

16  
SH

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP4600620

Willie E Gordon Jr	South Carolina State Of
--------------------	-------------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: <b>Justin J. Hunter</b>	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------------------------------	--

**DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 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; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

**FINAL ORDER OF DISMISSAL**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

YORK COUNTY CLERK  
COURT HOUSE  
1100 BAYVIEW BLVD  
YORK, SC 29732

*S/John C. Hayes, 999*

Circuit Court Judge

2049

Judge Code

4/9/2015

Date

**For Clerk of Court Office Use Only**

This judgment was entered on **May 5, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **May 5, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Willie E Gordon Jr Tyger Correctional Institution Smu #44  
200 Prison Road Enoree, SC 29335

Justin J. Hunter PO Box 11549 Columbia, SC 29211

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Willie E. Gordon, Jr., #103101. )  
Applicant. )

2014-CP-46-0620

v. )

**FINAL ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

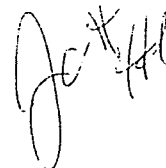
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

FILED-RECEIVED  
MAY -5 AM 9:19

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 5, 2014. The Respondent (the State) made its Return and Motion to Dismiss on September 24, 2015, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Lee S. Alford issued a Conditional Order of Dismissal dated October 8, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant replied timely to the Conditional Order of Dismissal on October 15, 2014.

In a document titled "Petitioner's Response to Return and Motion to Dismiss", the Applicant continues to argue that:

Because the Honorable Judge Rushing has ruled that the indictment is defective and he refused to allow the State to try the petitioner on indictment number 97-GS-46-1286. Since the State failed to correct the notice issue when it went back to the Grand Jury Judge Rushing[']s order remained in effect and the indictment remained insufficient and the Court is without jurisdiction over indictment number 97-GS-46-1286 and indictment number 2000-GS-46-3180. The original jurisdiction is with indictment number 97-GS-46-0266. Judge Rushing[']s standing order is the law of



the case. The State is refusing to address this issue. The petitioner ask[s] that the Court grant a hearing in the matter.

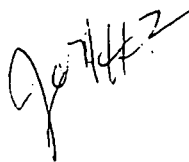
(Response p. 13).

Additionally, Applicant alleges “he did not receive proper constitutional notice he would be tried for a particular crime.” (Response p. 9). However, Applicant has already raised this issue in his federal habeas corpus proceedings and prior 2003 PCR application. Further, Applicant admits “[t]his ground is not a new ground for relief. [Applicant] raised the issue of lack of-subject matter jurisdiction in his first PCR application. The issue was not ruled upon.” (Response p. 7). This Court finds this issue has been raised and ruled upon in two separate forums.

This Court has reviewed the Applicant’s response to the State’s motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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 raised these exact issues in his 2003 PCR and 2011 Federal Habeas Corpus actions. See Respondent’s “Return and Memorandum of Law in Support of Motion for Summary Judgment” C/A No. 8:11-3399-RBH-JDA. The public interest in finality of judgments requires that

A handwritten signature in black ink, appearing to be "J. H. H. 2", is written over the page number.

litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismisses these claims as barred by *res judicata*.

The Applicant has shown no reason why these issues were not raised in his first PCR application. Further, S.C. Code § 17-27-90 states “[a]ll 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.”

The Applicant has also shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). 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 offense(s) he challenges in this Application on March 2, 2001. The Remittitur after the Applicant’s unsuccessful appeal was issued on October 20, 2003. Therefore, the Applicant had to file his application by October 21, 2004. This Application was filed on March 5, 2014, which was well after the statutory filing period had expired.

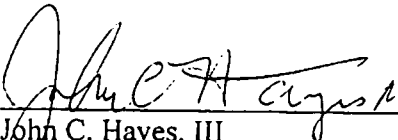
*Je H #3*

Accordingly, this Court finds no reason why the Conditional Order of Dismissal 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 PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 9<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
John C. Hayes, III  
Chief Administrative Judge #4  
Sixteenth Judicial Circuit

York, South Carolina.