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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Clinton McCallum, #305003, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2015-CP-26-4184

2015 AUG 11 PM 12:54  
HORRY COUNTY  
CLERK OF COURT

**CONDITIONAL ORDER  
OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed June 5, 2015. Respondent filed a return requesting summary dismissal contemporaneous with a draft of this order. This Court also has before it the records as stated in and provided with the return. The Court finds as follows:

**PROCEDURAL HISTORY**

Underlying Conviction

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. The Applicant was indicted in March 2007 by the Horry County Grand Jury for armed robbery and two (2) counts of murder (2007-GS-26-0954; -0955; -0956). He was later indicted in November 2007 for the commission of burglary in the first degree, arising out of the same incident (2007-GS-26-4825). The Applicant was represented by Barbara Wilson Pratt, Esquire. On October 21, 2008, the Applicant pled guilty, pursuant to the State's agreement to reduce both murder charges to voluntary manslaughter, with a recommendation of twenty-five (25) years, and with the sentences on the other charges to run concurrently. The Honorable Larry B. Hyman sentenced the Applicant pursuant to the State's recommendation. No direct appeal was filed.

First Post-Conviction Relief Action (2009-CP-26-3841)

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On April 15, 2009, Applicant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Ineffective assistance of counsel – failure to investigate and prepare;
2. Involuntary guilty plea – erroneous advice by counsel;
3. Denial of the sixth and fourteenth amendments – failure to file appeal.

Applicant requested a vacation of his sentence and remand for a new trial. An evidentiary hearing was convened at the Horry County Courthouse on February 10, 2010 before the Honorable Benjamin H. Culbertson, where Applicant was represented by Brana J. Williams, Esquire. The Applicant, though represented by Ms. Williams, moved for a continuance on the ground that he had been denied adequate access to the law library due to prison lockdowns. This motion was denied for several reasons, including the current preparedness of Applicant's counsel and the granting of continuances earlier in the matter. When the motion was denied, Applicant voluntarily withdrew his Application. He was placed under oath and questioned by the Court about his decision, and the Court was satisfied by the colloquy. Ms. Williams agreed that withdrawal was in his best interest. An order was signed by Judge Culbertson on February 18, 2010 dismissing the application with prejudice. This decision was not appealed.

#### Current Application

On June 5, 2015, Applicant filed an application for post-conviction relief alleging the necessity of relief on the following grounds:

1. Newly discovered evidence – affidavit of Earnest J. Vereen, Jr. stating that he was coerced to provide false and incriminating statements regarding Applicant's involvement in the underlying crime;
2. Ineffective assistance of counsel – failure to investigate medical history and mental health issues/competency to stand trial;
3. Involuntary guilty plea – erroneous or incomplete advice from counsel;
4. Denial of due process, fifth, sixth and fourteenth amendments – failure of counsel and trial judge to advise of sentencing consequences.

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely.

### FINDINGS OF FACT AND CONCLUSIONS 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.” See also Rule 56(c), SCRCPP. 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 Respondent’s motion to dismiss:

#### Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post-Conviction Procedure Act provides 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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, 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 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. Furthermore, Applicant alleged all but one (1) of these grounds in his prior application for PCR. Therefore, this application must be dismissed as impermissibly successive.

### Failure to Timely File

Further, this application must 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) 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, 470, 469 S.E.2d 606, 607 (1996).

Applicant’s plea and sentencing occurred on October 21, 2008. Applicant was therefore required to file his application before October 21, 2009. This application was filed on June 5, 2015, which was well beyond the time that 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) 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 must be summarily dismissed for the reasons discussed above.

### **CONCLUSION**

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

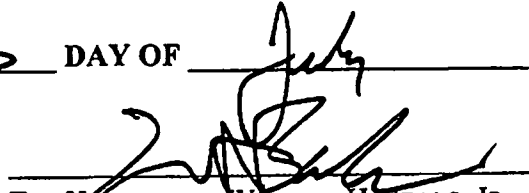
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted thirty (30) days from the date of service of this order upon

him to show why this ruling should not become final. Applicant shall file any reasons she may have with the Horry County Clerk of Court (P.O. Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Jessica E. Kinard, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 23 DAY OF July, 2015.

  
THE HONORABLE WILLIAM H. SEALS, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

  
Chamber, South Carolina

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JT

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCF, the Director of the South Carolina Department of Corrections has designated Atonia Jacobs (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Richland ) **AFFIDAVIT OF PERSONAL SERVICE**

On this 10 day of September, 2015, I served the signed **Conditional Order of Dismissal** on Inmate Clinton McCallum, #305003 by delivering personally and leaving a copy of the same at Broad River Correctional Institution, Columbia, South Carolina. Deponent is not a party to this action.

s/ Atonia Jacobs  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 10 day of September, 2015  
Camille Montgomery (L.S.)  
Notary Public for South Carolina

My Commission Expires 6/10/2018

**ADMISSION OF SERVICE**

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Broad River Correctional Institution, Columbia, Richland County, South Carolina, this 10 day of September, 2015.

s/ Clinton McCallum  
Inmate Signature  
SCDC No. 305003