STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Jason O. Riley, #311527, Applicant, v. State of South Carolina, Respondent.	Case No.: **2016-CP-40-00699** **FINAL ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 1, 2016. Respondent made its Return on or about September 12, 2016, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR application and is barred by the doctrine of *res judiciata* and laches.

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 15, 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 September 29, 2016, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Response and Reasons for Justice," on October 4, 2016, in which Applicant argues he should receive an evidentiary hearing because the order in Applicant's first PCR case fails to address specific findings of fact or expressed conclusions of law.

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.

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 21 **day of** April **, 2017.**

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

Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000699

Jason O Riley #311527
PLAINTIFF(S)

State of South Carolina
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 **24th day of April, 2017** to attorneys of record or to parties (when appearing pro se) as follows:

Jason O Riley #311527
ATTORNEY(S) FOR THE PLAINTIFF(S)

Jessica Elizabeth Kinard
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000699

Jason O Riley #311527

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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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 19 day of Sept, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

Jason O Riley #311527

James Clayton Mitchell III

Jason O Riley #311527
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

RICHLAND COUNTY FILED
2016 SEP 15 P 3:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	2016-CP-40-00699
Jason O. Riley, S.C.D.C. No. 311527	)	
	)	**CONDITIONAL ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina	)	
	)	
Defendant.	)	
	)	

This matter comes before the court by way of an application for post-conviction relief filed by Jason O. Riley (Applicant) on February 1, 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 October 12, 2004, the Columbia Police Department sought and obtained an arrest warrant against Applicant for the crimes of Murder (H-760971) and Armed Robbery (H-760972). Applicant was thereafter indicted by the Richland County Grand Jury during the December 2004 term for the same (2004-GS-40-9047, -9048). Mary P. Miles, Esquire represented Applicant on the charges. Applicant proceeded to a jury trial before the Honorable John C. Hayes III from September 20 to September 23, 2005 and was found guilty as indicted. Judge Hayes sentenced Applicant to concurrent terms of life imprisonment and thirty (30) years confinement. Applicant filed a timely notice of appeal, but upon consultation with his appellate counsel, Melissa J. Kimbrough, Esquire, sought to waive his direct appeal and immediately pursue post-conviction relief. The South Carolina Court of

Appeals dismissed Applicant's appeal by unpublished opinion and remitted the matter on March 20, 2007.

2008-CP-40-1707

Applicant filed his first Application for Post-Conviction Relief on March 5, 2008 (2008-CP-40-1707), alleging the following:

1. Counsel was ineffective for her failure to locate and subpoena Tyrone Johnson, an eye witness to the crime. Mr. Johnson was able to give a description of the Assailant that did not match the Petitioner.
2. That Trial Counsel was ineffective for not timely filing Notice of alibi as required by the Rules of Civil Procedure. Due to the failure to timely file, Petitioner was denied the ability to assert alibi or use alibi witnesses.
3. That Trial Counsel was ineffective for not challenging the State objection to use and introduction of the deceased eye witness statement of Barbara Moss.

Respondent made its return on July 15, 2008. An evidentiary hearing into the matter was convened on December 7, 2010 before the Honorable James R. Barber. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Brian T. Petrano, of the South Carolina Attorney General's Office, represented Respondent. Judge Barber denied and dismissed that application for PCR in an order dated February 9, 2011.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Susan B. Hackett, Esquire filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion. Riley v. State, S.C. Ct. App. Order dated April 9, 2014. The Remittitur issued on April 25, 2014.

2011-CP-40-2403

Applicant filed his second PCR on April 12, 2011 (2011-CP-40-2403), alleging the following:

1. Prosecutorial misconduct.
    a. State prosecutor's subornation of perjured testimony.
    b. State prosecutor admission of perjured testimony in State's case in chief.
        i. The Petitioner contended that the state suborned perjury from witnesses Jeffrey McDaniels and Ricky Hagler directly contradicting documents they had previously given. At the plea hearing of the witnesses, the state declared that: "we are giving these plea bargains because they have agreed to tell the truth . . . witnesses have not been honest on police statements but have come today to tell the truth."
        ii. The Petitioner complains that the trial testimony varied from earlier written statements and claims that the testimony was fabricated.
        iii. He claims that these "infractions" are in violation of Section 16-9-10 and 16-9-20 pursuant to State v. Stanley, 615 S.E.2d 455 (2005); Miller v. Pate, 368 U.S. 2 (1967).
2. Ineffective Assistance of Counsel
    a. Counsel's ineffectiveness for not properly challenging the state's objection to hearsay testimony of Barbara Moss. Under Rule 804(a)(4). He contends that Moss gave a statement that described the assailants that did not match Petitioner, gave statement that refuted eyewitness testimony of Easton Smalls being on the scene which prejudiced the case.
    b. Counsel ineffective for not challenging the prosecutorial misconduct.
3. Petitioner contends that each of these claims were raised at the evidentiary hearing in the first PCR action in December 7, 2010 and addressed in Judge Barber's Final Order, but no specific findings of fact were expressed and a Rule 59(e) motion was filed and dismissed.
    a. Petitioner contends that S.C. Code Ann. § 17-27-80 required specific findings and conclusions.

Respondent made its Return and Motion to Dismiss on or about August 19, 2014, arguing the application was successive, barred by the statute of limitations, and barred by res judicata. The matter was thereafter dismissed by the Honorable L. Casey Manning by order dated June 15, 2015.

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 22, 2014 (C.A. No. 8:14-1655-RMG-JDA). In his Petition, Applicant set forth the following grounds for relief:[1]

1. Prosecutorial misconduct – Subornation of perjury
   a. State prosecutors displayed misconduct by suborning witnesses Jeffrey Mcdaniels and Ricky Hagler to commit perjury by giving them plea deals to change material facts given on sworn affidavits. At trial, Solicitors Richard Cathcart and Margaret Fent gave those deals only after Ricky and Jeffrey agreed to make said revisions to aforementioned statements given to investigators Mitch Wilkerson and Paul Mead.
2. Prosecutorial misconduct – Suppression of Exculpatory evidence
   a. State Prosecutors committed misconduct by suppressing the revised editions of the previous sworn statements made by Jeffrey Mcdaniels and Ricky Hagler. At the trial of Mr. Riley, Solicitors Richard Cathcart and Margaret Fent violating Brady v. Maryland by not disclosing the material changes made in the affidavits. Said prosecutors should have included these revised editions with Rule 5 discovery material.
3. Prosecutorial misconduct – knowing use of perjured testimony
   a. State prosecutors committed misconduct by knowingly using perjured testimony to secure a conviction against Mr. Riley. Both State witnesses committed perjury by willfully giving false, misleading, or incomplete information to investigator on sworn statements, violating S.C. Code Ann. § 16-9-10(A)(2). These perjured testimonies supplied the State's case-in-chief.
4. Prosecutorial misconduct – Suppression of Exculpatory Evidence
   a. State prosecutors violated Mr. Riley's Due Process rights by withholding exculpatory cell phone tower logs that were in its possession and intended to be used in their case-in-chief. At trial, prosecutors presented cell phone tower logs to impeach Mr. Riley on rebuttal; however, had defense been supplied with a copy of tower logs before trial – as required by Rule # 5 – the exact tower location of the crime scene would have been ascertained and Mr. Riley would have been acquitted.
5. Ineffective assistance of counsel
   a. Trial counsel was grossly ineffective for not challenging the State's objection to the introduction of deceased eyewitness Barbara Moss'

[1] Allegations are as set forth in the Report & Recommendation.

statement, pursuant to Rule # 804(a)(4), preserving the issue for appellate review. Mr. Riley contends that Ms Miles was fully aware that Ms. Moss gave descriptions of assailants that did not match him. Additionally, Ms. Moss told investigators that no one else was present at the scene of the crime, which took place in her front yard, besides she and Tyrone Johnson; thus refuting the account of alleged eyewitness Easten Smalls. Mr. Riley asserts that had the jury been entertained with these facts, the outcome of his trial would have resulted in an acquittal, or in the least, the issue would have been apt for direct appeal.

6. Ineffective assistance of counsel – Failure to object to Prosecutorial subornation of perjury
   a. Trial counsel erred by not objecting to Prosecutorial subornation of perjury. Mr. Riley maintains that once Prosecutors Richard Cathcart and Margaret Fent suborned witnesses Ricky Hagler and Jeffrey Mcdaniels to commit perjury by offering them plea deals, Ms. Miles should have made a timely objection to prosecutorial misconduct, at least preserving the issue for direct appeal. Ms. Miles prejudiced Mr. Riley when she allowed said witnesses to change material facts, knowing that their testimonies would be directly contradictory to sworn statements procured by investigators. The changes were material. Aforementioned prosecutors knowingly and intelligently used the suborned perjured testimony – a violation of S.C. Code Ann. 16-9-20(A)(2) – as the sole basis for conviction; therefore, counsel's representation fell below an objective standard of reasonableness.
7. Ineffective assistance of counsel – failure to object to prosecutorial misconduct
   a. Trial counsel was highly ineffective for not objecting to prosecutorial misconduct, where state prosecutors clearly violated Mr. Riley's Due Process Rights by suppressing the revised editions of prior statements given by State's star witnesses. Prosecutors Richard Cathcart and Margaret Fent were conscious that the witnesses they were planning on using to testify against Mr. Riley were not telling the truth. Sometimes prior to trial by jury the prosecutors decided to Question Jeffrey and Ricky on their veracity. Once the material changes were made they should have been documented and the revised editions should have been included with Rule # 5 Brady material, they weren't. Mr. Riley declares that he was prejudiced by Ms. Miles' failure to object to prosecutorial misconduct, she could not provide competent representation when compelled to speculate as to what a witness will testify to and his trial and unlawful conviction resulted in a gross miscarriage of justice.

8. Ineffective assistance of counsel – failure to object to the impermissible solicitation of perjured testimony
    a. At trial, Mr. Riley's counsel was egregiously ineffective for failing to object to the State's use of the perjured testimonies of Ricky Hagler and Jeffrey Mcdaniels. Ms. Miles' trial strategy was to impeach said witnesses on the numerous inconsistencies in their collective statements. However, on the day Mr. Riley's trial commenced, Ricky and Jeffrey agreed to plea deals for the strong armed robbery, accessory to "tell the truth"; in other words, to testify contrarily to sworn statements. Margaret Fent and Richard Cathcart violated Mr. Riley's Due Process Rights by introducing perjured testimonies and Ms. Miles was ineffective for failing to object.
9. Ineffective assistance of counsel: Failure to object to suppression of Exculpatory Evidence
    a. Mr. Riley's trial counsel prejudiced him by not objecting accurately the State's withholding of exculpatory phone tower logs in its possession at trial. Ms. Miles objected to the inculpatory/impeaching values of the phone tower logs introduced by the State. However, these phone tower logs corroborated Mr. Riley's alibi defense that he was at home during the commission of these crimes and had he and his defense been supplied with said phone tower logs, as required by the Rule # 5 discovery statute, they would have been able to pinpoint the exact phone tower location of the crime scene. Because Ms. Miles objected erroneously, the State was allowed to use the logs on rebuttal and the jury never had the opportunity to hear the potentially exonerating facts about the phone tower logs.

Respondent filed its Return and Motion for Summary Judgment on August 13, 2014. The Honorable Jacquelyn D.Austin, United States Magistrate Judge, issued on January 16, 2015 a Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant timely filed objections to that report on January 29, 2015. The Honorable Richard Mark Gergel, United States District Judge, denied Applicant's Petition on February 3, 2015 and accepted the Report and Recommendation for summary judgment. Riley v. Cartledge, 8:14-1655-RMG-JDA, 2015 WL 456541 (D.S.C. Feb. 3, 2015). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals on March 2, 2015. The Fourth Circuit Court of Appeals dismissed Applicant's appeal for want of a certificate of appealability on June 23, 2015. Riley v.

Cartledge, 607 Fed.Appx. 308 (4th Cir. 2015). On August 10, 2015, Applicant filed a petition for writ of certiorari in the United States Supreme Court, which was denied November 16, 2015. Riley v. Cartledge, 136 S.Ct. 513 (2015).

2:15-3238-RMG-MGB

Applicant filed a second *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2241 on October 23, 2015 (C.A. No. 2:15-3238-RMG-MGB). In his Petition, Applicant set forth the following grounds for relief:

1. Prosecutorial misconduct – impermissible solicitation/subornation of perjured testimony
   a. State prosecutors suborned witnesses Jeffrey McDaniel and Ricky Hagler to commit perjury by offering them plea deals and subsequently used said mendacious testimony to convict Mr. Riley unlawfully, knowing testimony to be false and contradictory to evidence provided by the crime scene.
2. Ineffective assistance of counsel – failure to object to prosecutorial misconduct
   a. Mr. Riley's trial counsel was grossly ineffective for not objecting to the introduction of impermissible evidence, allowing jury to deliberate on known false testimony, ultimately resulting in an unconstitutional conviction.
3. Ineffective assistance of counsel – failure to challenge the state's objection to the introduction of deceased eyewitness Barbara Moss's sworn statement
   a. Mr. Riley contends that Ms. Moss's statement was admissible pursuant to Rule 804(a)(4) of the hearsay exception clause. Ms. Moss gave exonerating information to investigators, and had the jury heard these revelations, Mr. Riley would have been acquitted.

The Honorable Mary Gordon Baker, United States Magistrate Judge, issued on October 23, 2015 a Report and Recommendation that the petition be dismissed without prejudice and without requiring Respondent file an answer or return. The Honorable Richard Mark Gergel, United States District Judge, denied Applicant's Petition on November 18, 2015 and accepted the Report and Recommendation as the order of the Court. Applicant did not appeal.

II. CURRENT APPLICATION

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

1. "Prosecutorial Misconduct"
    a. "State's Prosecutor's Subornation of Perjured Testimony"
    b. "State's Proseuctor's admission of Perjured Testimony in his case-in-chief."
2. "Ineffective Assistance of Counsel"
    a. "Counsel's ineffectiveness for not properly challenging State's objection to Hearsay"

Applicant further supports his allegations with a handwritten "Memorandum of LAW" just over two pages in length. Applicant requests relief as follows:

- "Applicant requests that he be released from the Department of Corrections, INSTANTER"

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 and federal habeas corpus actions, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 was convicted on September 23, 2005 and the remittitur from direct appeals issued on March 20, 2007. The current application was not filed until February 1, 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 should 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 form 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 further 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 present claims are indistinguishable from the allegations of prosecutorial misconduct and ineffective assistance of counsel brought in his second post-conviction relief action and each of his federal habeas corpus actions. 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

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JASON O. RILEY, #311527 Plaintiff, vs. STATE OF SOUTH CAROLINA Defendant.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO: **2016-CP-40-0699** **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Jason O. Riley, #311527 (Pro Se) Address: 386 Redemption Way McCormick, SC 29899 Phone: _____ Fax _____ E-mail: _____ Other: _____	Johnny E. James, Jr., Bar No. 101260 Address: PO Box 11549 Columbia, SC 29211 Phone: 803.734.3737 Fax 803.734.4113 E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Johnny E. James, Jr. — September 12, 2016
Signature of Attorney for ☐ Plaintiff/☒ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	2016-CP-40-00699
Jason O. Riley, S.C.D.C. No. 311527	)	
	)	**RETURN AND MOTION TO DISMISS**
v.	)	
	)	
State of South Carolina	)	
	)	
Defendant.	)	
	)	

In response to the application for post-conviction relief filed by Jason O. Riley (Applicant) on February 1, 2016 ("the Application"), Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. On October 12, 2004, the Columbia Police Department sought and obtained an arrest warrant against Applicant for the crimes of Murder (H-760971) and Armed Robbery (H-760972). Applicant was thereafter indicted by the Richland County Grand Jury during the December 2004 term for the same (2004-GS-40-9047, -9048). Mary P. Miles, Esquire represented Applicant on the charges. Applicant proceeded to a jury trial before the Honorable John C. Hayes III from September 20 to September 23, 2005 and was found guilty as indicted. Judge Hayes sentenced Applicant to concurrent terms of life imprisonment and thirty (30) years confinement. Applicant filed a timely notice of appeal, but upon consultation with his appellate counsel, Melissa J. Kimbrough, Esquire, sought to waive his direct appeal and immediately pursue post-conviction relief. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and remitted the matter on March 20, 2007.

2008-CP-40-1707

Applicant filed his first Application for Post-Conviction Relief on March 5, 2008 (2008-CP-40-1707), alleging the following:

1. Counsel was ineffective for her failure to locate and subpoena Tyrone Johnson, an eye witness to the crime. Mr. Johnson was able to give a description of the Assailant that did not match the Petitioner.
2. That Trial Counsel was ineffective for not timely filing Notice of alibi as required by the Rules of Civil Procedure. Due to the failure to timely file, Petitioner was denied the ability to assert alibi or use alibi witnesses.
3. That Trial Counsel was ineffective for not challenging the State objection to use and introduction of the deceased eye witness statement of Barbara Moss.

Respondent made its return on July 15, 2008. An evidentiary hearing into the matter was convened on December 7, 2010 before the Honorable James R. Barber. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Brian T. Petrano, of the South Carolina Attorney General's Office, represented Respondent. Judge Barber denied and dismissed that application for PCR in an order dated February 9, 2011.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Susan B. Hackett, Esquire filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion. Riley v. State, S.C. Ct. App. Order dated April 9, 2014. The Remittitur issued on April 25, 2014.

2011-CP-40-2403

Applicant filed his second PCR on April 12, 2011 (2011-CP-40-2403), alleging the following:

1. Prosecutorial misconduct.
    a. State prosecutor's subornation of perjured testimony.
    b. State prosecutor admission of perjured testimony in State's case in chief.

i. The Petitioner contended that the state suborned perjury from witnesses Jeffrey McDaniels and Ricky Hagler directly contradicting documents they had previously given. At the plea hearing of the witnesses, the state declared that: "we are giving these plea bargains because they have agreed to tell the truth . . . witnesses have not been honest on police statements but have come today to tell the truth."
ii. The Petitioner complains that the trial testimony varied from earlier written statements and claims that the testimony was fabricated.
iii. He claims that these "infractions" are in violation of Section 16-9-10 and 16-9-20 pursuant to State v. Stanley, 615 S.E.2d 455 (2005); Miller v. Pate, 368 U.S. 2 (1967).

2. Ineffective Assistance of Counsel
   a. Counsel's ineffectiveness for not properly challenging the state's objection to hearsay testimony of Barbara Moss. Under Rule 804(a)(4). He contends that Moss gave a statement that described the assailants that did not match Petitioner, gave statement that refuted eyewitness testimony of Easton Smalls being on the scene which prejudiced the case.
   b. Counsel ineffective for not challenging the prosecutorial misconduct.
3. Petitioner contends that each of these claims were raised at the evidentiary hearing in the first PCR action in December 7, 2010 and addressed in Judge Barber's Final Order, but no specific findings of fact were expressed and a Rule 59(e) motion was filed and dismissed.
   a. Petitioner contends that S.C. Code Ann. § 17-27-80 required specific findings and conclusions.

Respondent made its Return and Motion to Dismiss on or about August 19, 2014, arguing the application was successive, barred by the statute of limitations, and barred by res judicata. The matter was thereafter dismissed by the Honorable L. Casey Manning by order dated June 15, 2015.

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on April 22, 2014 (C.A. No. 8:14-1655-RMG-JDA). In his Petition, Applicant set forth the following grounds for relief:[1]

1. Prosecutorial misconduct – Subornation of perjury
   a. State prosecutors displayed misconduct by suborning witnesses Jeffrey Mcdaniels and Ricky Hagler to commit perjury by giving them plea deals to change material facts given on sworn affidavits. At trial, Solicitors Richard Cathcart and Margaret Fent gave those deals only after Ricky and Jeffrey agreed to make said revisions to aforementioned statements given to investigators Mitch Wilkerson and Paul Mead.
2. Prosecutorial misconduct – Suppression of Exculpatory evidence
   a. State Prosecutors committed misconduct by suppressing the revised editions of the previous sworn statements made by Jeffrey Mcdaniels and Ricky Hagler. At the trial of Mr. Riley, Solicitors Richard Cathcart and Margaret Fent violating Brady v. Maryland by not disclosing the material changes made in the affidavits. Said prosecutors should have included these revised editions with Rule 5 discovery material.
3. Prosecutorial misconduct – knowing use of perjured testimony
   a. State prosecutors committed misconduct by knowingly using perjured testimony to secure a conviction against Mr. Riley. Both State witnesses committed perjury by willfully giving false, misleading, or incomplete information to investigator on sworn statements, violating S.C. Code Ann. § 16-9-10(A)(2). These perjured testimonies supplied the State's case-in-chief.
4. Prosecutorial misconduct – Suppression of Exculpatory Evidence
   a. State prosecutors violated Mr. Riley's Due Process rights by withholding exculpatory cell phone tower logs that were in its possession and intended to be used in their case-in-chief. At trial, prosecutors presented cell phone tower logs to impeach Mr. Riley on rebuttal; however, had defense been supplied with a copy of tower logs before trial – as required by Rule # 5 – the exact tower location of the crime scene would have been ascertained and Mr. Riley would have been acquitted.
5. Ineffective assistance of counsel
   a. Trial counsel was grossly ineffective for not challenging the State's objection to the introduction of deceased eyewitness Barbara Moss'

[1] Allegations are as set forth in the Report & Recommendation.

statement, pursuant to Rule # 804(a)(4), preserving the issue for appellate review. Mr. Riley contends that Ms Miles was fully aware that Ms. Moss gave descriptions of assailants that did not match him. Additionally, Ms. Moss told investigators that no one else was present at the scene of the crime, which took place in her front yard, besides she and Tyrone Johnson; thus refuting the account of alleged eyewitness Easten Smalls. Mr. Riley asserts that had the jury been entertained with these facts, the outcome of his trial would have resulted in an acquittal, or in the least, the issue would have been apt for direct appeal.

6. Ineffective assistance of counsel – Failure to object to Prosecutorial subornation of perjury
   a. Trial counsel erred by not objecting to Prosecutorial subornation of perjury. Mr. Riley maintains that once Prosecutors Richard Cathcart and Margaret Fent suborned witnesses Ricky Hagler and Jeffrey Mcdaniels to commit perjury by offering them plea deals, Ms. Miles should have made a timely objection to prosecutorial misconduct, at least preserving the issue for direct appeal. Ms. Miles prejudiced Mr. Riley when she allowed said witnesses to change material facts, knowing that their testimonies would be directly contradictory to sworn statements procured by investigators. The changes were material. Aforementioned prosecutors knowingly and intelligently used the suborned perjured testimony – a violation of S.C. Code Ann. 16-9-20(A)(2) – as the sole basis for conviction; therefore, counsel's representation fell below an objective standard of reasonableness.
7. Ineffective assistance of counsel – failure to object to prosecutorial misconduct
   a. Trial counsel was highly ineffective for not objecting to prosecutorial misconduct, where state prosecutors clearly violated Mr. Riley's Due Process Rights by suppressing the revised editions of prior statements given by State's star witnesses. Prosecutors Richard Cathcart and Margaret Fent were conscious that the witnesses they were planning on using to testify against Mr. Riley were not telling the truth. Sometimes prior to trial by jury the prosecutors decided to Question Jeffrey and Ricky on their veracity. Once the material changes were made they should have been documented and the revised editions should have been included with Rule # 5 Brady material, they weren't. Mr. Riley declares that he was prejudiced by Ms. Miles' failure to object to prosecutorial misconduct, she could not provide competent representation when compelled to speculate as to what a witness will testify to and his trial and unlawful conviction resulted in a gross miscarriage of justice.

8. Ineffective assistance of counsel – failure to object to the impermissible solicitation of perjured testimony
   a. At trial, Mr. Riley's counsel was egregiously ineffective for failing to object to the State's use of the perjured testimonies of Ricky Hagler and Jeffrey Mcdaniels. Ms. Miles' trial strategy was to impeach said witnesses on the numerous inconsistencies in their collective statements. However, on the day Mr. Riley's trial commenced, Ricky and Jeffrey agreed to plea deals for the strong armed robbery, accessory to "tell the truth"; in other words, to testify contrarily to sworn statements. Margaret Fent and Richard Cathcart violated Mr. Riley's Due Process Rights by introducing perjured testimonies and Ms. Miles was ineffective for failing to object.
9. Ineffective assistance of counsel: Failure to object to suppression of Exculpatory Evidence
   a. Mr. Riley's trial counsel prejudiced him by not objecting accurately the State's withholding of exculpatory phone tower logs in its possession at trial. Ms. Miles objected to the inculpatory/impeaching values of the phone tower logs introduced by the State. However, these phone tower logs corroborated Mr. Riley's alibi defense that he was at home during the commission of these crimes and had he and his defense been supplied with said phone tower logs, as required by the Rule # 5 discovery statute, they would have been able to pinpoint the exact phone tower location of the crime scene. Because Ms. Miles objected erroneously, the State was allowed to use the logs on rebuttal and the jury never had the opportunity to hear the potentially exonerating facts about the phone tower logs.

Respondent filed its Return and Motion for Summary Judgment on August 13, 2014. The Honorable Jacquelyn D.Austin, United States Magistrate Judge, issued on January 16, 2015 a Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant timely filed objections to that report on January 29, 2015. The Honorable Richard Mark Gergel, United States District Judge, denied Applicant's Petition on February 3, 2015 and accepted the Report and Recommendation for summary judgment. Riley v. Cartledge, 8:14-1655-RMG-JDA, 2015 WL 456541 (D.S.C. Feb. 3, 2015). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals on March 2, 2015. The Fourth Circuit Court of Appeals dismissed Applicant's appeal for want of a certificate of appealability on June 23, 2015. Riley v.

Cartledge, 607 Fed.Appx. 308 (4th Cir. 2015). On August 10, 2015, Applicant filed a petition for writ of certiorari in the United States Supreme Court, which was denied November 16, 2015. Riley v. Cartledge, 136 S.Ct. 513 (2015).

2:15-3238-RMG-MGB

Applicant filed a second *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2241 on October 23, 2015 (C.A. No. 2:15-3238-RMG-MGB). In his Petition, Applicant set forth the following grounds for relief:

1. Prosecutorial misconduct – impermissible solicitation/subornation of perjured testimony
   a. State prosecutors suborned witnesses Jeffrey McDaniel and Ricky Hagler to commit perjury by offering them plea deals and subsequently used said mendacious testimony to convict Mr. Riley unlawfully, knowing testimony to be false and contradictory to evidence provided by the crime scene.
2. Ineffective assistance of counsel – failure to object to prosecutorial misconduct
   a. Mr. Riley's trial counsel was grossly ineffective for not objecting to the introduction of impermissible evidence, allowing jury to deliberate on known false testimony, ultimately resulting in an unconstitutional conviction.
3. Ineffective assistance of counsel – failure to challenge the state's objection to the introduction of deceased eyewitness Barbara Moss's sworn statement
   a. Mr. Riley contends that Ms. Moss's statement was admissible pursuant to Rule 804(a)(4) of the hearsay exception clause. Ms. Moss gave exonerating information to investigators, and had the jury heard these revelations, Mr. Riley would have been acquitted.

The Honorable Mary Gordon Baker, United States Magistrate Judge, issued on October 23, 2015 a Report and Recommendation that the petition be dismissed without prejudice and without requiring Respondent file an answer or return. The Honorable Richard Mark Gergel, United States District Judge, denied Applicant's Petition on November 18, 2015 and accepted the Report and Recommendation as the order of the Court. Applicant did not appeal.

II.

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

1. "Prosecutorial Misconduct"
    a. "State's Prosecutor's Subornation of Perjured Testimony"
    b. "State's Proseuctor's admission of Perjured Testimony in his case-in-chief."
2. "Ineffective Assistance of Counsel"
    a. "Counsel's ineffectiveness for not properly challenging State's objection to Hearsay"

Applicant further supports his allegations with a handwritten "Memorandum of LAW" just over two pages in length. Applicant requests relief as follows:

- "Applicant requests that he be released from the Department of Corrections, INSTANTER"

Attached to and incorporated herein are 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 and federal habeas corpus actions, and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Statute of Limitations

The Application 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. 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 was convicted on September 23, 2005 and the remittitur from direct appeals issued on March 20, 2007. The current application was not filed until February 1, 2016 – well after the one-year statutory filing period expired. Therefore, the Application should be summarily dismissed as barred by the statute of limitations.

Laches

The Application should 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 form 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 should be summarily dismissed as barred by the doctrine of laches.

Successive

The Application should 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 should summarily dismiss the Application as successive to Applicant's previous PCR application.

Res Judicata

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 present claims are indistinguishable from the allegations of prosecutorial misconduct and ineffective assistance of counsel brought in his second post-conviction relief action and each of his federal habeas corpus actions. The finality of the previous Court rulings should be respected.

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

IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application as barred by the statute of limitations, as successive, and as barred by *res judicata*.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Bar No. 101260
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By: Johnny E. James Jr.
Attorneys for the Respondent

Columbia, South Carolina
Sept. 12, 2016

STATE OF SOUTH CAROLINA COUNT OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
JASON O. RILEY, #311527	)	2016-CP-40-0699
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jason O. Riley, #311527
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

DATED this 12th day of September, 2016.

Felicia V. Hayes, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
County of Richland
Jason O. Riley #311527

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
2016CP4000699

Response and REASONS
FOR JUSTICE

now comes the applicant, heretofore known as Jason O. Riley, and he presents this court with his Response and Reasons for Justice.

I. STATUE OF LIMITATIONS

Mr. Riley asserts that the statue of limitations does not apply to the case sub judice. as the respondent clearly pointed out, a timely PCR application was filed and clock-stamped on march 5, 2008. a subsequent PCR hearing was held on December 7, 2010. The egregious violations presented in PCR application 2016CP4000699 were thoroughly addressed to the Honorable Judge James Barber, at the evidentiary hearing and in a timely filed 59(e) motion to alter/amend (see att.); however, no written opinion, specific findings of fact, or expressed conclusions of law relating to each infraction, as required by S.C. code ann 17-27-80, were included in Judge Barber's Final Order, neither his order dismissing the 59(e) motion. Unless it has been annulled, there are no limitations applied to the provisions of rule 17-27-80. The sole purpose of this filing is for closure in the form of Justice,

Either through a hearing and ruling on the omissions discussed in the 59(e) motion to alter/amend in the court of common Pleas, or independtly by the Honorable Judge DeAndrea Benjamin.

II. SUCCESSIVENESS

mr. Riley contends that this argument set forth by the respondent also is moot and does not pertain to the case at bar. To reiterate, and not sound redundant, the constitutional violations illustrated in PCR application 2016CP4000699 were sufficiently presented to Judge Barber at the evidentiary hearing conducted on December 7, 2010. mr. Riley's trial counsel was available at the hearing to account for her ineptitude, and state solicitor Richard Gathcart had ample opportunity to give a righteous explanation for his malfeasance. Each of these severe grievances were properly raised at the hearing; whereas Judge Barber took it upon himself to disregard these injustices, while mentioning them in his order though neglecting to rule as required by S.C. Code ann 17-27-80, not once, but twice when a timely 59(e) motion to alter/amend was filed with the Reverend Jeanette mcbride and no additional hearing was held to to fully adjudicate the issues therein. The grounds raised in PCR application 2016CP4000699 are not new. The South Carolina Supreme Court has consistently vacated and remanded PCR court judgements that do not contain findings on issues presented to the PCR court. Pearson v. Harrison, 9 Fed appx. 85 (4th cir. 2001).

III. RES JUDICATA

mr. Riley asseverates that the dire Facts presented the Court in PCR application 2016CP4000699 were never properly addressed at Post-

conviction venue; therefore, invalidating any subsequent filings on his behalf. Mr. Riley discussed the situation with his appellate Defender Susan B. Hackett that his most meritorious constitutional violations were absent from Judge Barber's Final Order and aforementioned Judge chose not to conduct a subsequent hearing to finalize the points of contention relevant in the 59(e) motion to alter/amend. He further explained to Mrs. Hackett that an action cannot be considered fully adjudicated unless the PCR Judge rules on each allegation exclusively. For instance, if an issue is presented in a PCR application, even referred to at the PCR hearing, if the ground is not included in the PCR Judge's Final Order, the matter would be deemed procedurally barred from any future litigation. Mr. Riley explained this to Mrs. Hackett, only to have her reply, "pursuant to Marley v. State, 653 S.E. 2d 266 (S.C. 2007) (she even forwarded Mr. Riley a copy of the case), when a timely 59(e) motion has been filed, all grievances therein are properly preserved for appellate review." She went on to state that, "the Supreme Court would address each issue independently on Writ of Certiorari." Mr. Riley was naively certain that the Supreme Court would take notice of these egregious constitutional violations and rule on each seperately, only to receive The Court of Appeals' one page remittur denying relief. Mr. Riley's second PCR application was being disputed at the same time he was busy litigating the unfairness of his State PCR hearing at Federal Habeas Corpus, which is why he never had the opportunity to challenge the state's return to said application. This unlawful conviction should have never proceeded past the Supreme Court of South Caroling without a hearing on the 59(e) motion to alter/

amend. at the federal venue, one can only present arguments that a State court ruling ran contrary to the U.S. Constitution; this it utterly impossible when a the state court never determined whether the grounds violated State constitutions, statues, or laws. The facts that 1) pursuant to State v. Doctor, 413 S.E.2d 36 (S.C. 1992), State v. Steadman, 216 S.C. 579, S.E 168, 71 S.Ct 28, 95 L.Ed 123 (1950) and Rule 804 (a)(4), out-of-court statements made by an unavailable declarant are admissible in both civil and criminal cases in South Carolina; therefore the exculpatory contents of ms. Barbara Mose's sworn statement should have been considered by the jury before rendering a verdict; 2) State prosecutors subomed star witnesses to commit perjury by offering them plea deals to change sworn statements given to investigators or to "tell the truth", thusly violating S.C. Code ann. 16-9-20; 3) State's star witnesses unequivocally committed perjury by giving false statements to investigators, desecrating S.C. code ann. 16-9-10 and; 4) the phone Tower logs used on rebuttal to impeach mr. Riley's where-a-bouts two (2) hours after the crime had been committed were exculpatory in their nature-were never disputed in Judge Barber's final order as required by S.C. code ann 17-27-80. Bryson v. State, 328 S.C. 236, 493 S.E.2d 500, 500 (S.C. 1997); McCullough v. State, 320 S.C. 270, 464 S.E.2d 340, 340 (S.C. 1995); Pruitt v. State, 310 S.C. 354, 408 S.E.2d 127 (S.C. 1992); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (S.C. 1991). These undisputed facts were not partially, let alone fully adjudicated. The Respondent's Res Judicata defense blatantly disregards Judge

Barbara's deliberate omission of the flagrant Constitutional Violations from his Final order.

III. LACHES

mr. Riley Further contends the Laches position the State argues should not be reason to deny swift justice. While yet it has been approximately eleven (11) years since mr. Riley's actual conviction, only five (5) years have lasped since his unfair PCR hearing and one (1) year ~~since~~ he vehemently challenged the validity/fairness of said PCR hearing at the federal habeas level. This Futile argument just lends added credence to the legal axiom — JUSTICE DELAYED IS JUSTICE DENIED. Furthermore, the gist of mr. Riley's undisputed facts are timeless, recorded on transcripts and declarations For witnesses recollections as well as For future generations and courtroom posterity to review the grave injustice perpetrated upon mr. Riley. If the state's evidence of this unlawful conviction has been conveniently "faded" or "degraded", we have numerous copies here in this jungle and out there with mr. Riley's consanguinity in civilization. The party presenting a Laches cannot be the sole reason For the delay. again, this Laches position undertaken by the State, as all others Presented in their motion For Summary Dismissal, are not apropos to the case at bar.

CONCLUSION

Pursuant to S.C. code ann. 17-27-80 (Law co-op 1976), which requires a pcr court to, "make specific findings of facts, and state

expressly its conclusions of law, relating to each issue presented to it, mr. Riley prays the Court rule judiciously on the facts presented in this Response independently, conduct an evidentiary hearing that adheres to the Constitution of this Beloved State, or any such remedies to which he is entitled.

Respectfull submitted,

Jason O. Riley #311527
9-30-16

STATE OF SOUTH CAROLINA
County of Richland
Jason O. Riley #311527

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
2016CP4000699

CERTIFICATE of SERVICE

I, Jason O. Riley, hereby certify under penalty of perjury that on 9-30-16, a copy of a Response and Reasons for Justice has been served on opposing counsel John M. E. James, Jr., Esq., by placing said document in a properly addressed envelope with postage prepaid and placing said envelope in U.S. mail.

9/30/16
JASON O. Riley #311527
9-30-16