

PROOF OF SERVICE OF A **RECEIVED**  
NOTICE OF APPEAL

MAR 31 2017

CASE No. 2016-CP-40-01686

S.C. SUPREME COURT

STATE of South Carolina, ..... Respondent,  
DWAYNE Frederick, ..... Appellant,

PROOF OF SERVICE

I Certify that I have served the notice of  
Appeal on: THE SUPREME COURT of  
South Carolina  
DANIEL E. SHENKOWITZ, CLERK / Office of Attorney  
P.O. Box 11330 / General  
Columbia, S.C. 29211 / P.O. Box 11549  
Columbia, S.C. 29211-1549.  
By depositing a copy of it in the UNITED STATES  
mail, postage prepaid on: 3.29.2017

DATE: 3.29.2017

DWAYNE Frederick  
#888077 / 1/2 B#148  
EVANS INST.  
610 HWY 9 WEST  
BENNETTVILLE, S.C. 29512

THE STATE of South Carolina  
in the Court of Appeals  
[ IN THE SUPREME COURT ]

RECEIVED

MAR 31 2017

S.C. SUPREME COURT

Appeal From: Columbia, South Carolina  
Hon. DeANDREA G. Benjamin, Circuit Court  
Judge

CASE No. 2016-CP-40-01686

STATE of South Carolina, .... Respondent,  
DWAYNE Frederick, .... Appellant,

NOTICE OF APPEAL

DWAYNE Frederick, appeals the ORDER [Judgement]  
of the Honorable DeANDREA G. Benjamin, dated  
MARCH 1st, 2017; RECEIVED MARCH 17, 2017. Reference to  
Final order of Dismissal; Post-Conviction Relief  
CASE No. 2016-CP-40-01686.

DATE: 3-29-2017

s/ DWAYNE Frederick  
#288077 / #2 B#148  
EVANS INV.  
610 HWY 9 WEST  
BENNETTSVILLE, S.C. 29512

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Dwayne Frederick, #288077,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-40-01686

**FINAL ORDER OF DISMISSAL**

SHARPLESS COUNTY  
FILED  
2017 MAR -3 AM 9:28  
JEANETTE B. GIBSON  
C.C.P. & C.V. CLERK

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 16, 2016. Respondent made its Return on or about September 14, 2016, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, and is barred by the doctrine of *res judicata*.

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 September 14, 2016 and filed September 20, 2016, 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 October 13, 2016, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Ref: Response to Conditional Order; Motion Requesting Grant of Review," on October 19, 2016, in which Applicant argues due process prohibits the conviction because Applicant was mentally incompetent at the time of his plea and

lack of subject matter jurisdiction because the grand jury was not in session when Applicant was indicted.

This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant still fails to present any reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

This Court interprets Applicant's allegation that the Grand Jury did not meet during the time his indictment was true-billed as an allegation that the circuit court lacked subject matter jurisdiction due to the Grand Jury allegedly not meeting. Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court's obviously have subject matter jurisdiction to try criminal matters. Therefore, 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.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismiss this allegation with prejudice.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 1 day of March, 2017.



DEANDREA G. BENJAMIN  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4001686

Dwayne #288077 Frederick

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Non-suit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Mar, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Dwayne #288077 Frederick

Jessica Elizabeth Kinard

Dwayne #288077 Frederick

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4001686

Dwayne #288077 Frederick

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. No. Suit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award.  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

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IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

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**INFORMATION FOR THE JUDGMENT INDEX**

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		\$
		\$
		\$

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Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Dwayne #288077 Frederick

James Clayton Mitchell III

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeannette W. McBride

RICHLAND COUNTY  
FILED  
2016 SEP 20 PM 4:41  
JANE E. HARRIS, CLERK  
C.C.P. & S.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FIFTH JUDICIAL CIRCUIT  
 COUNTY OF RICHLAND )  
 ) 2016-CP-40-1686  
 Dwayne Frederick, )  
 S.C.D.C. No. 288077 )  
 )  
 ) **CONDITIONAL ORDER OF DISMISSAL**  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 Defendant. )

RICHLAND COUNTY  
 FILED  
 2016 SEP 20 PM 4:40  
 JEANETTE W. MORRIS  
 C.C.P. & G.S.

This matter comes before the court by way of an application for post-conviction relief filed by Dwayne Frederick (Applicant) on March 16, 2016 ("the Application"). Respondent made its Return, requesting the Application be summarily dismissed.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. On November 25, 2003, the Columbia Police Department sought and obtained an arrest warrant against Applicant for the crimes of Burglary, First Degree (H-552247) and Criminal Sexual Conduct, First Degree (H-552248). Applicant was thereafter indicted by the Richland County Grand Jury during the January 2005 term for Criminal Sexual Conduct, First Degree (2005-GS-40-1722) and during the February 2005 term for Burglary, First Degree (2005-GS-40-1721). LaNelle C. DuRant, Esquire represented Applicant on the charges. On June 2, 2005, Applicant entered a plea of guilty to the crimes as indicted, without negotiation or recommendation. The Honorable L. Casey Manning sentenced Applicant to concurrent terms of twenty-three (23) years on each charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Aileen P. Clare, Esquire filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South

Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Frederick, Op. No. 07-UP-285 (S.C. Ct. App. Order dated June 1, 2007). The Remittitur issued on June 26, 2007.

**2012-CP-40-2903**

Applicant filed his first Application for Post-Conviction Relief on April 23, 2012 (2012-CP-40-2903), alleging:

1. "Newly Discovered Evidence"
  - a. "Evidence newly learned after Court Sentence and Mental treatment."
2. "Violation Sixth Amendment Ineffective assistance of Counsel"
  - a. "Counsel failed to Request Mental Evaluation prior to being informed of Mental History"
  - b. "Counsel gave poor advice by failing to inform client of the lack of evidence to Support the Burglary 1<sup>st</sup> after appellant did state to Counsel He did not break into allege Victims Residence. Counsel advised client that Wasn't much she could do with clients DNA Being Connected to the CSC 1<sup>st</sup> charge and that if Appellant pleas she will fight for Appellant a lesser Concurrent Sentence."
3. "Violation Fourteenth Amendment claimed Due process"
  - a. "Due to Counsel failure to request Mental Evaluation, opportunity or Recommendation for appellant to be Committed to Mental asylum or Evaluation for test of Insanity was forfeited, Violation of appellants 14<sup>th</sup> and 6<sup>th</sup> Constitutional Rights Resulted in Appellant's Sentencing of a Concurrent 23 year Sentence."

[sic] Respondent made its Return and Motion to Dismiss on April 27, 2012, arguing the application was barred by the statute of limitations and that the claim of newly discovered evidence was without merit. The matter was thereafter dismissed by the Honorable James R. Barber, III by Order dated July 31, 2012. Applicant did not appeal.

**2012-CP-40-6909**

Applicant filed his second PCR on October 12, 2012 (2012-CP-40-6909), alleging:

1. "Ineffective assistance of counsel"
2. "Violation of 6<sup>th</sup> amendment – Ineffective assistant of counsel"

3. "Violation of 14<sup>th</sup> amendment – due process of law."

[sic] Applicant further supported the above allegations with one handwritten page attached to the Application. Respondent made its Return and Motion to Dismiss on or about November 6, 2012, arguing the application was successive and barred by the statute of limitations. The matter was thereafter dismissed by the Honorable James R. Barber, III by order dated November 13, 2012.

Applicant filed a notice of appeal on March 27, 2013. On July 8, 2013, the South Carolina Supreme Court dismissed Applicant's appeal for want of timely notice of appeal. The Remittitur was returned on July 24, 2013.

***2013-CP-40-5769***

Applicant filed his third PCR on September 24, 2013 (2013-CP-40-5769), alleging:

1. "Ineffective assistance of appellate counsel,"
2. "Ineffective assistance of sentencing counsel,"
3. "Illegal criminal sexual conduct – 1<sup>st</sup> indictment,"
4. "Unfulfilled indictment – Burglary 1<sup>st</sup>,"
5. "Insufficient burglary 1<sup>st</sup> evidence,"
6. "Indefinite identity of suspect(s),"
7. "Challenge of victims credibility and reputation,"
8. "DNA evidence sufficient only to raise suspicion,"
9. "Unfulfilled arrest warrant(s),"
10. "Indefinite/inconsistent statements of sexual assault," and
11. "Unclear time frame of incident."

[sic] Respondent made its Return and Motion to Dismiss, arguing the application was successive and barred by the statute of limitations. The matter was thereafter dismissed by the Honorable Alison Renee Lee by Order dated October 28, 2015.

Applicant filed a timely notice of appeal. On February 11, 2016, the South Carolina Supreme Court dismissed Applicant's appeal for want of an arguable basis for asserting that the determination by the lower court was improper. Remittitur was returned on February 29, 2016.

## II. CURRENT APPLICATION

In his fourth and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Newly Discovered Evidence"
  - a. "State lacked subject matter/personal jurisdiction to hear Criminal Sexual Conduct 1<sup>st</sup> charge in Indictment."
2. "Insufficient DNA evidence; sufficient only to raise mere suspicion."
3. "Indefinite/Inconsistent sexual assault accounts."
4. "Indefinite Identity of Suspect(s)"
5. "Victims Credibility and Reputations questionable."
6. "Unclear Time Frame of Incident"
7. "Insufficient Burglary 1<sup>st</sup> Evidence."
8. "Ineffective Assistance of Sentencing Counsel"
9. "Ineffective assistance of appellate counsel."

[sic] Applicant further supports his allegations with six pages of handwritten materials attached to his application. Applicant requests relief as follows:

- "Relief and Vacation of Conviction pertaining to this Case of Criminal Sexual Conduct 1<sup>st</sup> and Burglary 1<sup>st</sup>."

Respondent incorporates the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR action(s), and the records of this current PCR action.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### *After-Discovered Evidence – Indictment / Subject-Matter Jurisdiction Confusion*

The Court finds Application must be summarily dismissed because Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. The Uniform Post-Conviction Procedure Act permits an applicant to bring action where "there exists evidence of material facts, not previously presented and heard, that requires vacation of the

conviction or sentence in the interest of justice[.]” S.C. Code ann. § 17-27-20(4). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

(1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the ‘interest of justice’ requires the applicant’s guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014). Evidence is “[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact[.]” Evidence, Black’s Law Dictionary (10th ed. 2014).

Applicant’s allegation that the Court lacked subject-matter jurisdiction does not fall within the parameters of after-discovered evidence and is in any event without merit. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry at 101, 610 S.E.2d at 499. “[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue.” Id. Thus, Applicant’s arguments that alleged deficiencies in the indictment deprive the Court of subject-matter jurisdiction are without merit. Furthermore, the indictment charged the crime substantially in the language of the statute prohibiting the crime, in satisfaction of S.C. Code Ann. § 17-19-20, and was thus sufficient. For these reasons, Applicant’s subject-matter and indictment allegations, and every part of the Application based thereupon, shall be dismissed pursuant to Rule 12(b)(6), SCRCP.

### *Statute of Limitations*

The Court finds the Application must 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. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

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). 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.”

The Applicant pled guilty on June 2, 2005 and the remittitur from direct appeals issued on June 26, 2007. For reasons discussed above, the alternative statute of limitations provided for valid allegations of after-discovered evidence does not apply. The current application was not filed until March 16, 2016— well after the one-year statutory filing period expired. Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

### *Laches*

The Court finds the Application must also be barred under the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief.

McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). 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.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, Laches is an equitable doctrine defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief nearly eleven (11) years after his conviction. 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 review the applicant’s claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g.*, Bray at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the Application shall be summarily dismissed as barred by the doctrine of laches.

### *Successive*

The Court finds the Application must be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 indicate 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." Id. 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. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any

sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Thus, the Court shall summarily dismiss the Application as successive to Applicant's previous PCR application.

***Res Judicata***

The Court finds the Application is similarly barred by the doctrine of *res judicata*. *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.; *see also* Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's allegations are indistinguishable from those he raised in his previous application for post-conviction relief. The finality of the previous Court rulings should be respected.

Therefore, the Application shall be summarily dismissed as barred by the doctrine of *res judicata*.

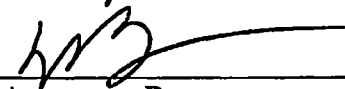
**CONCLUSION**

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 twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Johnny E. James, Jr., Esquire  
Post-Conviction Relief Division  
P.O. Box 11549  
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 14 day of sept, 2016.

  
DEANDREA G. BENJAMIN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina



DWAYNE FREDERICK #288077  
EVANS INST. 72-B #148  
610 HWY 9 WEST  
BENNETTSVILLE, G.C. 29512



THE SUPREME COURT OF  
SOUTH CAROLINA  
DANIEL E. STEARNS, CLERK  
P.O. Box 11330  
COLUMBIA, SC 29211

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