

97-MO-012 (S.C. Sup. Ct. filed February 11, 1997).

1997-CP-39-0820

Petitioner filed a post-conviction relief (PCR) application on October 30, 1997 (1997-CP-39-0820). Petitioner raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Petitioner's constitutional rights were violated.

Petitioner was represented by Scott D. Robinson, Esquire. An evidentiary hearing was convened on October 5, 1998 at the Pickens County Courthouse. The Honorable Larry R. Patterson denied and dismissed the PCR application by order dated February 17, 1999. Petitioner did not file an appeal.

1999-CP-39-0406

Petitioner filed a PCR application on May 25, 1999 (1999-CP-39-0406). Petitioner raised the following issues in his PCR application:

1. Ineffective assistance of PCR counsel – counsel failed to file an appeal.

Petitioner was represented by John W. DeJong, Esquire. An evidentiary hearing was convened on August 28, 2000 at the Pickens County Courthouse. By order dated August 29, 2000, the Honorable John W. Kittredge granted Petitioner a belated appeal from the denial of his first PCR application. Upon information and belief, the subsequent Petition for Writ of Certiorari was denied by the South Carolina Supreme Court.

2002-CP-39-1217

Petitioner filed a PCR application on August 6, 2002 (2002-CP-39-1217). Petitioner raised the following issue:

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1. Denial of due process of law, in violation of the Federal Constitution's Fourteenth Amendment in that the State knowingly presented false testimony through its key witness, James Fletcher Simpson.

Petitioner was represented by Cherce Gillespie, Esquire. An evidentiary hearing was convened on July 28, 2003 at the Pickens County Courthouse. The Honorable John C. Few denied and dismissed the PCR application by order dated August 19, 2003 and filed September 9, 2003.

Petitioner filed a notice of appeal. Wanda P. Hagler, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson¹ petition for writ of certiorari. The South Carolina Court of Appeals denied the petition for writ of certiorari on September 27, 2006. Petitioner filed a pro se petition for writ of certiorari at the South Carolina Supreme Court, which was denied by order dated April 20, 2007.

2005-CP-39-1735

Petitioner filed a petition for writ of habeas corpus on November 28, 2005 (2005-CP-39-1735). Respondent submitted a return and motion to dismiss. The Honorable G. Edward Welmaker, acting as Chief Administrative Judge, issued a conditional order of dismissal dated March 21, 2006 and filed April 4, 2006. Petitioner did not file a response to that order. Judge Welmaker issued a final order of dismissal dated May 31, 2006 and filed June 6, 2006.

Petitioner filed a notice of appeal. The South Carolina Supreme Court dismissed the appeal by order dated July 6, 2006.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).



Federal Habeas Corpus

Petitioner filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (8:07-1533-JFA-BHH). Respondent submitted a motion for summary judgment on November 26, 2007. The Honorable Bruce H. Hendricks, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated June 2, 2008. On September 2, 2008, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 25, 2009, the Court of Appeals denied a certificate of appealability and dismissed the appeal. Though Petitioner filed a petition for writ of certiorari at the United States Supreme Court, that petition was denied on October 18, 2010.

Federal Habeas Corpus

On May 25, 2011, Petitioner filed a motion – under 28 U.S.C. § 2244 – for an order authorizing the United States District Court of South Carolina to consider a successive habeas corpus application under 28 U.S.C. §§ 2254 or 2255. By order filed June 27, 2011, the United States Court of Appeals for the Fourth Circuit denied the motion.

2011-CP-39-1892

Petitioner filed a PCR application on December 22, 2011 (2011-CP-39-1892). Petitioner raised the following issues:

1. “The Applicant suffered a gross miscarriage of justice when he was convicted upon a standard of guilt below that required by 14th Amend.”
2. “Aftered-discovered evidence of knowing use of perjured testimony by the

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State.”

3. “The court lacked jurisdiction (power) to try and convict Petitioner.”

Respondent submitted a return and motion to dismiss. The Honorable G. Edward Welmaker, acting as Chief Administrative Judge, issued a conditional order of dismissal dated July 19, 2012 and filed July 20, 2012. Petitioner filed a response to that order; however, Judge Welmaker issued a final order of dismissal dated and filed September 26, 2012.

Petitioner filed a notice of appeal. The South Carolina Supreme Court required Petitioner – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated November 5, 2012, the Supreme Court found Petitioner failed to meet his burden in this regard.

2013-CP-39-0128

Petitioner filed a “Petition for Issuance of a Writ of Mandamus” on February 5, 2013 (2013-CP-39-0128). Petitioner raised the following issues:

1. “[He] was denied the right to a fair trial by the State’s knowing use of perjured testimony to convict him.”
2. “The trial court lacked subject matter jurisdiction to convict and sentence him.”
3. “[He] suffered a miscarriage of justice when he was convicted upon a standard of guilt below that required by the Fourteenth Amendment Due Process clause.”²

Respondent submitted a return and motion to dismiss. The Honorable Robin B. Stilwell, acting as Chief Administrative Judge, issued an order of dismissal dated February 13, 2015 and filed February 23, 2015. On March 10, 2015, Petitioner filed a response to that order; requesting Judge Stilwell recuse himself and vacate his order of dismissal. Judge Stilwell denied

² The Court notes Petitioner has raised these issues in prior PCR applications.

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Petitioner's motion by Order dated November 2, 2015 and filed November 10, 2015. Petitioner attempted to appeal the Order to the Supreme Court of South Carolina, but the appeal was dismissed by order dated November 19, 2015. The remittitur was issued on December 7, 2015.

Federal Habeas Corpus

On July 29, 2015, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (2:15-3604-JFA-MGB). The Honorable Mary Gordon Baker, United States Magistrate Judge, issued a report and recommendation to summarily dismiss the petition without prejudice to allow Petitioner the right to seek authorization from the Fourth Circuit Court of Appeals to file a successive petition dated October 14, 2015. On February 11, 2016, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order dismissing the petition without prejudice.

II.

In the current "Petition for Issuance of a Writ of Mandamus," Petitioner argues, indistinguishably from Petitioner's previous petition for a writ of mandamus and PCR applications:

1. "[H]e was denied the right to a fair trial by the State's knowing use of perjured testimony to convict him."
2. "The trial court lacked subject-matter jurisdiction to convict and sentence" him.
3. "[He] suffered a miscarriage of justice when he was convicted upon a standard of guilt below that required by the Fourteenth Amendment Due Process clause."

Petitioner requests "the Honorable Court should grant relief to correct [his] unjust convictions."

III.

Upon review of the documents filed and the argument from the parties in this matter, this

Court finds the "Petition for Issuance of a Writ of Mandamus" must be denied because Petitioner failed to name a responsible party with the power and authority to "grant relief to correct [his] unjust convictions."

IV.

This Court further finds the "Petition for Issuance of a Writ of Mandamus" must be denied because Petitioner failed to state a cause of action against the Office of the Attorney General. "The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law." Porter v. Jedziniak, 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999). A petitioner seeking a writ of mandamus to require the performance of an act "must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy." Id. at 18, 512 S.E.2d at 498; see also Sanford v. South Carolina Ethics Comm'n, 385 S.C. 483, 685 S.E.2d 600 (2009). "A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion." Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009).

This Court finds the act demanded in this case is not ministerial, the Office of the Attorney General has no duty to perform the act demanded, and Petitioner has no specific legal right to "relief to correct [his] unjust convictions." This Court also finds Petitioner has another adequate remedy (such as a PCR application or a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court). This Court concludes the matter must be dismissed.

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This Court further finds that the doctrine of *res judicata* bars the Petitioner'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.

Petitioner had his opportunity to litigate all allegations made in his current petition in his previous petition for a writ of mandamus. That previous petition (2013-CP-39-0128), being identical to the current petition, was denied and dismissed by Order signed by the Honorable Robin B. Stilwell on February 13, 2015. The issues have been ruled upon, yet Petitioner continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court summarily dismisses these claims as barred by *res judicata*.

IT IS THEREFORE ORDERED that the "Petition for Issuance of a Writ of Mandamus" must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 23rd day of November, 2016.


PERRY H. GRAVELY
Chief Administrative Judge
Thirteenth Judicial Circuit

Pickens, South Carolina

