

perfected by Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Indigent Defense. In an unpublished opinion, the South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Johnson, Op. No. 2008-UP-042 (S.C. Ct. App. filed January 11, 2008).

The Applicant filed a PCR application on July 2, 2008 (2008-CP-23-4967). In that Application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to object to Allen charge.
 - b. Failed to "object to the petitjury pool as being racially unbalanced in the composition."
 - c. Failed to offer proof that the State "substantially interfered with applicants due process right to present a defense by intimidation of defense witness Tyrone Thomas."
 - d. Conceded the introduction of impeachment evidence during cross-examination of State witness denied the defense the right to have the final closing argument to the jury.
 - e. Failed to investigate and discover the existence of a store videotape.
 - f. Failed to require prosecution witnesses be sequestered.
 - g. Failed to file a motion to be relieved after the Applicant filed complaints against counsel.
 - h. Failed to investigate "a Direct Alibi to the offense."

An evidentiary hearing was convened on February 23, 2010 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable Edward W. Miller denied and dismissed the PCR application by order dated April 1, 2010 and filed April 6, 2010.

The Applicant filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the Appeal. The appeal was denied by Order of the South Carolina Supreme Court dated December 15, 2011. The Remittitur was sent on January 4, 2012.

The Applicant filed another application for post-conviction relief on January 25, 2011 (2011-CP-23-0550). In that application, the Applicant claimed he was being held in custody unlawfully for

the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to inform the Applicant of "tape testimony" of Tyrone Thomas.
 - b. Failed to offer this tape into evidence at trial.
2. After-discovered evidence.
 - a. The Applicant was not aware of the tape until his first PCR hearing.
3. Violation of the 1st, 6th, 8th, and 14th Amendments.
 - a. Cruel and unusual punishment.
 - b. Ineffective assistance of counsel.
 - c. Violation of due process.

The Court issued a conditional order of dismissal dated April 26, 2011 and filed May 2, 2011.

The Honorable Robin B. Stilwell signed the final order of dismissal on July 12, 2011. The Applicant filed a notice of appeal on or about September 22, 2011. By Order dated December 15, 2011 the South Carolina Supreme Court dismissed the appeal. The Remittitur was sent on January 4, 2012.

The Applicant subsequently filed another PCR application on June 14, 2011 (2011-CP-23-3963). In that application, the Applicant alleged he was being held unlawfully for the following reasons:

1. Violation of 1st and 14th Amendments.
 - a. The South Carolina Supreme Court is denying the Applicant the right to exhaust "his state court 'highest' remedy by 'not' dismissing appellate counsel for Applicant to move pro-se where Applicant has a const. Right to do so."
2. Ineffective assistance of PCR appellate counsel.
 - a. Counsel has failed to argue all issues raised in both the order of dismissal and Rule 59(e) motion.

The Respondent filed a return and motion to dismiss on August 31, 2011. The Court issued a Conditional Order of Dismissal signed September 1, 2011 and filed September 15, 2011. The Applicant filed a document captioned "Applicant's Return to Respondent's Return and Motion to Dismiss and Conditional Order of Dismissal" on October 4, 2011. The court issued a Final Order of

Dismissal dated December 1, 2011 and filed December 8, 2011. The Applicant subsequently filed a document captioned "Notice and Motion for 59(A) and 59(E) Motion" dated December 16, 2011. The Respondent made its Return on or about December 29, 2011. By Order dated January 10, 2012 and filed January 10, 2012, the Honorable Robin B. Stilwell denied the Applicant's motion. The Applicant filed a Notice of Appeal on February 3, 2012. By Order dated March 5, 2012 the South Carolina Supreme Court dismissed the appeal. The Remittitur was sent on March 21, 2012.

The Applicant filed a Petition for a Writ of Habeas Corpus in the United States District Court on August 7, 2012. The Magistrate's Report and Recommendation was issued on April 30, 2013 denying the Applicant's Petition. The Applicant filed his objections to the Magistrate's Report and Recommendation on May 16, 2013. The matter is currently pending.

II.

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

1. Newly-discovered evidence.
 - a. "Key" witness Tyrone Thomas was kept from testifying through intimidation by the State.
2. Ineffective assistance of counsel.
 - a. PCR counsel "undermined Applicant's due process" by telling Applicant "his" witnesses did not want to testify.
 - b. PCR counsel denied Applicant the right to produce his witnesses at the PCR hearing.
3. Violation of due process and the 14th Amendment.
 - a. PCR counsel lied and told Applicant his witnesses did not want to testify at the PCR hearing.
 - b. PCR counsel did not file a Rule 59(e) motion "upon the intimidation matter."



III.

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).

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IV.

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 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.

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 offenses he challenges in this Application on November 9, 2004. This Application was filed on September 13, 2012, which was well 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.

V.

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

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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.

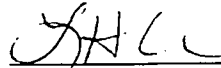
The Applicant had a full opportunity to litigate all current allegations in prior proceedings and did in fact make similar allegations in his prior applications for relief. The other grounds present allegations that could have been raised in those prior proceedings. The public interest in finality of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

VI.

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 Greenville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 13 day of March, 2014.



LETITIA H. VERDIN
Chief Administrative Judge
Thirteenth Judicial Circuit Court

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2304946

FILED
CLERK OF COURT
GREENVILLE
SOUTH CAROLINA
2014 APR 3 PM 3:32

Anthony Johnson vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
SCRPC (Vol. Nonsuit): Rule 12(b), SCRPC: Rule 41(a).
 Rule 43(k), SCRPC (Settled): Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC: Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed: Reversed: Remanded:
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - LETITIA H VERDIN

This judgment was entered on the . and a copy mailed first class this . to attorneys of record or to parties (when appearing pro se) as follows:

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J. Croom Hunter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court
- Clerk of Court