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STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
)
)
 Tony Moore, Jr., #188313,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2014-CP-44-0502

CONDITIONAL ORDER OF DISMISSAL

FILED FOR RECORD
 APR 21 PM 5:59
 WILLIAM F. GAULT
 CLERK OF COURT
 UNION, SC

This matter comes before this Court by way of an application for post-conviction relief filed December 30, 2014. The State made its Return and Motion to Dismiss on

March 30, 2015.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Union County. The Applicant was indicted at the January 16, 1995, term of the Union County Grand Jury for Murder (1995-GS-44-0035). Thomas H. White, IV, Esquire, represented him. On March 23, 1995, the Applicant underwent trial by jury pursuant to which he was found guilty of the indicted offense. The Honorable Costa M. Pleicones sentenced him to confinement for a period of life.

A timely Notice of Appeal was filed and an Appeal was perfected. Joseph L. Savitz, III, Esquire, represented him. On November 17, 1995, the Supreme Court of South Carolina suspended the Petitioner's direct appeal so that the Petitioner could move for a new trial before the Circuit Court. On February 9, 1996, a hearing was held on the motion for a new trial before Judge

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Pleicones. Lesley M. Coggiola, Esquire, represented the Petitioner. At the conclusion of the hearing, Judge Pleicones denied the motion for a new trial, filing a written order on March 28, 1996. The Petitioner subsequently continued with his appeal and the Supreme Court affirmed the Petitioner's conviction and sentence. State v. Moore, 97-MO-107 (filed October 29, 1997). The Remittitur was sent on November 19, 1997.

1997-CP-44-0287

The Applicant subsequently filed an application for PCR on November 14, 1997. On June 2, 1999, the Petitioner filed an amendment to his PCR application. The Respondent filed its Return on or about February 4, 1998. On June 2, 1999, a hearing was held before the Honorable Dean Hall, at which the Applicant was present and was represented by B. Allen Bullard, Esquire. By Order dated February 21, 2000, Judge Hall denied and dismissed the Applicant's application.

A timely Notice of Appeal was filed on the Applicant's behalf and the South Carolina Office of Appellate Defense submitted a Petition for Writ of Certiorari. On December 15, 2000, the Petitioner filed a Petition for Writ of Habeas Corpus, raising issues related to ineffective assistance of counsel. On March 27, 2001, the Respondent filed a cross-petition for writ of certiorari, raising a separate issue relating to ineffective assistance of counsel. On August 23, 2001, the Supreme Court denied the Petitioner's petition and the Respondent's cross-petition.

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The Applicant subsequently filed a Petition for Writ of Habeas Corpus in United States District Court in the District of South Carolina on June 18, 2002. The Respondent filed a Return and Motion for Summary Judgment on November 4, 2002. The Petitioner filed a written opposition to

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the Respondent's motion on or about November 25, 2002. The United States Magistrate Judge issued a Report recommending that the State's Motion for Summary Judgment be granted. After reviewing the Report and Recommendation filed by Magistrate Judge Catoe, the Honorable Terry L. Wooten accepted the Report, overruled the Petitioner's objections, and granted the Respondent's motion for summary judgment by written Order filed August 25, 2003.

Applicant appealed to the U.S. Fourth Circuit Court of Appeals. He filed an Informal Brief on October 3, 2003, and a Preliminary Informal Brief Enhancement [sic] on October 10, 2003. The U.S. Court of Appeals denied the Certificate of Appealability on March 3, 2004 while also denying the Applicant's Motion for a Hearing *en banc*.

2004-CP-44-0251

The Applicant subsequently filed a document captioned "Petition for Writ of Habeas Corpus" with the Circuit Court on August 9, 2004. The Respondent filed its Return and Motion to Dismiss on August 10, 2005. By Order dated August 16, 2005, the Honorable John C. Hayes, III, denied and dismissed the Applicant's application.

2005-CP-44-0267

Applicant filed another PCR application on November 2, 2005 (2005-CP-44-0267). The Respondent filed its Return and Motion to Dismiss on March 22, 2006. A Conditional Order of Dismissal was filed on March 29, 2006. The Applicant filed a Response on or about April 3, 2006. The Honorable Lee S. Alford filed a Final Order on May 9, 2006, dismissing the application. The Applicant did not appeal the dismissal of this application.

2007-CP-44-0320

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Applicant filed another PCR application on October 5, 2007 (2007-CP-44-0320) and amended on or about December 19, 2007, and January 3, 2008. The Respondent filed its Return and Motion to Dismiss on April 25, 2008. In his application, the Applicant alleged ineffective assistance of counsel and subject matter jurisdiction. A hearing was held on August 12, 2008 before the Honorable James R. Barber, III. At that time, the Applicant also raised an after-discovered evidence issue. On September 9, 2008, Judge Barber dismissed allegation and allowed the Applicant to come before the Circuit Court for a hearing on the after-discovered evidence issue. Respondent filed a Motion to Dismiss Future Filings on December 8, 2009. On December 18, 2008, a hearing was conducted before the Honorable J. Michelle Childs. Judge Childs dismissed Applicant's claim of after-discovered evidence and granted the State's Motion to Restrict Future Filings on September 15, 2009.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court denied Applicant's appeal on July 3, 2013. The Remittitur was issued on July 29, 2013.

In his current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "The circuit court which convicted and sentenced Moore lacked subject matter jurisdiction for failure to insure compliance with S.C. Code §17-19-40. Because this mandatory statute was not followed, Applicant's conviction is invalid and should be vacated by the Court."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C.

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Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court also 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 March 23, 1995. The Remittitur after the Applicant's unsuccessful appeal was issued on November 19, 1997. Therefore, the Applicant was required to file his application by November 20, 1998. This Application was filed on December 30, 2014, which was over seventeen (17) years 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) (2003) 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."

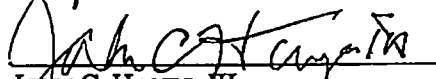
An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the

circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

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 with the Union County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 2nd day of April, 2015.


JOHN C. HAYES, III
Chief Administrative Judge #7
Sixteenth Judicial Circuit

York, South Carolina