STATE of South Carolina
County of Horry

Michael A. Dukes, SR. #311176
Applicant

VS.

State of South Carolina,
Respondent

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CA NO: 2013-CP-26-2686

Notice of APPEAL
From Second or Subsequent PCR

I Pro-se litigant am requesting for the above following matter be appealed to the Supreme Court of South Carolina for further review due to a dismissal of Applicant's Subsequent PCR by the final order of Dismissal handed down by the Honorable Benjamin H. Culbertson, Chief Judge for Administrative purposes for the fifteenth Judicial Circuit on 19th day of December, 2013, which was filed with the clerk of court Melanie Huggins-ward on January 7, 2014 at 1:31 pm. Pursuant to rule 71.1 (g), SCRCP, PCR Counsel must file a Notice of appeal on Applicant's behalf if Applicant wishes to pursue appellate review and as a Pro-se litigant I'm hereby requesting a appeal. The Pro-se litigant is also requesting the clerk of Courts to forward copies to the following parties: South Carolina Supreme Court, P.O Box 11330 Columbia, SC 29211, Joshua L. Thomas, Assistant Attorney General, P.O Box 11549 Columbia, SC 29211. I'm Requesting forwarding because the Pro-se litigant is without the proper materials and i'd like to thank you in advance for your time and patience and may god bless you!!!

Pro-se Litigant,
Michael A. Dukes Sr.
#311176
Date:
This 22 day of January, 2014

Pro-se Petitioners' explanation as to why this determination was and is improper made by the lower Court:

Petitioner claims PCR appellate Counsel from his first PCR (2008-CP-26-489) in which the PCR appellate Counsel did not raise the issues in her petition for writ of Cert to the Supreme Court. Both Issues of (1) Motion to Suppress and (2) Invalid Arrest warrant could and Should of been raised ~~effectually~~ when dealing with violations of the USCA Const. Amend. 4; Code 1976, § 17-13-140 (17-13-149) 4th Amend, SC const. Article 1, Section 10 See. Searches and Seizures, 349 key 123.1 State V. Covert, 382 SC 205, 675 S.E.2d 740). See also Sikes v. State, 448 S.E.2d 560 (SC 1994) for trial Counsel being ineffective for failing to raise a fourth Amendment Claim. See Arrest key 68(4) and Criminal law key 641.13(1) and also Criminal law key 641.13(5) both keys deal with trial counsel failing to be effective assistance of counsel at a defendants' contested trial...

AS for the explanation at hand that PCR Appellate Counsel are not per-se a Sufficient reason allowing for a Successive PCR application See Simpkins V. State, 303 SC 364, 401 SE 2d 142 (1991) post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error; See Criminal Law key 641.13(7). USCA Const. Amend. 6.. See also EZELL V. State, 548 S.E. 2d 852 (SC 2001); Criminal law key 641.13(7). USCA Const. Amend. 6..

FACTS

Respondent was convicted of trafficking in Crack Cocaine and was sentenced to imprisonment for 18 years. His convictions and sentences were affirmed on direct appeal. October 8, 2007 See State V. Dukes, 2007-UP-423.

After a hearing on his application for post-conviction relief (PCR), respondent was denied relief on the ground of ineffective assistance of counsel. On writ of certiorari Ms. M. Celia Robinson raised (1) ineffective assistance of counsel claim out of (3) inwhich was denied and the remittitur was sent to the lower court as provided by rule 221 (b) of the South Carolina Appellate court Rules on January 7, 2011.

ISSUES

I. was appellate counsel ineffective?

II. What is the appropriate remedy for ineffective assistance of appellate counsel?

Conclusion

The issue of the search and seizure was a meritorious one which would have entitled petitioner to reversal on PCR and or petition for writ of certiorari inwhich appellate counsel's patent omission in failing to raise the issue of the search and seizure clearly establishes ineffective assistance. See State v. Carter, SC 392 S.E.2d 184 (1990). If the issue had been raised by appellate counsel the result of the proceeding would have been different inwhich entitles the respondent to a new trial or immediate release (vacate sentence) due to the Judgement being Void under rule 60 b (4) federal rules of court or either State Court rule 60 b (4) .... The issue of the Search and Seizure was never part of the trial record inwhich the petitioner had to go off trial record to retrieve the issue; inwhich trial counsel was ineffective during the course of trial and petitioner raised the issues but appellate counsel abandoned the issues for her own personal reasons and petitioner is attempting to show the honorable Courts that her performance was deficient as measured by the standard of reasonableness under prevailing professional norms, and that the petitioner was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. See Southerland V. State, 337 SC. 610, 617, 524 S.E.2d 833, 836 (1999) michael A. Duke #311176 1-22-14

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Edward B. Cottingham, Circuit
Court Judge

THE STATE,

RESPONDENT,

VS.

MICHÊL A. DUKES SR.

APPELLANT

CERTIFICATE OF SERVICE

The undersigned pro. se litigant hereby certifies that a true copy of the notice of appeal from denial of final order of Dismissal signed and issued on December 19 2013 by the honorable Benjamin H. Culbertson under civil ACTION: 2013-CP-26-2686, has been served upon the honorable MELANIE Huggins-ward at clerk's office, P.O Box 677 Conway, SC 29528-0677, and the clerk has forwarded a copy to the following: South Carolina Supreme Courts, P.O Box 11330 Columbia, SC 29211, Joshua L. Thomas, ASSistant Attorney General, P.O Box 11549 Columbia, SC 29211.

Michel A. Dukes Sr. #311176
MICHÊL A. DUKES SR. #311176
PRO. SE LITIGANT

DATE: 1-22-14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Michêl A. Dukes, SR

Petitioner

VS.

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Alter or Amend
Explanation required
by Rule 243(c)

RE: 2013-CP-26-2686
2008-CP-26-489

The arguable basis for asserting that the determination by the lower court was improper falls under:

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

Criminal Law key 1181.5(3)

Petitioner expressed his desire to seek review of the denial of the PCR application (2008-CP-26-489) pursuant to his State law rights as set fourth in S.C. code Ann. § 17-27-100 and in Supreme court rule 50(9).

Supreme Court Rule 50(6) expressly provides for the appointment of counsel to an indigent to seek appellate review of a denial of PCR. Petitioner's Counsel failed to timely seek review of (2) PCR issues that were raised at the first PCR; inwhich makes her ineffective and merely as a method of enforcing Rule 50(6), and of enforcing petitioner's entitlement to a PCR proceeding, complete with a petition for certiorari to this Court. I never recieved a full "bite" at the apple, as I was prevented from seeking full review of the denial of ~~ANY~~ PCR application. The petitioner is asking the honorable Courts to provide him with a remedy in order to effectuate the purposes of the Uniform Act and of the PCR rules.

Petitioner's sufficient reason under Supreme court rule 50(3) is See McCleskey v. Zant, 499 U.S. 467, 468 (1991). where government interference or the reasonable unavailability of the factual basis of the claim impeded counsel's ability to raise the claim....

But as far as the Austin V. State petitioner did request and was denied opportunity to seek appellate review on issues: 1) motion to suppress and 2) invalid arrest warrant and then after that appellate attorney retires... How ironic is that??? If She had raised the issues the out come of the proceedings would have been different and the fact that She did'nt raise the issues prejudiced the petitioner inwhich her performance was unreasonable. See Simpkins V. State, 303 S.C. 364, 401 SE 2d 142 (1991), and EZELL V. State, 548 S.E. 2d 852 (S.C. 2001).

I'd like to apologize for not being able to get my Sufficient reason together but due to not being able to get time in the law library i've had to do this on my own and i've found the Sufficient reason and i pray for the courts to reverse and remand for further review of the issues of appellate Counsel being ineffective, and review of the two claims of trial Counsel being ineffective during trial or both. I'd also like to thank you in advance for your time and patience and for a fast and speedy reply, and may god bless you all!!

Yours truly,
Michael A. Dubay Sr.
#311176
1-28-14

Amendment to the explanation for the lower courts decision of the final order of dismissal under rule 243(c)

FILED
COUNTY
2014 JAN 31 AM 8:41
MELANIE HIGGINS WARD
CLERK OF COURTS

Applicant,
vs.
State,
Respondent.

RE: case #
(2008-CP-26-489)
&
(2013-CP-26-2686)

See Martinez v. Ryan, 132 S.Ct. 1309

Criminal Law [redacted] 110 key 1870
The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. (U.S.C.A. Const. Amend. 6.)

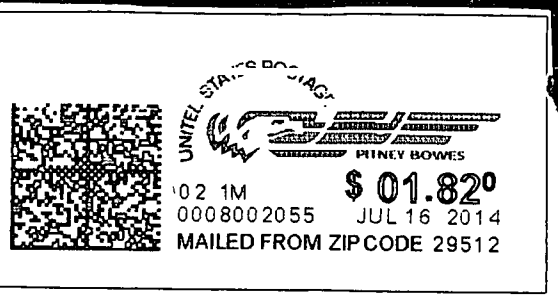
Criminal law 110 key 1710
Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while potecting the rights of the person charged.

A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged. See, e.g., Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("[The defendant] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence"). Effective trial counsel preserves claims to be considered on appeal, see, e.g., Fed. rule crim. Proc. 52(b), and in federal habeas

Proceedings, Edwards V. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000). & See also for a sufficient reason: McCleskey V. Zant, 499 U.S. 467, 490, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991) &

This is not to imply the State acted with any impropriety by reserving the claim of ineffective assistance for a collateral proceeding. See Massaro V. United States, 538 U.S. 500, 505, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003). Ineffective-assistance claims often depend on evidence outside the trial record. Direct appeals, without evidentiary hearings, may not be as effective as other proceedings for developing the factual basis for the claim. Abbreviated deadlines to expand the record on direct appeal may not allow adequate time for an attorney to investigate the ineffective-assistance claim. See Primus, Structural Reform in Criminal Defense, 92 Cornell L.Rev. 679, 689, and n. 57 (2004) (most rules give between 5 and 30 days from the time of conviction to file a request to expand the record on appeal). Thus, there are sound reasons for deferring consideration of ineffective-assistance-of-trial-counsel claims until the collateral-review stage, but this decision is not without consequences for the State's ability to assert a procedural default in later proceedings. By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims. It is within the context of this State procedural framework that counsel's ineffectiveness in an initial-review collateral proceeding qualifies as cause for a procedural default. I'm attempting to show the honorable courts as a State prisoner that I've been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of [redacted] my claims inwhich were raised at the initial PCR hearing (2008-CP-26-489) and argued; but on appeal after the denial of the PCR hearing appellate Counsel failed to raise meritorious issues under the 4th amendment of the US, 4th S.C. Constitution article 1, Section 10, and SC State Statute 17-13-140. The two claims were: motion to Suppress, and invalid arrest warrant; see Sikes V. State, 448 S.E.2d 560 (S.C. 1994); and also State V. McKnight, 352 S.E.2d 471 (S.C. 1987) and also State V. Sachs, 216 S.E.2d 501 (1975). I'm asking for review of the issues so that i could RECIEVE a new trial or have my sentence and conviction vacated. I'd like to thank the courts in advance for their time and patience and for a fast and speedy reply and may god bless you all !!! Yours truly, Michael A. Duke #311196

MR. Michael A. DUKES, SR. #311176
ECI - 1B - Santee - RM 211
610 Hwy 9 WEST
Bennettsville, SC
29512



The Honorable Clerk of Court
Daniel E. Shearouse
POST office BOX 11330
Columbia, SC
29211

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michael A. Dukes, Sr., #311176, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-26-2686 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed April 13, 2013. Respondent made its Return and Motion to Dismiss on or about August 15, 2013, requesting the application be summarily dismissed as successive, untimely, and barred by the doctrine of laches. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Court issued a Conditional Order of Dismissal, filed on September 13, 2013, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated October 4, 2013, of the above-mentioned conditional order on Applicant.

Applicant field a *pro se* "Response to Conditional Order of Dismissal" on August 28, 2013. In this filing, Applicant alleges he never received a full adjudication on his allegation trial counsel was ineffective for failing to challenge the constitutionality of a search. He claims PCR appellate counsel from his first PCR (2008-CP-26-489) did not raise the issue in her petition for writ of certiorari to the supreme court. However, allegations of ineffective PCR counsel,

including PCR appellate counsel, "are not *per se* a 'sufficient reason' allowing for a successive PCR application[.]" Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). Furthermore, the Court notes Applicant filed a second PCR action (2012-CP-26-3026) subsequent to the first PCR appeal. Thus, his allegation regarding PCR appellate counsel either was raised or could have been raised in that action.

The Court has reviewed the original pleadings and finds Applicant has not shown a sufficient reason why the application is not successive, untimely, or barred by the doctrine of laches, and why the conditional order should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice.**

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, and Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED this 19th **day of** December, **20** 13.

Benjamin H. Culbertson

THE HONORABLE BENJAMIN H. CULBERTSON
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Georgetown, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michel A. Dukes, Sr., #311176, Applicant, v. State of South Carolina, Respondent.	)	Civil Action No. 2013-CP-26-2686 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 13, 2013. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the November 2003 term of the Horry County Grand Jury for trafficking in crack cocaine, 10-28 Grams (2003-GS-26-3445). Applicant was represented in the charge by Paul Archer, Esquire. On August 8-9, 2005, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted. Judge Cottingham sentenced Applicant as a third drug offender[1] to confinement for a period of eighteen (18) years.

[1] Applicant has prior convictions in 1996 of Possession with intent to distribute marijuana and in 200 of possession with intent to distribute cocaine.

Applicant filed a timely notice of appeal. Aileen P. Clare, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal with the filing of an Anders[2] brief on October 18, 2006. The South Carolina Court of Appeals dismissed Applicant's appeal on October 8, 2007. See Sate v. Dukes, Op. No. 2007-UP-423 (S.C. Ct. App. filed October 8, 2007). The remittitur was returned to the circuit court on December 21, 2007.

Applicant filed his first PCR action on January 18, 2008. Respondent made its return on March 31, 2008. In his first application, Applicant alleged the following grounds for relief:

1. "Directed Verdict"
    a. "The judge should have directed a verdict due to the state not putting forth any evidence to show actual or constructive possession"
2. "Ineffective assistance of counsel"
    a. "Not doing any investigation into whether or not applicants 4th amendment was violated by the officer searching his vehicle..."
    b. "Proceeding with the picking of the jury in the absence of Applicant..."
    c. "Court lacked subject matter jurisdiction to sentence applicant as second or subsequent offender for trafficking [because] applicant has never been convicted of trafficking first."
3. "Did judge err in his ruling of Brady violation?

The Honorable Michael G. Nettles convened a hearing on the application on November 17, 2008. At the hearing, Applicant voluntarily withdrew all claims except the ineffective assistance of counsel claims. Judge Nettles issued an order, signed December 9, 2008, and filed December 12, 2008, denying and dismissing the first PCR application. Applicant filed a timely notice of appeal. M. Celia Robinson, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of a petition for writ of certiorari on December 11, 2009. The South Carolina Supreme Court denied the petition on January 7, 2011. The remittitur was returned to the circuit court on January 25, 2011.

[2] 386 U.S. 738 (1967)

Applicant filed a federal petition for *habeas corpus* on February 24, 2011 (Case number 0:11-cv-00819-JFA). The United States District Court for the District of South Carolina granted summary judgment against Applicant on January 4, 2012. The District Court denied Applicant's certificate of appealability on February 7, 2012. On March 8, 2012, Applicant filed a motion to file a subsequent federal *habeas corpus* action with the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit denied the motion on March 28, 2012.

Applicant filed a second federal *habeas corpus* on December 19, 2012 (Case number 0:12-3445-JFA-PJG). The District Court dismissed the action on June 4, 2013. Applicant also filed a third federal habeas on February 28, 2013 (Case number 0:13-157-JFA-PJG). This action was dismissed on June 4, 2013 as well.

Applicant filed a second PCR application on April 13, 2012. In the second application, Applicant again alleged violation of his 4th amendment rights, trial judge error in selecting a jury outside Applicant's presence, and ineffective assistance of counsel for allowing jury selection outside of Applicant's presence. The court entered a Conditional Order of Dismissal on June 13, 2012. The Honorable Thomas A. Russo convened a hearing on Applicant's response to the conditional order on August 27, 2012, in Horry County. Applicant was present and represented by counsel at this hearing. Judge Russo issued an order on September 11, 2013, dismissing the second PCR as untimely and successive. Applicant's motion for reconsideration was denied on October 17, 2012.

Applicant also appealed Judge Russo's order with the filing of a notice of appeal on January 24, 2013. The South Carolina Supreme Court dismissed the appeal on March 8, 2013. The remitter was returned to the circuit court on March 26, 2013.

II. CURRENT APPLICATION

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

1. "Ineffective assistance of trial counsel for not requesting a suppression hearing due to an illegal arrest"
2. "Ineffective assistance of trial counsel by not protecting defendants' 4th and 14th amendment constitutional rights under due process due to an illegal arrest"
3. "Ineffective assistance of counsel by not raising a brady violation"
4. "Lack of subject matter jurisdiction"

Applicant filed an "Amendment and Supplementation" on June 11, 2013. In the amendment, Applicant states he "was denied the right to effective assistance of counsel guaranteed by the sixth and fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution during the course of applicant's criminal trial[.]" In support of this allegation, Applicant posits that trial counsel failed to object to evidence and statements gathered during an illegal arrest. Respondent made a return and motion to dismiss the application on August 15, 2013. Respondent asked this Court to dismiss the application as successive, untimely, and barred by the doctrine of laches.

Applicant filed a "Motion for Default" on July 12, 2013. Respondent made a return to the motion on August 15, 2013, asking the court to deny the motion pursuant to Rule 55(e), SCRCP, and Kneece v. State, 269 S.C. 177, 236 S.E.2d 746 (1977).

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." The

Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Applicant's motion for default and Respondent's motion to dismiss:

A. Applicant's Motion for Default

The Court finds that Applicant's motion for default should be denied. In his motion, Applicant alleges that Respondent's delay in filing a return has prejudiced the prosecution of his claim. However, a state agency cannot be held in default except in rare circumstances. See Rule 55 (e), SCRCP. In this post-conviction relief action, Applicant must show that he has been prejudiced by Respondent's delay in filing a return. Kneece, 269 S.C. at 178, 236 S.E.2d at 747. However, Applicant cannot show prejudice if the application is without merit. Herring v. State, 262 S.C. 597, 598, 206 S.E.2d 885, 886 (1974).

Applicant has not shown any evidence he has been prejudiced by Respondent's delay in filing a return. Respondent's return was only filed 114 days after the application was filed on April 23, 2013. See Guinyard, 260 S.C. at 225, 195 S.E.2d at 394 (not prejudice from 190 day delay); Herring, 262 S.C. at 598, 206 S.E.2d at 886 (no prejudice from eleven month delay). Even if Applicant had filed a meritorious claim, he would not have received a hearing on his claim at the time he filed his motion for default as the next scheduled term for hearings in Horry County was the week of August 26, 2013.

Furthermore, Applicant has not shown that his claims are meritorious. His current application re-alleges the same complaints he raised in his first and second application for PCR. Applicant litigated the issue in his current application in his direct appeal in the prior PCR and federal *habeas* actions. Because Applicant has only presented claims that have already been

dismissed in prior actions, the Court finds that he had not established prejudice from Respondent's failure to file a timely return. Therefore, the motion for default is denied.

B. Respondent's Motion to Dismiss

1. Successive Application

The Court finds that this application should be dismissed because it is successive to Applicant's previous applications for post-conviction relief and petitions for federal *habeas corpus*. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless Applicant can point to 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, 450, 409 S.E.2d 392, 394 (1991). Any new grounds raised in a subsequent application are limited to those that "could not have been raised . . . in the previous application." Id. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised the "new" grounds for relief in his prior post-conviction relief application. In fact, the grounds alleged in the current applications are almost identical to the

grounds raised Applicant's two prior PCRs and his three federal *habeas corpus* actions. Applicant has failed to present any reasons why the current allegations are different from the allegations in his previous applications. Therefore, the Court finds that summary dismissal is appropriate.

2. Failure to Timely File

The Court further finds that this application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

> "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."

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this application on August 9, 2005. Applicant was therefore required to file his application before August 9, 2006. This application was filed on April 23, 2013, which was well beyond the time when the statutory filing period had expired. Therefore, the Court finds that summary dismissal is appropriate.

3. Laches

The Court further finds that this application should be dismissed based on the doctrine of laches. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute Applicant's claims. See McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). To

ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (citing Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979)). Recognizing the importance of finality in litigation, Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. § 17-27-45(a).

Applicant filed this current application over seven (7) years after he was convicted. This delay has prejudiced Respondent (and Applicant) in that records and exhibits from the trial may no longer be available. Therefore, the Court finds that summary dismissal is appropriate.

IV. CONCLUSION

The Court finds that the record before the Court creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this

Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

The honorable
Melanie Huggins-
Ward
Clerk of court of
Horry County
P.O Box 677
Conway, South Carolina
29528-0677

IT IS SO ORDERED.

THE HONORABLE BENJAMIN H. CULBERTSON
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

_____, 2013
Georgetown, South Carolina

ALAN WILSON
ATTORNEY GENERAL

January 13, 2014

Michael A. Dukes, #311176
Evans Correctional Inst.
P.O. Box 2951202
Bennettsville, SC 29512

Re: **Michael A. Dukes, #311176 v. State of South Carolina**
2013-CP-26-2686

Dear Mr. Dukes:

Enclosed please find a filed copy of the Final Order of Dismissal signed by Judge Culbertson, in the above-captioned case.

Sincerely,

Joshua L. Thomas
Assistant Attorney General

JLT/nb

Enclosure

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2013-CP-26-2686
	)	
MICHAEL A. DUKES, #311176	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a filed copy of the Final Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael A. Dukes, #311176
Evans Correctional Inst.
P.O. Box 2951202
Bennettsville, SC 29512

DATED this 13th day of January, 2014.

Norma Bigbee, Legal Assistant
For Respondent