

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

William J. Henry, #276767,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2024-CP-23-2218

CONDITIONAL ORDER OF DISMISSAL

ENTERED COMPUTER

FILED: 26MAR11PM1:30
COC JAY GRESHAM GVL SC

Applicant, William J. Henry, filed the above captioned application for post-conviction relief on April 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 for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Having reviewed the application, and the return and motion, this Court agrees and makes the following findings:

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the November 2006 term of the Greenville County Grand Jury for kidnapping (2006-GS-23-9698), assault and battery with intent to kill (2006-GS-23-9699), murder (2006-GS-23-9700), and armed robbery (2006-GS-23-9701). He was represented by Thomas M. Creech, Jr., Esquire.

After the State called the case to trial, the Applicant was found guilty of murder and not guilty of all other charges. On February 4, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to fifty years imprisonment for the murder charge.

DIRECT APPEAL

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Henry, Op. No. 2011-UP-333 (S.C. Sup. Ct. filed June 27, 2011). The Remittitur was issued to the lower court on December 12, 2011.

FIRST PCR ACTION: 2012-CP-23-4209

The Applicant filed his *first* PCR application on June 29, 2012 (2012-CP-23-4209). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. "My lawyer failed to object to perjury testimony."
2. "The State failed to produce competent reliable evidence."
3. "The State must prove every element of the charge of Murder."
4. Subject matter jurisdiction.

In an "Amended Petition for Post Conviction Relief" filed by counsel on August 27, 2013, the Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to the jury charge regarding aiding and abetting.
 - b. Failed to object to the State's failure to present an indictment to the Grand Jury within 90 days after receipt of the arrest warrant.
 - c. Failed to object to the State's failure to petition the court for an order delaying action on the warrant for a successive 90 day period.
 - d. Failed to timely object to:
 - i. Testimony regarding the Applicant's attendance of a school for children with behavior problems.
 - ii. Testimony regarding cell phone and tower information.
 - iii. Testimony regarding victim statements.
 - e. Failed to inform the Applicant of the potential penalty he faced on all charges.
 - f. Failed to object to the State's Brady violation and failure to provide counsel with copies of Brooks' statements.
 - g. Failed to move to suppress Brooks' testimony.
 - h. Failed to have the Applicant evaluated for competency and criminal responsibility.
 - i. Failed to argue the court's charge on malice shifted the burden of proof.
 - j. Failed to object to the court's abuse of discretion in sentencing the Applicant more harshly than his co-defendants.
2. Ineffective assistance of appellate counsel:

- a. Failed to raise the trial court's failure to object to the State's non-compliance with Rule 3(c), SCRCrimP.

Respondent made its Return and Partial Motion to Dismiss on June 29, 2012. An evidentiary hearing was convened on October 22, 2013, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. The Respondent was represented by Karen C. Ratigan of the South Carolina Attorney General's Office.

At the hearing Applicant testified on his own behalf, testimony was also presented by Applicant's trial counsel, Thomas M. Creech, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's SCDC records, the PCR application, the Return and Partial Motion to Dismiss, and the appellate records. The Honorable Edward W. Miller issued an Order of Dismissal with Prejudice on November 25, 2013 (filed November 26, 2013).

PCR APPEAL

The Applicant filed a notice of appeal. Applicant was represented by Appellate Defender Lanelle C. Durant who perfected the appeal by filing a Johnson¹ Petition for Writ of Certiorari. Henry v. State, 2013-002762 (S.C. Sup. Ct. filed June 23, 2014). The South Carolina Supreme Court denied certiorari and granted counsel's motion to be relieved by order dated October 8, 2014. The Remittitur was issued to the lower court on October 24, 2014.

FEDERAL HABEAS CORPUS ACTION: 1:14-4343-BHH-SVH

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on December 30, 2014. The Respondent submitted a motion for summary judgment on April 24, 2015. The Honorable Shiva V. Hodges, United States Magistrate

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

Judge, issued a report and recommendation to grant the motion for summary judgment on November 5, 2015. The Honorable Bruce Howe Hendricks, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice on December 1, 2015.

CURRENT ALLEGATIONS AND RELIEF SOUGHT

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. The court erred in failing to give a jury instruction on criminal intent which relieved the state of their burden of proving essential element of murder which violated Applicant's rights to due process.

(App. at 3 and attachments).

Applicant ask this Court to “grant him release from custody, or granted new trial.” (App. at 6 and attachments.)

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

Respondent moved to summarily dismiss Applicant's claims of trial court error, asserting

these allegations were not cognizable PCR claims. See S. 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).

This Court agrees and finds Applicant's allegation (1) in his current application, as set forth above, should be dismissed for failure to assert a cognizable PCR claim. Applicant alleges the trial court erred in "failing to give a jury instruction on criminal intent which relieved the state of their burden of proving essential element of murder which violated Applicant's rights to due process." However, this is a direct appeal issue that is not appropriate for PCR. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974) (providing a PCR application is not a substitute for a direct appeal); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (providing a PCR application cannot assert any issues that could have been raised at trial or on appeal). Thus, Respondent moves to dismiss this claim. Thus, allegation (1), as set forth above, is dismissed.

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.² 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

² S.C. Code Ann. § 17-27-10 to -160.

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 (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 an various allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on February 4, 2009. Applicant did pursue a direct appeal. The Remittitur was returned to the lower court on or about December 12, 2011. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before December 12, 2012. Applicant did not file this PCR application until April 10, 2024, *thirteen 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 application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a 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 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 *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 application.

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 PCR action. 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 thirteen years after his conviction. 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 AND SIGNATURE ON FOLLOWING PAGE]

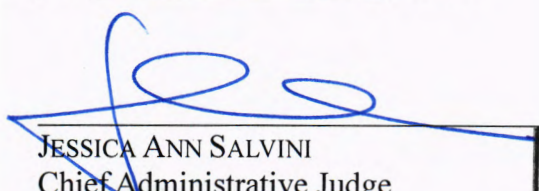
CONCLUSION

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 10 day of March, 2026.


JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to
Attorney General / Applicant
on 3 / 11 / 2026.