

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
TERRENCE BRADSHAW, #320361)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-45-205

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

2014 SEP - 8 PM 12: 27
 SHARON W STAGGERS
 CLERK OF COURT
 KINGSTREE, S.C.
FILED

Plaintiff's Attorney: Terrence Bradshaw, #320361, Bar No. _____ Address: Kershaw Correctional Institution Kershaw, SC 29067 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
---	--

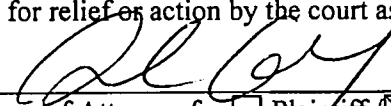
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 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 Plaintiff / Defendant

August 22, 2014
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- 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: _____
- Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE <u>2156</u> Date: <u>8/28/14</u>
--	--

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

- b. Statement was involuntary and could not have been used at trial.
 - c. Failed to advise of law and application to facts of case.
2. Guilty plea was not knowing, voluntary, and intelligent.
- a. Plea rendered involuntary due to ineffective assistance of counsel.
 - b. Not advised prior to plea of constitutional rights being waived.

An evidentiary hearing was convened on April 1, 2009, at which Applicant was present and represented by counsel. In an order dated May 15, 2009, and filed June 2, 2009, the Honorable George C. James, Jr., denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on June 23, 2011, and the Remittitur was sent on July 11, 2011.

A timely notice of appeal was filed. In a written Order, dated June 23, 2011 the South Carolina Supreme Court denied the petition for writ of certiorari. The Remittitur was issued on July 13, 2011.

Subsequently, Applicant filed his second application for post-conviction relief (2011-CP-45-0321) filed on July 6, 2011. In this application, Applicant alleged the following grounds for relief:

1. Plea of guilty was involuntary and unintelligently made.
2. Ineffective assistance of counsel.

Respondent filed its Return and Motion to Dismiss on January 5, 2012. The Honorable R. Ferrell Cothran, Jr. issued a Conditional Order of Dismissal on January 18, 2012 and filed January 25, 2012. A Final Order of Dismissal was signed on July 3, 2012 and filed on July 13, 2012.

Subsequently, Applicant filed a timely notice of appeal. On November, 7, 2012, the matter was dismissed, as "Petitioner failed to provide written explanation as to why the lower court determination was improper." The remittitur was issued on November 27, 2012.

Applicant then filed a petition for writ a habeas corpus on December 20, 2012, in federal district court. Petitioner raised the following issues verbatim:

1. Denial of Effective Assistance of Counsel
 - a. Plea counsel failed to investigate case counsel failed to advise of law and application to facts of case.
2. Denial of Voluntary Guilty Plea
 - a. Guilty plea rendered was involuntary due to ineffective assistance of counsel and was not advised prior to plea of guilty of constitutional rights being waived.

On June 5, 2013, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated February 4, 2014, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on June 20, 2014. On May 1, 2014, Applicant indicated that he wished that his notice of appeal be "terminated." The Fourth Circuit Court of Appeals issued an order granting Applicant's motion to dismiss his case pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure on May 1, 2014.

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Guilty plea was involuntary and unintelligently made see North Carolina v. Alford 400 U.S. 25 Supreme Court (1970).
2. Ineffective Assistance of Counsel see Strickland v. Washington.
 - a. "See attached sheet/this attached sheet contain to table of content and 33 page brief."²

² Respondent notes that there was no attached sheet/brief accompanying Applicant's PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds 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 pled guilty to the offense(s) he challenges in this Application on February 5, 2007. Therefore, the Applicant had to file his application by February 6, 2008. This Application was filed April 23, 2014, 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) (1985) 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."

Additionally, this Court finds that the application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 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 an 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, 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." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980). In regards to the allegations set forth in Applicant's Amendment to the PCR application, these are the same allegations raised by Applicant in a previous PCR application and therefore, by very definition, are successive in nature.

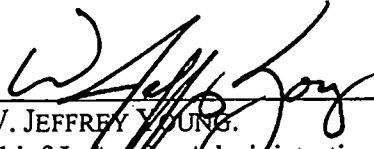
Furthermore, this Court finds that the current application for post-conviction relief must be summarily dismissed because the doctrine of *res judicata* bars the Applicant's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 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 allegations regarding ineffective assistance of counsel and involuntary guilty plea in his 2008 PCR action and in his Federal Habeas Corpus action. 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 summarily dismisses 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, factual or legal, with the Williamsburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 28 day of Aug, 2014.



W. JEFFREY YOUNG,
Chief Judge for Administrative Purposes
Third Judicial Circuit

Sumter, South Carolina.