

RECEIVED

MAY 24 2017

S.C. SUPREME COURT

MAY 22, 2017

CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA

Re: Stoudemire, Hazel V. THE STATE

Dear Clerk

Enclosed please find the Notice of
Appeal pursuant to Rule 203, SCACR, Rule
71.1(g) SCRCP.

Hazel Stoudemire
Hazel Stoudemire, 220501

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
J. MARK HAYES, II
Seventh Judicial Circuit

CASE No. 2014-CP-42-3700

Hazel Stoudemire

Appellant

THE STATE OF SOUTH CAROLINA

Respondent

NOTICE OF APPEAL

Hazel Stoudemire Appeals the Final order of dismissal of the Honorable J. MARK HAYES, II, dated December 29, 2016. This Applicant reserve all claims alleged in the above mention case. MAY 1, 2017 this matter became final.

Hazel Stoudemire
Hazel Stoudemire, Jr.
pro se

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Hazel Stoudemire, Jr., #220501,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-3700

**ORDER DENYING APPLICANT'S
RULE 59(E) MOTION**

2017 MAY -1 PM 4:30
M. HAYES
CLERK

This matter comes before the Court by way of Applicant's *pro se* document captioned, "Rule 59(E) in judgment in favor of applicant." The Respondent made its Return to this Motion requesting it be dismissed.

The Final Order of Dismissal in this matter was signed by this Court on December 29, 2015. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal, which was signed and then filed December 30, 2016, shall stand as it was written.

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

J. Mark Hayes, II
Seventh Judicial Circuit

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Hazel Stoudemire, Jr., #220501,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-3700

**ORDER DENYING APPLICANT'S
RULE 60(b), SCRPC, MOTION**

2017 FEB 16 AM 11:14
RECEIVED
CLERK OF COURT

This matter comes before the Court by way of Applicant's *pro se* Motion captioned "60(b)(3)(4)(5)." Respondent made its Return, requesting the Motion be denied and dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the April 1999 term of the Spartanburg County Grand Jury for murder (1999-GS-42-2188). Applicant was represented by Michael Bartosh, Esquire. Applicant was tried before the Honorable Lee S. Alford and a jury on April 11-13, 2000. The jury found him guilty as indicted. Judge Alford sentenced him to confinement for life.

Applicant filed a timely notice of intent to appeal, and an appeal was perfected. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Stoudemire, Op. No. 2002-UP-020 (S.C. Ct. App. filed January 15, 2002). The Remittitur was issued on January 31, 2002.

2002-CP-42-972

Applicant filed his first PCR application on March 13, 2002, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

A hearing into the matter was convened on November 10, 2003. Applicant was present at the hearing and was represented by James K. Robinson, Esquire. The Honorable J. Derham Cole issued a written Order dated January 5, 2004, denying the application with prejudice.

On April 16, 2004, Applicant filed a pro se motion seeking to alter or amend the judgment pursuant to Rule 59(e), SCRPC. By Order dated November 2, 2004, Judge Cole denied and dismissed the motion as being untimely and improperly filed.¹ Applicant did not appeal.

2004-CP-42-2124

Applicant filed his second PCR application on June 23, 2004, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Prosecutorial misconduct;
3. Conflict of interest;
4. Subject matter jurisdiction; and
5. Ineffective assistance of PCR counsel (for failure to file a PCR appeal)

Respondent made its Return on September 29, 2004. A hearing was held at the Spartanburg County Courthouse on October 24, 2005. Petitioner was present at the hearing and was represented by N. Douglas Brannon, Esquire. By written Order dated January 4, 2006, the Honorable Roger L. Couch denied the application because it was procedurally barred as successive and filed outside the statute of limitations. However, Judge Couch granted Petitioner a review of the denial of his first application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

A timely Notice of Appeal was filed. Wanda H. Carter, Esquire, submitted a petition for writ of certiorari and a petition for writ of certiorari pursuant to Austin v. State on Applicant's

¹ Specifically, the Court found that the document was improperly filed because it was filed as a *pro se* document while Applicant was still represented by counsel.

behalf. Applicant subsequently moved to have appellate counsel relieved, and to proceed *pro se* on his Austin appeal. In an Order dated August 25, 2006, the South Carolina Supreme granted Applicant's motion to proceed *pro se*, but denied Applicant's motion to strike the petitions filed by counsel and to be allowed to file a *pro se* petition. Applicant subsequently filed a petition for reconsideration and submitted a *pro se* petition for writ of certiorari and petition for writ of certiorari pursuant to Austin v. State. Respondent filed a return. By Order dated August 23, 2007, the South Carolina Supreme Court granted the petition for writ of certiorari from Judge Couch's 2006 order, reviewed Judge Cole's 2004 order pursuant to Austin v. State, and denied the petition for writ of certiorari from Judge Cole's 2004 order. The Remittitur was issued September 19, 2007.

RECEIVED
MAY 15 2014
AM 11:14

Current Application

In his third PCR application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Improper procedure of Austin v. State 2004-CP-42-2124"
2. "In the Austin hearing, Applicant was denied a full adjudication on the merits of the original petition."

On October 3, 2014, Applicant filed a document titled "Amend Memorandum" alleging the following additional grounds for relief:

1. Ineffective Assistance of Appellate Counsel
 - a. Counsel failed to argue the legal authorities of a significant and obvious issue on direct appeal, Rule 803(2) SCRE
2. "Unjust procedural irregularities prejudiced Applicant because it prevented him from seeking any review of the meritorious issue of ineffective assistance of appellate counsel that was raised in the original application."

On October 27, 2014, Applicant filed a document titled "Supplemental to Application," alleging the following additional grounds for relief:

1. "Whether Applicant had a constitutional right to an effective attorney in his first PCR proceeding involving the ineffectiveness on direct appeal."

Subsequently on January 12, 2015, Applicant filed a document captioned, "Rule 12(b)(6), 56 (c, e)," requesting summary judgment based on Respondent's failure to file a return within 90 days. On Jun 1, 2015, Applicant filed a document captioned, "Notice – Applicant assertion of inordinate delay in PCR process requiring federal habeas action," in which he complains of the delay in Respondent's filing a return and includes additional claims against direct appellate counsel.

Respondent submitted its Return and Motion to Dismiss on April 21, 2016. Applicant filed a document captioned, "Objection to Motion to Dismiss and Conditional Order of Dismissal" on May 6, 2016. Applicant was personally served with the signed Conditional Order of Dismissal (COD) on May 18, 2016. Applicant responded by filing a document captioned, "Reply to Conditional Order of Dismissal" on June 9, 2016, reasserting the same claims made in his prior filings and requesting post-conviction relief be granted. Applicant was provided with twenty days in which to reply and object to the signed COD, which was indisputably served on Applicant on May 18, 2016. This Court signed a Final Order of Dismissal which was filed on December 30, 2016. Thereafter, on January 25, 2017, Applicant filed a Rule 59(e), SCRCP, motion. Respondent filed its Return on April 27, 2017. Judge Hayes issued an order denying Applicant's Rule 59(e) motion on May 1, 2017.

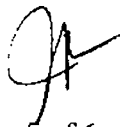
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant has failed to meet his burden of presenting evidence that proves the facts essential to entitle him to relief. The movant in a Rule 60(b), SCRCP, motion has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C., 65, 403 S.E.2d 127 (Ct. App. 1991).

Applicant alleges that he should be relieved from this judgment because of fraud committed by Respondent, inordinate delay caused by Respondent, and that each appellate counsel from his direct appeal through his PCR actions have all been ineffective. However, Applicant fails to offer any evidence providing facts essential to entitle him to relief. Id. Prior to this application, Applicant had a full evidentiary hearing on his first PCR application, in which he was represented by counsel. Applicant then received a full review, pursuant to Austin v. State, of the denial of his PCR application. This current application was untimely and successive to his prior PCR action.

In addition, Applicant cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All of Applicant's allegations against direct appellate counsel either have been or could have been addressed in his prior PCR action challenging his conviction. All arguments were raised to the PCR judge and ruled on in the order dismissing Applicant's PCR application. See Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). The doctrine of *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). Applicant's allegation of ineffective assistant of PCR and PCR appellate counsel are not cognizable claims under the PCR Act and do not excuse Applicant from the procedural bar of the statute of limitations and prohibition against successive applications.

This Court further finds that this Motion is denied because relief under Rule 60(b), SCRCP, also requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). Applicant offers no evidence of the existence of a meritorious defense, but simply attacks the post-conviction relief process.



CONCLUSION

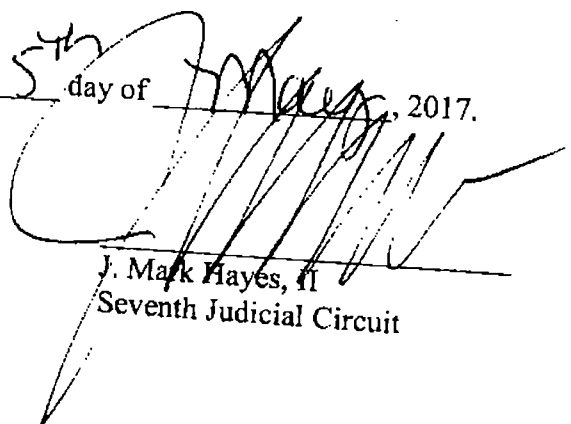
Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's Motion this Court is not persuaded to grant relief from the judgment.

This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order of Dismissal, which was filed on December 30, 2016, shall stand as it was written.

IT IS THEREFORE ORDERED that Applicant's motion pursuant to 60(b) is hereby **DENIED AND DISMISSED**.

The Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005). Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

AND IT IS SO ORDERED this 15th day of May, 2017.


J. Mark Hayes, II
Seventh Judicial Circuit

Spartanburg, South Carolina

FILED
2017 MAY 16 AM 14

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

Hazel Stoudemire, Jr.,)
S.C.D.C. No. 220501,)

Case No.: 2014-CP-42-3700

Applicant,)

CONDITIONAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY -3 PM 4:36
M. HOPE BLACKLEY

This matter comes before the Court by way of an application for PCR (PCR) filed by Hazel Stoudemire, Jr., ("Applicant") on September 22, 2014. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the April 1999 term of the Spartanburg County Grand Jury for murder (1999-GS-42-2188). Applicant was represented by Michael Bartosh, Esquire. Applicant was tried before the Honorable Lee S. Alford and a jury on April 11-13, 2000. The jury found him guilty as indicted. Judge Alford sentenced him to confinement for life.

Applicant filed a timely notice of intent to appeal, and an appeal was perfected. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Stoudemire, Op. No. 2002-UP-020 (S.C. Ct. App. filed January 15, 2002). The Remittitur was issued on January 31, 2002.



2002-CP-42-972

Applicant filed his first PCR application on March 13, 2002, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

A hearing into the matter was convened on November 10, 2003. Applicant was present at the hearing and was represented by James K. Robinson, Esquire. The Honorable J. Derham Cole issued a written Order dated January 5, 2004, denying the application with prejudice.

On April 16, 2004, Applicant filed a pro se motion seeking to alter or amend the judgment pursuant to Rule 59(e), SCRPC. By Order dated November 2, 2004, Judge Cole denied and dismissed the motion as being untimely and improperly filed.¹ Applicant did not appeal.

2004-CP-42-2124

Applicant filed his second PCR application on June 23, 2004, alleging he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Prosecutorial misconduct;
3. Conflict of interest;
4. Subject matter jurisdiction; and
5. Ineffective assistance of PCR counsel (for failure to file a PCR appeal)

Respondent made its Return on September 29, 2004. A hearing was held at the Spartanburg County Courthouse on October 24, 2005. Petitioner was present at the hearing and was represented by N. Douglas Brannon, Esquire. By written Order dated January 4, 2006, the Honorable Roger L. Couch denied the application because it was procedurally barred as successive and filed outside the statute of limitations. However, Judge Couch granted Petitioner

¹ Specifically, the Court found that the document was improperly filed because it was filed as a pro se document while Applicant was still represented by counsel.

QA

CLERK
SPARTANBURG COUNTY
2016 MAY -3 PM 4:38
M. HOPE BLACKBERRY

a belated review of the denial of his first application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

A timely Notice of Appeal was filed. Wanda H. Carter, Esquire, submitted a petition for writ of certiorari and a petition for writ of certiorari pursuant to Austin v. State on Applicant's behalf. Applicant subsequently moved to have appellate counsel relieved, and to proceed *pro se* on his Austin appeal. In an Order dated August 25, 2006, the South Carolina Supreme granted Applicant's motion to proceed *pro se*, but denied Applicant's motion to strike the petitions filed by counsel and to be allowed to file a *pro se* petition. Applicant subsequently filed a petition for reconsideration and submitted a *pro se* petition for writ of certiorari and petition for writ of certiorari pursuant to Austin v. State. Respondent filed a return. By Order dated August 23, 2007, the South Carolina Supreme Court granted the petition for writ of certiorari from Judge Couch's 2006 order, reviewed Judge Cole's 2004 order pursuant to Austin v. State, and denied the petition for writ of certiorari from Judge Cole's 2004 order. The Remittitur was issued September 19, 2007

Current Application

In his third and current PCR application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Improper procedure of Austin v. State 2004-CP-42-2124"
2. "In the Austin hearing, Applicant was denied a full adjudication of the merits of the original petition."

On October 3, 2014, Applicant filed a document titled "Amend Memorandum" alleging

the following additional grounds for relief:

1. Ineffective Assistance of Appellate Counsel
 - a. Counsel failed to argue the legal authorities of a significant and obvious issue on direct appeal, Rule 803(2) SCRE
2. "Unjust procedural irregularities prejudiced Applicant because it prevented him from seeking any review of the meritorious issue of



CLASSIFIED
SPARTANBURG
2016 MAY -3 PM 5:36
M. HOPE BLACKLEY

ineffective assistance of appellate counsel that was raised in the original application."

On October 27, 2014, Applicant filed a document titled "Supplemental to Application," alleging the following additional grounds for relief:

1. "Whether Applicant had a constitutional right to an effective attorney in his first PCR proceeding involving the ineffectiveness on direct appeal."

Subsequently on January 14, 2015, Applicant filed a document captioned "Rule 12(b)(6), 56 (c, e)." Respondent construed this as a motion for default judgment.

Before this Court are the Spartanburg County Clerk of Court records, Applicant's prior PCR records, Applicant's current PCR Application, and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current Application for PCR must be summarily dismissed because it is successive to the previous applications for PCR. S.C. Code Ann. § 17-27-90 (1985) 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.

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).



2016 MAY -3 PM 4:08
CLERK OF COURT
SPARTANBURG COUNTY
Spartanburg, South Carolina
M. H. ASKLEY

This Court finds that Applicant's allegations concerning ineffective assistance of appellate counsel could have been raised—and were in fact raised—in a prior PCR proceeding. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous PCR applications, and thus the current application is successive and barred under S.C. Code § 17-27-90. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991).

Statute of Limitations

The Court finds that this Application for PCR must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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 666 (1996). The Remittitur from Applicant's unsuccessful direct appeal was issued January 31, 2002. This application was filed on September 22, 2014, well after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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 the current application must be dismissed because it was filed outside of the statute of limitations.



SPRINGFIELD
CLERK OF COURT
36
MAY - 3 PM
NO HOPE BUCKLEY

V.

This Court also finds Applicant's current PCR application must be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a PCR action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack on any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

CLERK OF COURT
SPARTANBURGH, S.C.
2016 MAY -3 PM 4:36
M. HOPE
CLERK

S.C. Code Ann. § 17-27-20(a) (2003).

This Court finds Applicant has failed to set forth any allegations upon which relief may be granted under S.C. Code Ann. §17-27-10 to -160. Applicant alleges that the Austin review of his 2002 PCR action was improperly conducted and that he "was denied a full adjudication on the merits of the original petition." Applicant's claim is without merit because the PCR Court and the South Carolina Supreme Court handled Applicant's Austin claim properly. The proper procedure is as follows:

When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other

questions petitioner seeks to have reviewed from that order. At the same time this petition is served, petitioner shall serve and file an Austin petition addressing the questions from the previous post-conviction relief order. The Austin petition shall comply with the requirements of Rule 227(d). The Appendix shall contain the entire records from both post-conviction relief proceedings. Respondent's return to the petition shall address the questions from the latest post-conviction relief order, including whether the right to appellate review of the previous post-conviction relief order was knowingly and intelligently waived. At the same time this return is served, respondent shall serve and file an Austin return addressing the questions from the previous post-conviction relief order.

King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868-69 (1992).

In this case, the courts followed correct protocol when Judge Couch issued an order in Applicant's second PCR granting Applicant's request for an Austin Appeal, while denying all other PCR allegations. Applicant's counsel then filed a notice of appeal and Wanda Carter, Esquire, with the Office of Appellate Defense, filed a petition for writ of certiorari and a petition for writ of certiorari pursuant to Austin. Applicant subsequently moved to relieve counsel, proceed *pro se*, strike the petitions filed by counsel, and be allowed to file a *pro se* petition. The South Carolina Supreme Court granted Applicant's motion to relieve counsel and proceed *pro se*, but denied his motion to file his own petition and strike counsel's petition. Subsequently, Applicant filed a petition for reconsideration along with a *pro se* petition for writ of certiorari and petition for writ of certiorari pursuant to Austin v. State, which the court accepted. Applicant's reply to the state's return petition was barred and stricken as untimely filed. After review, the South Carolina Supreme Court issued an Order in which it (1) granted the petition for writ of certiorari to review Judge Couch's Order, dispensed with further briefing and reviewed Judge Cole's Order dismissing Applicant's first PCR; and (2) denied the petition for writ of certiorari from Judge Cole's Order. Accordingly, there were no procedural irregularities, and

² The filings were accepted notwithstanding Respondent's return in opposition to the petition for reconsideration.

Applicant was afforded a full review under Austin as outlined in King. Therefore, this Court dismisses Applicant's current application for failing to state a cognizable ground for relief.

Res Judicata

This Court finds that Applicant's allegations of ineffective assistance of appellate counsel as 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.

Applicant had a full opportunity to litigate all claims regarding ineffective assistance of appellate counsel in his prior PCR actions. The first PCR Court found that the claim was "wholly lacking in merit," warranting its dismissal. Applicant alleges that the Courts have "prevented him from seeking any review of the meritorious issue of ineffective assistance of appellate counsel." This Court finds that the allegation of ineffective assistance of appellate counsel has been raised, ruled upon, and dismissed in a final order of the court. The public interest in finality of judgments requires that litigation must eventually come to an end. Accordingly, this Court dismisses Applicant's current application as barred by *res judicata*.

Motion for Default Judgment

This Court finds that the Applicant has failed to establish that he is entitled to default judgment. Applicant asserts in the document captioned "Rule 12(b)(6), 56 (c)" that he is entitled to summary judgment in his PCR application due to Respondent's failure to timely respond to his PCR application. For an applicant to be granted default judgment in PCR he must show prejudice from the State's delay in failing to timely answer his Application. See Kneece v.

2016 MAY -3 PM 4:36
M. HOPE BLANKLEY
CLERK OF COURT
SPARTANBURG, SC



State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring v. State, 262 S.C. 597, 206 S.E.2d 885. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). Because Applicant failed to demonstrate that his application had merit or that he had suffered any prejudice as a result of any delay, this Court hereby dismisses Applicant's motion for default judgment.

Ineffective Assistance of PCR Counsel

In Applicant's filing captioned "Rule 12(b)(6), 56 (c,e)," he states, "Did Applicant have a constitutional right to attorney in his first PCR proceeding." The Court notes that Applicant was represented by PCR counsel in his first and second PCR actions. To the extent Applicant attempts to raise the issue that PCR counsel was ineffective, this Court finds such a claim must be summarily dismissed for failure to state a claim for which relief can be granted pursuant to Rule 12 (b)(6), SCRPC.

The courts in this State have not recognized a claim of ineffective assistance of collateral counsel. In Martinez v. Ryan, 132 S.Ct. 1309 (2012), the United States Supreme Court held that "[w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013) (quoting Martinez, 132 S.Ct. at 1320). Concerning state court, however, the Supreme Court of South Carolina has recognized that "the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction

DECLINED
SPARTANBURG COUNTY
2016 MAR -3 PM 36
M. HOPKINS
BLACKLEY



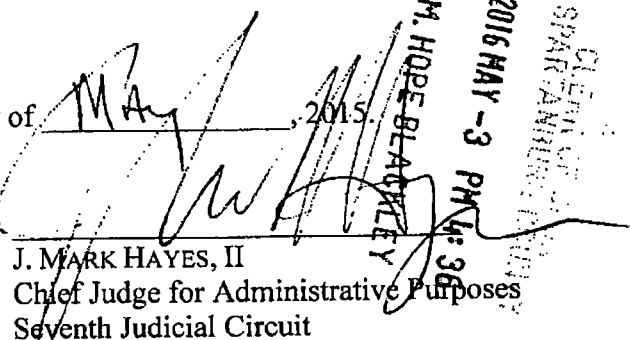
relief actions." Id. (emphasis added). Consequently, Applicant's contention that he received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application. See Id.; see also Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965) (finding that before a Court will hold an evidentiary hearing, the applicant must make a *prima facie* showing that he is entitled to relief). Accordingly, this Court finds this allegation must be summarily dismissed.

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

Office of the Attorney General
Alicia A. Olive, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 3rd day of May, 2015.


J. MARK HAYES, II
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY -3 PM 4:38
M. HOPE BLANKLEY

Spartanburg, South Carolina

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley

Clerk of Court

May 3, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Harrel Staudemire Jr.

Applicant

#2205701

CASE # *2014CP02-3700*

Stee

VS

Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the
In this action dated *5-3* *2016* on *5-3-16*

Conditional Order of Dismissal

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Orly Hawthorn
Harrel Staudemire Jr.

May 4, 2016
(Date)

Carrie D. Seay
(Signature)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
Hazel Stoudemire, Jr., #220501)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2014-CP-42-3700

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 22, 2014. The Respondent made its return on April 21, 2016, requesting the application be summarily dismissed based upon requesting the application be summarily dismissed based upon expiration of the statute of limitations, the presumption against successive PCR applications, the doctrine of *res judicata*, failure to establish that Applicant is entitled to default judgment, and failure to state a claim upon which relief can be granted regarding the alleged ineffectiveness of prior PCR counsel.

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 and filed May 3, 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 May 18, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a mailed document captioned "Rules 12(b)(G), 56(c,e)," Applicant made a motion for summary judgment in his PCR application. This motion was never filed with the clerk of court.

2016 DEC 09 PM 2:11
M. JOPELACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

In a mailed document captioned "Objection to Motion to Dismiss and Conditional Order of Dismissal," Applicant argues that he is attacking "the PCR procedure used" by Judge Cole in his prior PCR application rather than the merits of his conviction or sentence. Applicant asserts that Judge Cole's Order "cannot be supported by the trial hearing record."

This Court notes that Applicant continued to file responses in this matter. However Applicant has failed to file these responses within the twenty (20) day response period. Therefore, this Court will not address any issues raised in the subsequent filings.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on April 11-13, 2000, and the South Carolina Court of Appeals affirmed his convictions and sentences. State v. Stoudemire, Op. No. 2002-UP-020 (S.C. Ct. App. filed January 15, 2002). As this action was filed on September 22, 2014, it was clearly filed *well outside* the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's *third* application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on November 10, 2003. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and is not a sufficient claim to warrant

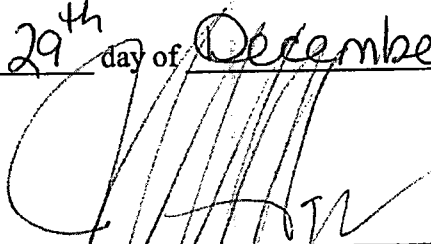
2015 DEC 30 PM 2:41
M. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). The South Carolina Supreme Court in Aice v. State, held that the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. Id. at 451, 409 S.E.2d at 395. The Court in Aice further held that “the contention that prior PCR counsel was ineffective is not *per se* a “sufficient reason” allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal, the Application for post-conviction relief 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 29th day of December, 2016.



J. MARK HAYES III
Chief Administrative Judge
Seventh Judicial Circuit

CLERK OF COURT
SPARTANBURG COUNTY
2016 DEC 30 PM 2:41
M. HDPE BLACKLEY

Spartanburg, South Carolina.

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Hazel Staudenmeier, Jr.

Applicant # 220501

CASE # 2014CP42-3700

CERTIFICATE OF SERVICE

VS
State
Respondent

I certify that, on this date, I served a copy of the Final Ord. Dismissal
in this action dated 12-29 2016 on 1-3-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Adley Henseth
Beverly Oliver
Hazel Staudenmeier Jr.

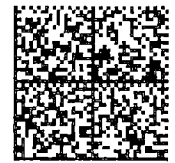
CLERK OF COURT
SPARTANBURG COUNTY
2017 JAN -3 PM 1:10
M. HOPE BLACKLEY


1-3-17
(Date)

Corie Seaf
(Signature)

Mr. HAZEL Stoudermire, Jr., #220501
Lee C.I. F-1 B1252
990 WISACKY Hwy
Brookville, SC 29010

COLUMBIA
SC 290
22 MAY '17
PM 11

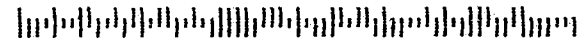


UNITED STATES POSTAGE

PITNEY BOWES
02 1P \$ 000.46⁰
0000880020 MAY 22 2017
MAILED FROM ZIP CODE 29010

Clerk of COURT
Post Office Box 11330
Columbia, South CAROLINA 29211

LEGAL MAIL

29211-133030



THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS

LEE CORRECTIONAL INSTITUTE
SC DEPARTMENT OF CORRECTIONS

RECEIVED

MAY 22 2017

LEE CI MAIL ROOM

