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June 29, 2016

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JUL 01 2016

SC SUPREME COURT

Re: Rule 243(c) Explanation
Hayward Rogers, #278510, v. State of South Carolina;
Circuit Court Case Number: 2012-CP-32-3237
Appellate Case No. 2016-001333

Dear Sir or Madam:

Please find the enclosed Explanation pursuant to Rule 243(c) of the S.C. Appellate Court Rules, as requested in your letter dated June 24, 2016.

I am hereby serving same on opposing counsel, Patrick Lowell Schmeckpeper, Esq.

Thank you for your assistance.

Sincerely:

David K. Allen, Esq.

DKA/idi
Enclosures

cc: Mr. Hayward Rogers
Patrick Lowell Schmeckpeper, Esq.

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

JUL 01 2016

J. Mark Hayes, II, Circuit Court Judge

SC SUPREME COURT

Case No.
(2012-CP-32-3237)

Hayward Rogers,..... Appellant

v.

State of South Carolina, Respondent.

Rule 243(c) Explanation

BACKGROUND

Appellant's Grounds for Relief

On August 8, 2012, Appellant filed an Application for Post-Conviction Relief alleging:

- a) Denial of Due Process and Fundamental Fairness;
- b) The sentence exceeds the maximum authorized by law; and
- c) The Court was without Jurisdiction to impose sentence for A.B.W.I.K. and C.S.C. 1st Degree.

The application was amended on October 23, 2015 to include a claim for "newly discovered evidence," claiming specifically that the "Individual (Ms. Merkyle Blackmon) who drew Applicant's blood for D.N.A. sample was not, and has never been, licensed with the State Board of Nursing. The transcript shows that a witness for the State testified Ms. Blackmon was a nurse." (attached)

Respondent's Defenses

On November 9, 2013, Respondent filed a Return and Motion to Dismiss based on:

- I) Successive applications; §17-27-90;
- II) Failure to comply with filing procedures; 17-27-45(a);
- III) Common Law Doctrine of *Res Judicata*; and
- IV) Applicant's sentence was appropriate as a matter of law.

Respondent amended the Return and Motion to Dismiss to address the amended Application's added ground of "newly discovered evidence." The amended Return states that "applicant" (appellant) fails show that "the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching."

I. Successive Applications

Section 17-27-90 of the South Carolina Code of Laws states that grounds alleged (or those which could have been alleged) in a prior PCR application cannot be the basis for a subsequent PCR application unless the Court finds a "sufficient reason" to allow it.

There are sufficient reasons in this case. The first sufficient reason is the financial hardship Appellant incurred in obtaining this evidence. As shown in the attached, Appellant made a FOIA request to the South Carolina Law Enforcement Division and to the Department of Labor, Licensing, and Regulation to force the State to send him the "newly discovered evidence." The attached shows SLED charged Applicant \$246.70 to send him the paperwork associated with the search he requested. This is a large amount of money to an individual that

has been incarcerated for the preceding sixteen years (since October 6, 1998). Appellant's family, unfortunately, is also not financially well-off.

The second sufficient reason is the sheer volume of information with which Appellant was faced. This was a five-day trial, with nineteen (19) witnesses providing testimony for the State. Under these circumstances, it is a miracle Appellant ever discovered this issue.

II. Failure to Comply with Filing Procedures

Section 17-27-45(a) requires applications for relief to be filed within one year of the filing of the final appeal decision. However, §17-27-45(c) essentially creates a "discovery rule" caveat to this statute. For the reasons raised in the previous section, Appellant contends he acted with reasonable diligence in discovering this new evidence, and is therefore in compliance with this statute's requirement that he raise the issue within one-year from the time he knew (or should have known) of this new evidence. Additionally, Appellant argues any time constraints on his raising this newly discovered evidence should be *equitably tolled* under the circumstances raised in the foregoing section. The case of Pelzer v. State, 378 S.C. 516, 521 (2008), holds in part that such statutes of limitations should be tolled in circumstances where individuals are "unable to obtain vital information bearing on the existence of his or her claim." (attached)

III. Res Judicata

Regarding Respondent's stated defense of *res judicata*, Appellant argues that the common law doctrine of *res judicata* is subsumed by §17-27-90 of the S.C. Code of Laws regarding successive applications. In the short opinion of Foxworth v. State, 275 S.C. 615, 617 (1981), (attached) the Court applies a §17-27-90 analysis when dealing with *res judicata* in a PCR setting. Section 17-27-90 builds in an exception for situations where there is a "sufficient reason" to allow an additional application, and this sufficient reason exception is necessary. If

an Appellant applied for and was denied PCR, *then* discovered new conclusive proof of his innocence (such as exonerating DNA evidence, for example), *res judicata* should not be a bar to a successive application for PCR. Therefore, *res judicata* in PCR setting should (and has been viewed by the Supreme Court) as an argument under §17-27-90, which has the logical, built-in exception for successive applications when there is a “sufficient reason.” Appellant argues his sufficient reasons in the section devoted to the “successive applications” defense raised by Respondent.

IV. Appellant’s sentence was appropriate

Appellant faced the enhanced penalty of Life Without Parole under the “two-strike” statute of §17-25-45 based on a prior conviction of Assault and Battery with Intent to Kill from 1979. Appellant submits that in 1979, there was no classification to this charge (serious, most serious, etc.). The relevant language of §17-25-45 was not enacted until at least 1982. Because his 1979 charge had no classification at the time he was convicted, Applicant’s sentence cannot be enhanced by §17-25-45. The case law Respondent cites in their Motion to Dismiss deals with the age of the prior offense and does not address the issue raised by Applicant.

This improper sentencing affects Appellant’s rights under the State and Federal Constitution, and therefore, there is a sufficient reason for the Court to consider this despite it being raised in a successive application. Additionally, if the Court were to find a violation of an incarcerated person’s Constitutional rights, that would amount to extraordinary circumstances that require the Court to apply equitable tolling to any applicable statute of limitations. See *Pelzer* at 520.

V. Respondent's Amended Motion to Dismiss (citing *Hayden v. State*)

The newly discovered evidence could certainly change the outcome of the trial. Appellant was clearly convicted, at least in part, because the State found DNA in his blood that matched DNA found in blood on clothing belonging to the victim. The testimony of the procedures regarding the blood draw process were likely crucial in the jury's ability to rely on the accuracy of the DNA results. For a State witness to erroneously claim the person drawing the blood was a nurse, would likely have a significant impact on the jury's view of this important piece of evidence. It could certainly have impacted the accuracy of the test, and therefore, it could certainly have impacted Appellant's guilt or innocence.

THE ALLEN LAW FIRM, P.A.

David K. Allen
Attorney for Applicant
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West Columbia, South Carolina

January 12, 2016

Attachment 1

DOROTHY FILIATREAU -DIRECT- BY MR. RIDDLE

1 it's considered a less invasive examination or
2 collection technique. You simply take a pair of
3 teasers and pull the hairs out one by one or a
4 few at a time from the area in question and
5 collect them in that manner.

6 However, because it's a blood standard as
7 well that needs to be collected, typically a
8 nurse or a qualified nurse or someone like that
9 will take the blood standards. In this
10 particular case, a nurse Merkyle (ph.) Blackmon
11 performed the D.N.A. standards or the blood and
12 saliva standards in my presence.

13 Q She actually drew the blood?

14 A Yes.

15 Q After she drew the blood, what did she do with
16 it?

17 A She properly packaged them back into the suspect
18 evidence collection kit and gave them to me.

19 Q Did she do anything to change it while she had
20 it?

21 A No, sir.

22 Q And all this was done in your presence?

23 A Yes, sir.

24 Q When you get the various samples -- the blood,
25 the hair, and saliva -- what do you do with

DOROTHY FILIATREULT -DIRECT- BY MR. RIDDLE

1 evidence department typically analyzes, was the
2 head hair standards, pubic head standards, pubic
3 hair combings, if the incident occurred within a
4 certain time frame from the collection of
5 samples, and an envelope containing
6 miscellaneous materials if they find certain
7 things on the body of the suspect that might be
8 probative to the case. The other part of the
9 kit would be blood and saliva standards
10 collected from the suspect as well.

11 Q What is the blood collected for? What is the
12 purpose of that?

13 A I believe that's for the D.N.A. examination.

14 Q Did you have an opportunity, as part of your
15 employment, to go to the Lexington County
16 Detention Center and do a suspect evidence
17 collection kit on Heyward Rogers?

18 A Yes, sir, I did.

19 Q And when did this take place?

20 A On October 8, 1998.

21 Q Were you present when the samples were taken?

22 A Yes, sir, I was. When you take a suspect
23 evidence collection kit, the hair evidence that
24 I described earlier can be collected by someone
25 who simply knows what they are doing because

Attachment 2

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

August 27, 2014

Hayward Rogers, #278510
Perry C.I./ Q2-B221
430 Oaklawn Road
Pelzer, SC 29669

RE: Freedom of Information Act Request #2014-415
SLED Lab No.: L98-12207

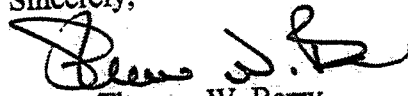
Dear Mr. Rogers:

Listed below is an estimate of the charges associated with your request for the above referenced file.

689 Pages @ \$0.30 Per Page	-	206.70
2 Hours Preparation Time	-	40.00
TOTAL	-	\$246.70

All fees need to be paid by check or money order and made payable to the State Law Enforcement Division. Please ensure that your name and FOIA#2014-415 are written on the envelope or money order. Address the envelope to **SLED FOIA Processing, P.O. Box 21398, Columbia, SC 29221-1398**. Upon receipt of payment, the file will be forwarded to you.

Sincerely,


Agent Thomas W. Berry
Freedom of Information Coordinator



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

June 19, 2015

Hayward L. Rogers, #278510
P.C.I. / Q2-B115
430 Oaklawn Road
Pelzer, SC 29669

RE: ~~Freedom of Information Act Request #2015-0389~~
~~Merkyle Blackmon~~

Dear Mr. Rogers,

Please be advised that Merkyle Blackmon is not and has never been a "SLED-certified Chemist". SLED does not "approve" individuals to collect DNA samples, nor is SLED "approval" required for an individual to collect DNA samples.

Sincerely,

Thomas W. Berry / mcp

Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp

CALEA



An Accredited Law Enforcement Agency
P.O. Box 21398 Columbia, South Carolina 29221-1398 (803) 737-9000 Fax (803) 896-7588

Attachment 3

378 S.C. 516 (2008)
662 S.E.2d 618

Nathaniel K. PELZER, Petitioner,
v.
STATE of South Carolina, Respondent.

No. 4399.

Court of Appeals of South Carolina.

Submitted June 1, 2008.
Filed June 5, 2008.

518 *518 Assistant Appellate Defender Robert M. Pachak, of Columbia, for Petitioner.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Brian T. Petrano, all of Columbia, for Respondent.

ON WRIT OF CERTIORARI

ANDERSON, J.

Nathaniel K. Pelzer ("Pelzer") appeals the circuit court's summary dismissal of his application for post-conviction relief (PCR) for failure to file within the applicable statute of limitations. We affirm.¹¹¹

FACTUAL/PROCEDURAL BACKGROUND

On June 4, 2001, Pelzer pled guilty to first degree criminal sexual conduct and kidnapping in Richland County. Two twenty year, concurrent sentences were imposed. Pelzer's direct appeal was withdrawn on August 31, 2001.

Pelzer filed an application for post-conviction relief on September 16, 2002. Included in his application were arguments based on (1) ineffective assistance of counsel, (2) lack of subject matter jurisdiction, (3) involuntary plea, and (4) violation of due process. The State filed a return and motion to dismiss dated July 25, 2003, and a hearing was held July 27, 2004. The State asserted Pelzer failed to comply with the one-year statute of limitations for filing post conviction relief applications. Additionally, the State moved for summary judgment on Pelzer's claim that the court lacked subject matter jurisdiction over his preliminary hearing.

519 The record indicates Pelzer's application was notarized August 30, 2002, and Pelzer asserts it was mailed the same day. However, he admits it was incorrectly sent to the South Carolina Office of Appellate Defense who then forwarded the *519 application on September 5th to the proper recipient, the Richland County Clerk of Court.

The circuit judge issued an order denying and dismissing Pelzer's application for failing to comply with the one-year statute of limitations. His claim of lack of subject matter jurisdiction was likewise dismissed. A petition for writ of certiorari dated April 11, 2005, was filed. Pursuant to Rule 227(1), SCACR, the South Carolina Supreme Court transferred the case to this court.

STANDARD OF REVIEW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C.Code Ann. § 17-27-70(b)-(c) (2003); Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). "When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000)). Likewise, this court must view the facts in the same fashion when reviewing the appropriateness of a dismissal. Leamon, 363 S.C. at 434, 611 S.E.2d at 494.

LAW/ANALYSIS

Pelzer requests his case be remanded for a full hearing arguing the statute of limitations should be equitably tolled because he filed his application in the wrong venue.

The statute of limitations for filing an application for PCR is one year. Section 17-27-45(A) of the South Carolina Code provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of 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.

520 "520 Mailing does not constitute filing. Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). "When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." Gary, 347 S.C. at 629, 557 S.E.2d at 663 (citing Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955)). "Under S.C.Code Ann. § 17-27-40 (1985), the application must be filed with clerk of the court in which the conviction took place." *Id.*

Pelzer's remittitur is dated August 31, 2001. One year after was August 31, 2002, and adding one day pursuant to Rule 6(a), SCRCP, Pelzer's last day to file his application was September 1, 2002. Because September 1 st was a Sunday and Monday, September 2nd, was Labor Day, the period runs until the end of the next day that is neither a Saturday, Sunday, nor a holiday. Rule 6(a), SCRCP. Thus, the period expired Tuesday, September 3, 2002.

Pelzer admits the application was not "technically" filed within one year. However, statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system. Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996) (citing C.S.J. *Limitations of Actions* § 2 (1989)).

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id.

521 Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations. Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr., 377 S.C. 217, 230, 659 S.E.2d 213, 219 (Ct.App.2008). "Equitable tolling is reserved for extraordinary circumstances." *Id.*; see, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990) (stating that while equitable tolling was allowed where claimant actively pursued remedies but filed defective pleading, or was induced by adversary into "521 allowing deadline to pass, "[w]e have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights."); Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989) (holding statute of limitations equitably tolled for workers' compensation claim during reliance period in which employer represented to

employee that claim compensable and would be taken care of without employee filing claim). The doctrine of equitable tolling can be summarized:

The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.

Equitable tolling has been deemed available where —

— extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.

— the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.

— the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.

51 Am.Jur.2d *Limitation of Actions* § 174 (2007); see also *Hooper*, 377 S.C. at 232, 659 S.E.2d at 221.

522 "522 Here, Pelzer has not alleged any wrongdoing by the State. Rather, Pelzer relies on our Supreme Court's decision in *Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001), to demand equitable tolling. We find this reliance misplaced. Pelzer states Gary held "that the statute of limitations should be equitably tolled when an application is simply filed in the wrong venue." In Gary, the applicant claimed he had mailed his PCR application within the one-year limitation period but to the wrong place. The period had run when the application came back. Our Supreme Court did not address his equitable tolling argument finding it was not preserved. A footnote specifically clarified, "[w]e express no opinion on the validity of this defense to the statute of limitations." *Id.* at 629, 557 S.E.2d at 663, n. 2.

At the dismissal hearing, Pelzer's counsel contended Pelzer's misunderstanding of where to file was "understandable given his status as a layman and his lack of knowledge of the law." We disagree that his error resulted from any lack of legal skill rather than simple neglect. Pelzer's PCR application, which was filled out by hand and signed, clearly instructs: "When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted." Three lines below this directive, the applicant is asked to name the location of the court which imposed his sentence. Pelzer answered "Richland County." Under these facts, the narrow window by which Pelzer's application missed the statute of limitations cannot be construed as so exceptional a circumstance as to warrant equitable tolling. The reasoning of the Court of Appeals for the Fourth Circuit in denying equitable tolling to a party is particularly illuminating:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce *523 the limitation period against the party and gross injustice would result.

523

Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling).

For the foregoing reasons, we affirm the circuit court's grant of summary dismissal of Pelzer's PCR application.

AFFIRMED.

HUFF, J., and CURETON, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Attachment 4

275 S.C. 615 (1981)

274 S.E.2d 415

Myron FOXWORTH and Gary W. Wilson, Appellants,

v.

STATE of South Carolina et al., Respondents.

21376

Supreme Court of South Carolina.

January 15, 1981.

616 *616 Robert L. Hallman, Columbia, for appellants.

Atty. Gen. Daniel R. McLeod and Asst. Atty. Gen. William K. Moore, Columbia, for respondents.

January 15, 1981.

HARWELL, Justice:

Myron Foxworth and Gary W. Wilson appeal the decision of the trial judge which denied their application for post-conviction relief. We affirm.

The appellants were convicted of armed robbery and sentenced to twenty-two years imprisonment. Following the convictions, they filed appeals with this Court but their convictions were affirmed and their appeals dismissed. *State v. Foxworth*, Memorandum Opinion 77-123, filed December 6, 1977. The appellants then elected to file *pro se* petitions for *habeas corpus* relief in the South Carolina Federal District Court. The District Court in its discretion did not require of the appellants a prior exhaustion of available State remedies. See, 28 U.S.C. § 2254(b). The trial record and the numerous allegations raised in the petitions were considered by the District Court and dismissed on the merits. *Wilson v. Harvey*, C.A. No. 78-256 and *Foxworth v. Harvey*, C.A. No. 78-527, Order filed August 4, 1978.

617 Having failed to secure federal relief, the appellants then applied for post-conviction relief pursuant to the Uniform Post-Conviction Procedure Act, §§ 17-27-10 *et seq.*, Code of Laws of South Carolina (1976). The post-conviction hearing judge addressed each allegation on the merits and *617 found each to be without merit. Since the record before us contains ample evidence to support the findings of the lower court, we would affirm on this ground alone. *Ross v. State*, 250 S.C. 442, 158 S.E. (2d) 647 (1967); *Clark v. State*, 259 S.C. 378, 192 S.E. (2d) 209 (1972).

The court below also concluded, however, that the claims raised and those that could have been raised in the prior federal *habeas corpus* proceeding were barred under the doctrine of *res judicata*. We agree, applying the Uniform Act.

Section 17-27-90 of the Uniform Act provides as follows:

"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." [Emphasis added.]

This Court adopted rules pursuant to § 17-27-110 designed to effectuate the purposes of the Uniform Act. Of these, Rule 3 states in part: "... successive applications for relief are not to be entertained, and the burden shall be on the applicant to establish that any new ground could not have been raised by him in the previous application."

We have held that successive applications for post-conviction relief in the State courts, while not absolutely barred, are not looked favorably upon unless ample reason exists for a person under sentence to litigate again. Land v. State, S.C. 262 S.E. (2d) 735 (1980). "This is particularly true where this court has reviewed the action of the lower court by way of a direct appeal and found *618 the appeal to be without merit." Land v. State, supra, 262 S.E. (2d) 735 at 737.

The language of Section 17-27-90 is not restricted to State proceedings but rather refers to "any other proceeding" where relief might be sought prior to the submission of a subsequent application. We, therefore, extend the reasoning espoused in Land v. State, supra, to the situation where, as here, an application in the State court follows a federal *habeas corpus* adjudication. The burden is on the applicant to prove that the alleged grounds for relief could not have been raised in federal court. The appellants made no such showing here. The application was properly denied. See, Commonwealth v. Bennett, 472 Pa. 314, 372 A. (2d) 713 (1977); State v. Olquin, 78 N.M. 661, 437 P. (2d) 122 (1968).

Affirmed.

LEWIS, C.J., and LITTLEJOHN, NESS and GREGORY, JJ., concur.

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The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, SC 29171

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SC SUPREME COURT

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SC SUPREME COURT

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
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Columbia, SC 29211

