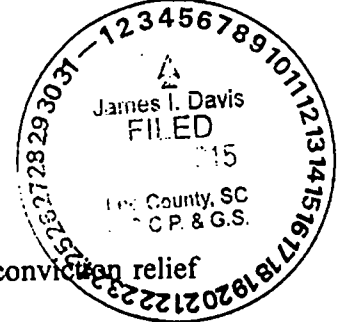


STATE OF SOUTH CAROLINA )  
COUNTY OF LEE )  
 )  
Robbie Collins, #290946 )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2014-CP-31-148

**FINAL ORDER OF DISMISSAL**



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 19, 2014. The Respondent made its return on August 11, 2014, requesting the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed August 16, 2014 and filed August 21, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 24, 2014, serving the above mentioned Conditional Order of Dismissal on the Applicant.

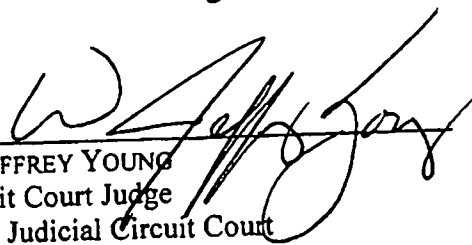
In a letter, Applicant argues that his new grounds were not raised in his prior PCR or were not raised properly in his prior PCR. Applicant claims his trial counsel's testimony at the PCR hearing was false. Applicant argues his PCR Counsel, Regina Lewis covered up various documents that would have shown Trial Counsel was lying.

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

This Court notes the Applicant was convicted and sentenced on August 18, 2005 and the South Carolina Court of Appeals affirmed his convictions and sentences on February 17, 2008. As this action was filed on May 19, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's fourth application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on October 26, 2009. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

**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.

AND IT IS SO ORDERED this 28 day of May, 2015.

  
W. JEFFREY YOUNG  
Circuit Court Judge  
Third Judicial Circuit Court

Sumter, South Carolina.

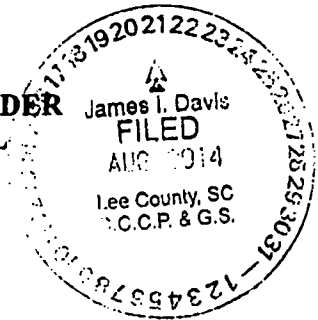


STATE OF SOUTH CAROLINA )  
 COUNTY OF LEE )  
 )  
 Robbie Collins, # 290946, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-31-148

**CONDITIONAL ORDER  
 OF DISMISSAL**



This matter comes before this Court by way of an application for post-conviction relief filed May 19, 2014. In its Return, Respondent requests that the action be summarily dismissed.

**PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. Applicant was indicted by the Lee County Grand Jury, along with Antwan Myers and Jumal Prescott, for: Murder (Count 1), Conspiracy to Commit Murder (Count 2), Accessory Before the Fact (Count 3), Accessory After the Fact (Count 4), Unlawful Possession of a Pistol (Count 5), Possession of a Firearm During a Crime of Violence (Count 6), Accessory Before the Fact (Count 7), and Accessory After the Fact (Count 8) (2004-GS-31-0158). The Applicant was represented by Charlie J. Johnson, Jr., Esquire. On August 16-18, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman. On August 18, 2005, Applicant was found guilty of Murder and Possession of a Firearm During a Crime of Violence. Judge Newman sentenced Applicant to life imprisonment for Murder and five years for Possession of a Firearm, sentences to be served concurrently.

Applicant appealed his convictions, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Collins, 2008-UP-098 (S.C. Ct. App. filed February 11, 2008). The Remittitur was sent on February 17, 2008.

Applicant subsequently filed an application for Post Conviction Relief on February 22, 2008 (C.A. No. 2008-CP-31-0050). In that application, Applicant alleged he was being held in custody unlawfully because:

1. "Violation of Due Process; Insufficient Indictment; Denial of Due Process"
2. Ineffective Assistance of Counsel; and
3. Prosecutorial Misconduct by amending the indictment.

The Respondent made its Return on September 11, 2008. Counsel for Applicant submitted a Supplemental Petition for Post Conviction Relief on February 18, 2009. An evidentiary hearing was convened on October 26, 2009, before the Honorable R. Ferrell Cothran, Jr. Applicant was present and represented by Regina H. Lewis, Esquire. Judge Cothran denied and dismissed the application by written order dated December 22, 2009 and filed December 30, 2009. A timely Motion to Alter or Amend the Judgment was submitted on January 7, 2010. Judge Cothran issued an Order on January 25, 2010, amending the Order of Dismissal to clarify the nature of a videotape and his ruling, denying the remainder of the Rule 59 Motion, and affirming the previous Order of Dismissal. Counsel for Applicant submitted a Supplemental Motion to Alter or Amend the Judgment on January 20, 2010. In an Order Denying Applicant's Supplemental Motion to Alter or Amend, issued on February 22, 2010, Judge Cothran amended the order to address specific issues of ineffective assistance of counsel, denied the remainder of the Motion, and affirmed the previous Order of Dismissal. A timely Notice of Appeal was filed. By Order dated August 18, 2011, the South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari. The remittitur was sent on September 7, 2011.

The Applicant subsequently filed a second application for post-conviction relief on April 26, 2010 (C.A. No. 2010-CP-31-0082). A third post-conviction relief application was filed on June 22, 2010 (C.A. No. 2010-CP-31-0158). By Order signed April 15, 2011 and filed April 26, 2011, the Honorable W. Jeffrey Young merged both applications. The Applicant raised the following issues in this post-conviction relief application:

1. Ineffective Assistance of PCR Counsel.
  - a. "Counsel withheld evidence to support Petitioner Allegations."
  - b. "Counsel fail to obtain Evidence in Petitioner behalf."
2. Newly Discovered Evidence.
  - a. "Witness Recantation of statement/testimony."
  - b. "Co-Defendant(s) Recantation."

The State made its Return and Motion to Dismiss the application as barred by the one-year statute of limitations and successiveness on August 3, 2011. A Conditional Order of Dismissal was signed by Judge Young on August 9, 2011. Applicant filed a response to the Conditional Order. In his response, dated August 12, 2011, the Applicant restated the allegations from his application. After reviewing the responses, Judge Young, denied and dismissed the application with prejudice in a Final Order dated January 6, 2012, and filed January 11, 2012. A timely Notice of Appeal was filed. By Order dated May 3, 2012, the South Carolina Supreme Court dismissed Applicant's Notice of Appeal. The remittitur was sent on May 31, 2012.

Applicant filed his fourth application (2010-CP-31-207) for post-conviction relief on October 26, 2010<sup>1</sup>. In this application, Applicant alleged the following grounds for relief:

1. "Newly discovered evidence."
  - a. "Witnesses Recantation (Eye-Witness Recantation)."
2. "Ineffective Assistance of PCR Counsel."
  - a. "Failure to Produce Exculpatory Evidence."

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<sup>1</sup> The application was received by Respondent on July 26, 2012.

Respondent filed its Return and Motion to Dismiss on December 5, 2012. The Honorable R. Ferrell Cothran, Jr. issued a Conditional Order of Dismissal on January 4, 2013. A Final Order of Dismissal was filed on April 23, 2013.

Subsequently, Applicant filed a writ of habeas corpus on May 1, 2012, in federal district court. Petitioner raised the following issues verbatim:

1. Counsel failed to investigate
2. "Counsel failed to take pictures and sufficiently show my property, failed to investigate."
3. Trial counsel failed to subpoena alibi witness. Counsel was contacted and informed of Petitioners Alibi witnesses that could corroborate Petitioners story.
4. Trial counsel gave Petitioner erroneous advice by telling Petitioner not to testify so he could have last argument.
5. Appellate Counsel failed to Raise on Direct Appeal that Trial Court Erroneously admitted evidence without a chain of custody.
6. Trial Counsel failed to be Present at Preliminary Hearing.
7. Trial Counsel failed to Request a lesser-Included instruction.
8. Appellate Counsel failed to raise an Appeal that Trial Court abused its discretion by admitting evidence that was siezed[sic] by means of a[sic] Illegal Search.
9. Trial Counsel was ineffective for not objecting to Photo Line-Up.
10. Counsel failed to object to Indictment.
11. Trial Counsel was ineffective for not objecting to evidence that was not preserved and Appellate Counsel failed to Raise on Direct Appeal admissibility of Evidence that was not preserve and had not Chain Custody.
12. Trial Counsel failed to object Petitioner being in shackles during Trial.
13. Trial Counsel failed to put in a Motion for Recusal of the judge.
14. Trial Counsel failed to introduce Evidence.
15. Trial counsel failed to object to the Gun.
16. Petitioner asserts that he told Trial Counsel that he had alibi witnesses that could testify to his whereabouts and corroborate[sic] Petitioners story. Trial Counsel failed to contact alibi witness.
17. Trial Counsel told petitioner not to testify so that he could have the last argument in the closing argument. After petitioner waived his right to testify, courts informed counsel that he could not have the last argument in the closing argument due to the fact he presented evidence.

18. Petitioner informed counsel that when he was escorted to the Police station the witnesses saw him being escorted by officers in handcuffs then the next day witnesses ID petitioner in a photographic line-up. Trial Counsel did not object to photographic line-up on this Basis.
19. Trial Court erroneously admitted evidence that was illegally[sic] obtained by a warrantless Search. A Gun was found after Detective's search petitioner property with a metal Detector along with a Man Search. Detectives testified that two searches was conducted and that the Gun was found on My property. Appellate Counsel failed to raise this issue on Direct Appeal and Trial Counsel failed to properly argue the fact that Gun was on my property and introduced a insufficient[sic] platt to show jury the curtilage of petitioners' property.
20. Trial Counsel failed to Request that a lesser-included offense be given to the jury. The State failed to prove every element of Murder and there was no evidence of Murder towards the deceased.
21. Trial Counsel failed to object to the fact that Petitioner was in Shackles and chains during trial. Petitioner was forced to be in chains in front of the jury during Trial, and Counsel did not object.
22. Trial Counsel failed to object to the indictment. The indictment failed to allege the time and death of the crime.
23. Trial Counsel failed to be present at Preliminary hearing. At Preliminary hearing there was No Supporting Evidence to Substantiate Probable Cause.
24. Trial Counsel withheld potentially exculpatory evidence. Petitioner told trial counsel to video tape crime scence[sic] to show that the visibility was poor and that there's No way the witnesses could identify the assistant due to the poor condition of visibility and no lighting. Trial Counsel took the video but didn't show it to the jury.
25. Trial Counsel failed to investigate there was a shoe involved that petitioner supposedly hid the Gun in Petitioner told trial Counsel that Shoe was not his and told Trial Counsel to take pictures of all.
26. Appellate Counsel failed to Raise that trial Court erroneously admitted evidence without a proper chain of custody being established. At trial Counsel objected to evidence "Shoe bag + Gun" being admissible without a chain of custody.
27. Trial Counsel failed to file for Recusal Judge Being that Judge Newman threatened petitioner in a previous case in which Trial Counsel represented petitioner.
28. Trial Counsel failed to object to evidence admissibility. At trial Officer Wingate testified that he had destroyed all evidence by handling the evidence

with no gloves. All exculpatory value was destroyed and the evidence was admitted without objection.

29. Trial Counsel failed to take pictures of the area where the evidence was found, instead showed a Plat that was insufficient to show where evidence was found at and/or curtilage.
30. At trial on the Day of admission of the letters, My lawyer stated that he had no knowledge of Having the letters, then he stated he had received the letters early that Morning. Trial Counsel should of objected to the admission of the letters because they wasn't given to him in a timely fashion, and he had no time to prepare

On October 1, 2012, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated August 23, 2013, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on September 30, 2013. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on June 4, 2014.

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

1. Ineffective Assistance of Counsel
  - a. "Petitioner asserts that trial counsel committed extrinsic fraud upon the court. At PCR hearing Petitioner argued that Trial Counsel told him not to testify so he could have the last argument in the closing argument. Trial Counsel then testified saying "there are certain things that me and Robbie discussed that I could not put him on the stand and say Did you do this with him answering. So I didn't with me knowing from my conversations with him that it wasn't true." Trial Counsel knowingly presented perjured testimony testifying that petitioner had divulge any incriminating information. Before trial had written a statement explaining of what took place to trial counsel and investigator. Petitioner argues that because of extrinsic fraud it precluded Petitioner from having his day in court.
2. Ineffective Assistance of PCR Counsel
  - a. "Petitioner also asserts that PCR Counsel committed Fraud Upon the Court (extrinsic) by concealing documents intentionally. Counsel had my statement and intentionally withheld this document to prevent petitioner from prevailing at evidentiary hearing.

## 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 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 August 18, 2005 and the South Carolina Court of Appeal affirmed Applicant's conviction and sentence on February 27, 2008. Therefore, the Applicant had to file his application by February 28, 2009. This Application was filed May 19, 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 four applications 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.

In addition to these allegations being barred by the Uniform Post Conviction Procedure Act, and being procedurally barred, this Court finds there is no merit to Applicant's allegations. The Applicant contends he is able to file a successive state PCR action alleging ineffective assistance of previous collateral counsel. This Court finds this contention to be without merit. The Supreme Court's ruling in Martinez v. Ryan, 132 S. Ct. 1309 (2012) is instructive. Martinez

has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 2546, 2565 (1991) ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See Martinez, *supra* at 6 ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial.").

With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental "cause and prejudice" standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining "[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter." Id.

Additionally, Martinez's interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina's interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court's opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("The contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under 17-27-90."). Aice went on to note that such a holding was in accord with the United States Supreme Court's opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Therefore, Applicant's contention that he is allowed to bring this untimely and successive state PCR application is misguided and erroneous. See Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

Additionally, this Court finds this application for post-conviction relief is barred by the doctrine of laches. The Applicant has filed this application over 9 years after he was convicted. The doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. 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, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). 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. 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." McElrath, 276 S.C. at 283. 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.

Furthermore, the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. §17-27-45(a). The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is now unavailable. Potential witnesses might also now be unavailable. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being barred by the doctrine of laches.

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 in four prior PCR actions 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), SCRCPP, 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 Lee 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 16 day of Aug, 2014.

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

Sumter, South Carolina.