STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
John Allen Hagood, SCDC #123067, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2021-CP-23-3159 **CONDITIONAL ORDER OF DISMISSAL**

FILED: 26JUN12PM1:31
GDC JAY GRESHAM GVL SC

ENTERED COMPUTER

Applicant, John Allen Hagood, filed the above captioned application for post-conviction relief on May 14, 2025. Respondent has moved for summary dismissal alleging the records attached to the return and motion show that the application is barred by the statute of limitations, successive to Applicant's previous application, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, 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

Applicant is presently confined in the South Carolina Department of Corrections, Allendale Correctional Institution, pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2010 term of the Greenville County Grand Jury for grand larceny (2010-GS-23-3443) and first-degree burglary (2010-GS-23-3444). He was represented by Amanda Lackland Wicker, Esquire.

After the State took the case to trial, the Applicant was found guilty. On February 9, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of life imprisonment without parole for first-degree burglary and ten years for grand larceny, third or greater property offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Hagood, Op. No. 2012-UP-407 (S.C. Ct. App. filed July 11, 2012). The remittitur was issued on July 27, 2012.

FIRST PCR ACTION: 2012-CP-23-5600

The Applicant filed his *first* PCR application on August 29, 2012 (2012-CP-23-5600). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
    a. "[F]ailed to argue correct probable cause for traffic stop."
    b. "[F]ailed to hire handwriting expert to prove of confession and Miranda signatures were fake."

In an "Amended Petition for Post Conviction Relief" filed by PCR counsel on June 21, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
    a. Allowed the State to introduce an involuntary statement by the Applicant purporting to be a confession to the crimes and failing to object to the admission of same.
    b. Failed to put the State's case through adversarial testing.
    c. Failed to challenge probable cause.
    d. Failed to preserve the Applicant's Fourth Amendment issues.
    e. Failed to argue section 17-25-45 violated the Equal Protection Clause.
    f. Failed to argue that the discretion given to the solicitor's office by section 17-25-45 regarding service of notice of intent to seek life without parole is arbitrary and capricious.
    g. Failed to request a jury instruction that the Applicant faced a mandatory sentence of life without parole.
    h. Failed to argue that the Applicant's Sixth Amendment rights were violated in that he was not advised of the possibility of life without parole at the time of his prior conviction.

i. Failed to argue that the Applicant's conviction and sentence were in violation of the United States Constitution and South Carolina laws.
j. Failed to object to the use of his prior unclassified convictions to enhance his sentence to life without parole.

2. Ineffective assistance of appellate counsel:
   a. Raised an issue that was not preserved for appeal.

In an "Amended Petition for Post-Conviction Relief" filed by PCR counsel on December 17, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
   a. Failed to adequately and effectively argue the Applicant's statement was not knowingly and voluntarily made.
   b. Failed to preserve the Applicant's objection to the introduction of the Applicant's statement during the trial.
   c. Failed to adequately and effectively challenge the existence of reasonable suspicion to stop the Applicant and probable cause to arrest the Applicant.
   d. Failed to make a motion to suppress.
   e. Failed to request that the court instruct the jury that the Applicant faced a sentence of life without parole if convicted at trial.
   f. Failed to argue that the Applicant was not informed of life without parole by eligibility by previous attorneys.

An evidentiary hearing into the matter was convened on December 17, 2013, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's represented the Respondent. On January 30, 2014, the Honorable G. Edward Welmaker issued an Order dismissing the application for post-conviction relief with prejudice. Applicant filed a notice of appeal. An Order denying the petition for writ of certiorari was issued on October 23, 2014. The remittitur was issued on November 10, 2014.

FEDERAL HABEAS CORPUS ACTION: 2:15-CV-4163-RBH-MGB

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on January 11, 2016. The Respondent submitted a motion for summary judgment on April 4, 2016. The Honorable Mary Gordon Baker, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment on

November 15, 2016. The Honorable R. Bryan Harwell, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

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. Ineffective Assistance of Counsel.
    a. Trial Counsel failed to communicate plea offer, found at about plea offer through F.O.I.A. would have gladly accepted plea, had my attorney informed me.
    b. Fourteenth Amendment and Sixth Amendment Due Process
2. Newly Discovered Evidence

(PCR App. at 3).

Applicant is seeking relief in the following form: "Would have accepted plea offer had I been informed never knew about any plea offer in my case, will gladly accept." (PCR App. at 5).

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:

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.[1] Specifically, the Act requires as follows:

> (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
> (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
> (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). 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

[1] S.C. Code Ann. § 17-27-10 to -160.

(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 various allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced on February 9, 2011. Applicant did pursue a direct appeal. The Remittitur was returned to the lower court on or about July 27, 2012. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before July 27, 2013. Applicant did not file this PCR application until May 14, 2025, *over 12 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 regarding Trial Counsel *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 applications.

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 a final judgment 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 over a decade 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*.

Summary Dismissal Based on Failure to State a Claim of Newly Discovered Evidence

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. Applicant attached as an exhibit to his current PCR application to support his claim of newly discovered evidence a plea offer letter from Solicitor Moyer dated May 14, 2010, *dated prior to Applicant's trial and first PCR action*. Therefore, even if this Court were to consider Applicant's attachments to his current PCR application as potentially newly discovered evidence, it fails because Applicant could have discovered this information before his *first* PCR action.

The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that require vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). Suppose the applicant contends there is evidence of a material fact not previously presented. In that case, the PCR application must be filed within one year of the date of actual discovery of the facts by the applicant, or within one year of the date on which the facts could have been ascertained through the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

Applicant alleges his convictions and sentences are invalid because there exists evidence that was not previously presented or heard, Applicant's claims are baseless and meritless. Furthermore, his recent discovery, now more than a decade after his trial, could have been discovered before, during, and directly after his trial—thus, this fails number 3. See, e.g., United

States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

Applicant's current allegations involve "facts" that were or could have been raised in his first PCR action; thus, the current application is successive and barred by S.C. Code Ann. § 17-27-90. Accordingly, this Court moves to dismiss the application based on Applicant's failure to establish a *prima facie* case of newly discovered evidence.

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 29 day of May, 2026.

JESSICA ANN SALVINI
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina