

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS)

Willie Anderson, 170797

Plaintiff

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

CASE NO.
2010-CP-14-0672

DATE 7/20/11

v.

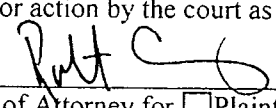
Beulah G. Roberts

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

CLERK OF COURT
CLARENDON COUNTY, SC

Plaintiff's Attorney: Willie Anderson, Bar No. Address: ACI Post Office Box 1151 Fairfax SC 29827 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 6, 2011 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	<u>W. Jeffrey Young</u> JUDGE CODE: <u>43</u> Date: <u>07.13.11</u>
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

BEULAH G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC
 2011 JUN 20 AM 11:58

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

2010-CP-14-0672

Willie Anderson, #170797,)

Applicant, CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

v.

DATE 7/20/11

CONDITIONAL ORDER OF
DISMISSAL

State of South Carolina,)

Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Respondent.)

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
JUL 20 AM 11:28

This matter comes before this Court by way of an application for post-conviction relief filed December 1, 2010. In its Return, Respondent requests that the action be summarily dismissed.

Before this Court are the records of the Clarendon County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and records from Applicant's previous application for post-conviction relief. The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Clarendon County. The Applicant was indicted at the September 1990 term of the Clarendon County Court of General Sessions for Armed Robbery, Assault and Battery with Intent to Kill, and Possession of a Weapon during a Violent Crime (1990-GS-14-0235). Harold Detwiler, Esquire, represented him. On September 27, 1990, Applicant proceeded to a jury trial before the Honorable Anthony Harris. The jury found Applicant guilty, and Applicant was sentenced twenty (20) years imprisonment for Armed Robbery, twenty (20) years imprisonment for Assault and Battery with Intent to Kill, to be served

consecutively, and five (5) years imprisonment for Possession of a Weapon during a Violent Crime, to be served concurrently. The Applicant did not appeal his conviction.

The Applicant subsequently filed an application for PCR on November 7, 1994 (1995-CP-14-0003). In his application, Applicant set forth the following grounds for relief:

1. "Incompetency, ineffective assistance of Counsel."
2. "17-27-20(4) Exclusiveness Remedy; Rule 33; 59 ALR FED 657, FED PRC CRIM."
3. "Did not advise the defendant of the right to appeal."

The State filed its return on March 13, 1995, and an evidentiary hearing was held before the Honorable Gary E. Clary, at which the Applicant was present and represented by John C. Land, IV, Esquire. By Order dated November 28, 1995, Judge Clary denied and dismissed the Applicant's application for PCR.

Applicant filed his second application for PCR on October 9, 1996 (1996-CP-14-0393). In his application, Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "Counsel did not call all witnesses Mr. Anderson requested at his trial."

The State filed its Return and Motion to Dismiss on November 27, 1996. By Order dated December 3, 1996, the Honorable Thomas W. Cooper denied and dismissed the Applicant's second application for PCR.

Applicant filed his third application for PCR on July 1, 2004 (2004-CP-14-0331). In his application, Applicant set forth the following grounds for relief:

1. "... deprived of his liberty without Due Process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and by Article I, Section 3, of the South Carolina constitution."
2. "After discovered evidence/Illegal Arrest."
3. Lack of Subject Matter Jurisdiction.

The State filed its Return and Motion to Dismiss on August 2, 2005. By Final Order dated August 18, 2006, the Honorable Thomas W. Cooper denied and dismissed the Applicant's third application for PCR.

Applicant also filed a Federal Habeas Corpus motion, which was denied.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant applied for legal advice and attorney by submitting 'In Forma pauperis.' Applicant should have been appointed an attorney but was not."
2. "Not knowing proper procedure, Applicant missed important deadlines, and PCR was denied. This is a direct violation of SCRCP 71.1(d)(g)."
3. "Applicant applied for same in his Federal habeas Corpus claim and was denied."
4. "In both motions (State and federal), Applicant's Constitutional rights were violated."

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous

application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish 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. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should 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. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement 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.

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). The Applicant was convicted of the offense(s) he challenges in this Application on September 27, 1990. This Application was filed on December 1, 2010, which was more than twenty (20) years after the statutory filing period had expired.

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) (2003) 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." Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

Additionally, this Court intends 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.

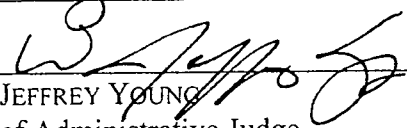
The Applicant had a full opportunity to litigate all current allegations in prior proceedings and did in fact make similar allegations (e.g. the victim was related to the sheriff) in his prior application for relief. The other grounds present allegations that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCF, the Court will summarily dismiss these claims as barred by *res judicata*.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any

reasons he may have with the Clarendon County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Rob D. Corney, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 13 day of July, 2011.


W. JEFFREY YOUNG
Chief Administrative Judge
Third Judicial Circuit Court

Sumter, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Cynthia G. Sanders (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Allen dale)

AFFIDAVIT OF PERSONAL SERVICE

On this 19 day of August 2011, I served the Conditional Order of Dismissal, on Inmate Willie Anderson, SCDC Inmate #170797, by delivering personally and leaving a copy of the same at Allendale Correctional Institution. Deponent is not a party to this action.

s/ Cynthia G. Sanders

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 19 day of August, 2011

Hale P. Lueem (L.S.)

Notary Public for South Carolina

My Commission Expires: 5/18/14

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Allendale Correctional Institution), Fairfax County, SC this 19 day of August, 2011.

s/ Willie Anderson
Inmate
SCDC Inmate #: 170797