshawn Cunningham's application for post-conviction relief (PCR), filed March 6, 2020. On August 17, 2020, the State filed a return requesting an evidentiary hearing. On February 21, 2022, Applicant filed an amended application.

On August 30, 2022, an evidentiary hearing convened before the Honorable Daniel D. Hall at the Lancaster County Courthouse. Applicant was present and represented by Monier M. Abusaft, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified on his own behalf and called as witnesses his trial attorney Geoffrey M. Dunn. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In August 2017, the Lancaster County Grand Jury indicted Applicant for murder and possession of a firearm during a violent crime (2017-

GS-29-1255), possession of a handgun by a person under eighteen (2017-GS-29-1257), and unlawful carrying of a handgun (2018-GS-29-1258). In November 2017, the Lancaster County Grand Jury indicted Applicant for three counts of attempted murder and three counts of possession of a firearm during the commission of a violent crime (2017-GS-29-1702; -1703; -1704). These charges arose after Applicant and two other persons fired at a vehicle twenty-six times, killing Marquis Evans, who was believed to be standing nearby. Law enforcement believed the shooting was gang-related.

On May 1, 2019, Applicant pled guilty pursuant to Alford¹ before the Honorable Brian M. Gibbons. Geoffrey Dunn, Esquire, represented Applicant, and Deputy Solicitor Lisa Collins represented the State. Pursuant to a negotiated plea of a twenty-to-thirty-year sentence, Applicant pled guilty to four counts of attempted murder² and one count each of possession of a handgun by a person under eighteen, unlawful carrying of a handgun and possession of a weapon during the commission of a violent crime.³ Judge Gibbons sentenced Applicant concurrently to twenty-five years' imprisonment for one charge of attempted murder, twenty years for each of the remaining attempted murder charges, and five years for each weapon charge.

On May 13, 2019, Applicant filed a timely notice of appeal. On July 2, 2019, the Court of Appeals dismissed Applicant's appeal for failure to provide an explanation for appealing a guilty plea. The remittitur was sent July 18, 2019.

Current Application

Applicant timely commenced this PCR action on March 6, 2020. Applicant asserts he is

¹ North Carolina v. Alford, 400 U.S. 25, 31 (1970).

² One of the attempted murder pleas was on the murder indictment.

³ In exchange for his plea, the State dropped the weapon charges on indictments -1702, -1703, and -1704 and dismissed an accessory before the fact to armed robbery (warrant 2017A29300235).

being held in custody unlawfully, alleging:

1. 4th, 5th, 6th, 13th, 14th Amendment violations;
2. Due process
3. Subject matter jurisdiction
4. Fraud upon the court
5. Prosecutorial misconduct
6. Ineffective assistance of counsel

In his amended application, Applicant asserts plea counsel was ineffective for telling "Applicant to just say yes to everything to get through the plea." Before this Court are the Lancaster County Clerk of Court records, Applicant's records from the Department of Corrections, the plea transcript, Applicant's appellate records, and the records of this PCR action.

Testimony Presented at Evidentiary Hearing

At the PCR hearing, Applicant testified he was detained a year and a half before his plea, and plea counsel visited with him "maybe twice." He stated the first time they discussed a twenty-year plea deal, but Applicant said no. The second time they discussed a fifteen-year plea deal, but Applicant turned it down because it would require him to testify against co-defendants. Applicant stated plea counsel later obtained a plea offer with a range of twenty to thirty years.

Applicant claimed plea counsel never discussed anything other than the plea. He stated he told counsel he wanted to go to trial, but counsel told him he had a bad defense. When asked whether plea counsel explained his trial rights, Applicant replied "no" and indicated counsel only told him he had no defense and this deal was the best he would get. Applicant averred he would have proceeded to trial if counsel had informed him he had the right to trial. He stated he decided to plea because plea counsel told him he would lose at trial. He acknowledged telling the plea court he was satisfied with plea counsel but claimed he only said that because plea counsel told him to and that it was in his best interest. Applicant asserted plea counsel told him he could not have a trial.

Applicant claimed plea counsel never reviewed discovery with him, but he would have proceeded to trial if counsel had explained discovery. When asked what defense he wanted to raise, Applicant acknowledged he was guilty of attempted murder but maintained he was not holding the gun that was used in the murder. When asked what discovery would have made him want to proceed to trial, Applicant replied, "All of it." He maintained he would have had a better chance at trial if plea counsel had reviewed the evidence with him.

Plea counsel testified it was ultimately Applicant's decision to plead guilty. He stated he visited with him more than two times and reviewed discovery every time they met at the detention center. Plea counsel testified he advised Applicant he had the right to proceed to trial, as is his normal practice with all his clients. He testified he advised Applicant of his constitutional rights prior to the plea. Plea counsel denied telling Applicant to answer all the plea court's questions affirmatively; rather, he explained the type of questions Applicant would be asked and told Applicant to answer truthfully. Plea counsel stated he had "no doubt" Applicant understood what was going on at the plea hearing. He testified it was ultimately Applicant's decision to plead guilty, and if Applicant had wanted a trial, they would have proceeded to select a jury.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e),

SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

“The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To prove prejudice following a guilty plea, an applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Told to Answer Yes

In his amended application, Applicant asserted counsel was ineffective because he told him to answer “yes” to everything at the plea hearing. This Court finds Applicant has failed to prove counsel was ineffective in this regard. This Court finds NOT credible Applicant’s testimony that

plea counsel told him how to answer the questions at the plea colloquy. This Court finds credible plea counsel's testimony that he did not advise Applicant to answer "yes" to everything but rather told him to answer truthfully. Based on the foregoing, Applicant has not shown plea counsel was deficient, nor has he demonstrated any resulting prejudice. This allegation is thus denied and dismissed with prejudice.

Not advised of right to trial⁴

At the evidentiary hearing, Applicant asserted counsel was ineffective because he never advised him of his right to trial. This Court finds Applicant has failed to prove counsel was ineffective in this regard. This Court finds credible counsel's testimony that he advised Applicant of his constitutional rights prior the guilty plea, including his right to a jury trial. This Court finds NOT credible Applicant's testimony that he was not informed he had a right to a jury trial. Based on the foregoing, Applicant has not shown counsel was deficient in this regard, nor has he shown any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Failed to review discovery⁵

At the evidentiary hearing, Applicant asserted counsel was ineffective because he never reviewed discovery with him. Applicant further averred he would have proceeded to trial if counsel had reviewed discovery. This Court finds Applicant has failed to prove counsel was ineffective in this regard. This Court finds credible counsel's testimony that he reviewed the discovery with Applicant. This Court finds NOT credible Applicant's testimony that plea counsel never reviewed discovery. Thus, Applicant has not shown counsel was deficient in this regard.

⁴ Applicant did not raise this allegation in his application or amended application, but counsel for applicant raised it during the evidentiary hearing.

⁵ Applicant did not raise this allegation in his application or amended application, but counsel for applicant raised it during the evidentiary hearing.

Likewise, when asked what discovery would have caused Applicant to proceed to trial, Applicant merely responded "All of it." This Court does not find credible Applicant's testimony in this regard. Thus, Applicant has not shown any resulting prejudice, and this allegation is denied and dismissed with prejudice.

Remaining Allegations

Other than the issues set forth above, Applicant did not present any further testimony or argument to support his generic claims of 4th, 5th, 6th, 13th, 14th Amendment violations; due process; subject matter jurisdiction; fraud upon the court; and prosecutorial misconduct. The State moved to dismiss these claims at the outset of the hearing, arguing they were vague and not specific. However, counsel for Applicant moved to be permitted to conform the pleadings to the evidence presented at the PCR hearing. This Court finds no evidence or argument was presented to further support these claims, and Applicant thus abandoned these claims by failing to set forth any specific facts to support them (other than the allegations set forth above). This Court likewise finds Applicant did not prove these remaining allegations; thus, they are denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

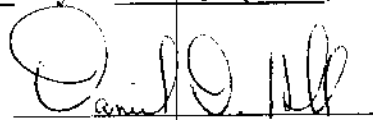
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCARC. Pursuant to Austin v. State, 305 S.C. 453, S.E.2d (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g),

SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 17th day of October, 2022.



DANIEL D. HALL
Presiding Judge
Sixth Judicial Circuit

York, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Keshawn Cunningham, #379970,

Applicant,

v.

State of South Carolina,

Respondent

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT

) CASE NO. 2025-CP-29-00841

) ORDER GRANTING BELATED APPEAL

FILED

PURSUANT TO AUSTIN V. STATE

AND GRANTING RESPONDENT'S

OFFICE OF CLERK OF COURT
FOR LANCASTER COUNTY MOTION TO DISMISS ALL

OTHER CLAIMS

2026 Aug 28 A 11:30

LANCASTER COUNTY

LANCASTER, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed by Keshawn Cunningham (Applicant) on June 27, 2025. Respondent, the State of South Carolina, made its return, requesting an evidentiary hearing to address Applicant's request for belated PCR appeal pursuant to Austin¹, and moved to summarily dismiss all other claims for failure to show lack of subject matter jurisdiction, as untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, barred by the doctrine of *res judicata*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

The Court convened a hearing on August 26, 2026, at the Lancaster County Courthouse before the Honorable Diane Schafer Goodstein. Respondent was represented by Senior Assistant Deputy Attorney General D. Russell Barlow, II. Applicant was present and represented by Shawana Burris, Esquire. At the outset, Respondent called the case and moved to dismiss all claims except the Austin claim. Respondent further indicated that after a review of the case file, Applicant's prior PCR counsel did not file a notice of appeal, and Respondent indicated their consent to an Austin review. After reviewing all records and evidence before this Court, this Court

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

finds Applicant is entitled to an Austin appeal from his first PCR Action and further grants Respondent's motion to dismiss all the other allegations. Findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In August 2017, the Lancaster County Grand Jury indicted Applicant for murder and possession of a firearm during a violent crime (2017-GS-29-1255), possession of a handgun by a person under eighteen (2017-GS-29-1257), and unlawful carrying of a handgun (2018-GS-29-1258). In November 2017, the Lancaster County Grand Jury indicted Applicant for three counts of attempted murder and three counts of possession of a firearm during the commission of a violent crime (2017-GS-29-1702; -1703; -1704). These charges arose after Applicant and two other persons fired at a vehicle twenty-six times, killing Marquis Evans, who was believed to be standing nearby. Law enforcement believed the shooting was gang-related.

On May 1, 2019, Applicant pled guilty pursuant to Alford² before the Honorable Brian M. Gibbons. Geoffrey Dunn, Esquire, represented Applicant. Deputy Solicitor Lisa Collins represented the State. Pursuant to a negotiated plea of a twenty-to-thirty-year sentence, Applicant pleaded guilty to four counts of attempted murder³ and one count each of possession of a handgun by a person under eighteen, unlawful carrying of a handgun, and possession of a weapon during the commission of a violent crime.⁴ Judge Gibbons sentenced Applicant concurrently to twenty-

² North Carolina v. Alford, 400 U.S. 25, 31 (1970).

³ One of the attempted murder pleas was on the murder indictment.

⁴ In exchange for his plea, the State dropped the weapon charges on indictments -1702, -1703, and -1704 and dismissed an accessory before the fact to armed robbery (warrant 2017A29300235).

five (25) years' imprisonment for one charge of attempted murder, twenty (20) years for each of the remaining attempted murder charges, and five (5) years for each weapons charge

On May 13, 2019, Applicant filed a timely notice of appeal. On July 2, 2019, the Court of Appeals dismissed Applicant's appeal for failure to provide an explanation for appealing a guilty plea. The remittitur was returned to the lower court on July 18, 2019.

FIRST PCR ACTION AND SUBSEQUENT APPEAL: 2020-CP-29-0383

Applicant filed his *first* PCR action on March 6, 2020, alleging he was being held in custody unlawfully for the following reasons:

1. 4th, 5th, 6th, 13th, 14th Amendment violations;
2. Due process
3. Subject matter jurisdiction
4. Fraud upon the court
5. Prosecutorial misconduct
6. Ineffective assistance of counsel

Respondent filed its Return on August 17, 2020, requesting an evidentiary hearing. On August 30, 2022, an evidentiary hearing convened before the Honorable Daniel D. Hall at the Lancaster County Courthouse. Applicant was present and represented by Monier M. Abusoft, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified on his own behalf and called his trial attorney, Geoffrey M. Dunn, as a witness. On October 14, 2022, Judge Hall signed an order denying and dismissing Applicant's PCR.

Applicant did not appeal his PCR action.

CURRENT ACTION BEFORE THIS COURT

In his *second* and current PCR application, Applicant asserts he is being held in custody unlawfully for the following:

1. Ineffective Assistance of PCR Counsel

- a. PCR Counsel failed to file a notice of appeal of the denial of Applicant's initial PCR action.
2. Involuntary Guilty Plea
3. Lack of Subject Matter Jurisdiction

Applicant is seeking relief in the form of vacation of conviction and sentence.

Attached to this return and incorporated by reference are the Lancaster County Clerk of Court records regarding Applicant's convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's direct appeal; the records from Applicant's previous PCR actions; and the records of the current PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant contends that PCR Counsel was ineffective for failure to timely file a notice of appeal. "An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal." Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); Austin v. State, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In Austin, the South Carolina Supreme Court framed the inquiry as whether the PCR applicant "requested and was denied an opportunity to seek appellate review." Austin at 454, 409 S.E.2d at 396. Under Austin, an Applicant is entitled to appeal the denial of a PCR application when they have not voluntarily waived the right to appeal. An applicant may waive the right to appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010).

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin, 305 S.C. at 454, 409 S.E.2d at 396; S.C. Code Ann. § 17-27-100 (2014). Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to

appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

This Court finds that Respondent has consented to Applicant's request for Austin review from his prior PCR action and that Applicant did not waive this right knowingly and intelligently. Accordingly, this Court finds that Applicant is entitled to an Austin appeal of the denial of his first PCR action 2020-CP-29-00383.

SUMMARY DISMISSAL OF ALL OTHER CLAIMS

Respondent moved for summary dismissal of the remaining claims pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact, which would necessitate an evidentiary hearing. 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). Respondent moved for summary dismissal of the remaining claims for the following reasons:

SUMMARY DISMISSAL OF LACK OF SUBJECT MATTER JURISDICTION

Respondent moved to summarily dismiss the application because the allegation that the State lacked subject matter jurisdiction is without merit.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction

involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Additionally, a presumption of regularity is attached to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Applicant's indictments are valid on their face because they state all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40.

Defects in the indictment do not affect the circuit court's jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 498–500 (S.C.2005) (explaining difference between jurisdiction and defective indictments and noting that a defective indictment alone does not deprive trial court of jurisdiction); see also Battle v. Bodison, No. C.A. 1:09-2038, 2010 WL 3489273 (D.S.C. Aug. 2, 2010), report and recommendation adopted, No. CIV.A. 1:09-2038, 2010 WL 3489007 (D.S.C. Aug. 31, 2010) (Finding that petitioner's argument that the circuit court lacked jurisdiction as he did not waive presentment of his indictments to the grand jury failed, as Gentry establishes that presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court).

Regardless, the record reflects that the indictments were true-billed on August 31, 2017, and November 16, 2017, and signed by the foreperson.

This Court finds Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation shall be summarily dismissed.

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss the application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.⁵ 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.

Section 17-27-45 became effective on July 1, 1995. The South Carolina Supreme Court has held that 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. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant is challenging his conviction from May 1, 2019. Applicant pursued a direct appeal, and the remittitur was returned to the lower court on July 18, 2019. Because his conviction was after the enactment of section 17-27-45, Applicant needed to file his application on or before July 18, 2020, pursuant to Peloquin v. State. This application was

⁵ S.C. Code Ann. § 17-27-10 to -160.

filed on June 27, 2025, *four years, eleven months, and nine days* after the expiration of the statutory filing period.

Accordingly, this Court finds this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and should be dismissed, except for the Austin claim, for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss the application because it is successive to the Applicant's previous post-conviction relief 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.

Section 17-27-90 is clear—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).

The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice, 305 S.C. 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 395. Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised this claim in his prior post-conviction relief actions. Applicant specifically states that the "issue does not fall under newly discovered evidence."

This Court finds Applicant has failed to sufficiently explain why he could not have raised these claims in his 2020 PCR action. Accordingly, the application shall be summarily dismissed as successive to Applicant's prior post-conviction relief actions.

SUMMARY DISMISSAL OF RES JUDICATA

Additionally, Respondent moved to summarily dismiss the application as 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 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).

This Court finds Applicant had a full opportunity to litigate all his allegations in his prior PCR action. The prior PCR Court issued a final judgment on the merits of the very same or similar

issues that Applicant now raises in his present action. The finality of the previous court rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

CONCLUSION

The Court finds that the Applicant is entitled to an Austin appeal of the denial of his first PCR action and all other allegations are summarily dismissed.

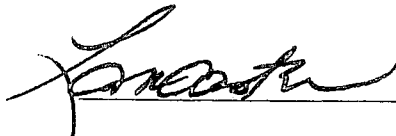
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE** to all allegations except the Austin allegation.
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243 for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the South Carolina Department of Corrections for the completion of his sentence.

AND IT IS SO ORDERED this 28 day of August, 2026.



DIANE SCHAFER GOODSTEIN
Presiding Judge
Sixth Judicial Circuit



, South Carolina