

State of South Carolina,
Lord Byron Slater, #274992
Petitioner,

v.
State of South Carolina,

) In The Court of Common Pleas
) For The Ninth Judicial Circuit
) Notice of Appeal
) To Final Order of Dismissal
) PCR 2014-CP-10-5357
)
)
)

This is my Notice of Appeal of Judge Jefferson's Order
Certificate of Service

I certify that a true copy of the Notice of Appeal
have been served on the Clerk of Chas County 100 Broad
street, suite 106, chas, SC, 29401-2258, Attorney General's
office Rasheeda Cleveland P.O. Box 11549, Columbia, SC
29211-1549, and also the Clerk of the SC Supreme Court
Daniel E. Shearouse, Supreme Court Building
1231 Gervais Street, Columbia, SC, 29201

Sworn to and subscribed before me this 17
day of November, 2017
[Signature]
Notary Public (L.S.)

My Commission Expires: 12-16-2019

[Signature]
Lord Byron Slater #274992
McJ FH As 177
386 Redemption Way
McLinnick, SC, 29899
Date: 11/17/17

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386 Redemption Way
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)
)
)

Lord Byron Slater, #279992,

) Case No.: 2014-CP-10-5357
)
)

Applicant,

v.

) **FINAL ORDER OF DISMISSAL**
)
)

State of South Carolina,

Respondent.

FILED
2017 NOV 15 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 3, 2014. Respondent made its Return on or about June 2, 2017, requesting that the application be summarily dismissed as untimely, successive, and without merit. The Court issued a Conditional Order of Dismissal on June 8, 2017 provisionally denying and dismissing this action, and giving the Applicant twenty days from the date of service to show why the dismissal should not become final. Applicant filed a response to the Conditional Order of Dismissal on June 12, 2017. For the reasons stated herein, the Court dismisses the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Charleston County Clerk of Court. Applicant was indicted at the May 2001 term of the Charleston County Grand Jury for Murder (2001-GS-10-3221). Applicant proceeded to a jury trial before the Honorable Edward B. Cottingham on November 13, 2015. Applicant was represented by Ashley Pennington, Esquire and S. Boyd Young, Esquire at trial. During the trial, Judge Cottingham submitted the lesser-included offense of voluntary

manslaughter to the jury. The jury nevertheless convicted the Applicant of Murder. Applicant was sentenced to confinement for a period of life by Judge Cottingham on November 15, 2001.

Applicant subsequently appealed his conviction and sentence. The South Carolina Court of Appeals reversed Applicant's conviction by published Opinion dated August 9, 2004. The State made a timely Petition for Rehearing on August 24, 2004, however this Petition was denied by the Court of Appeals on September 23, 2004. The State then filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on October 24, 2004. The Supreme Court granted certiorari on March 23, 2006, and thereafter reversed the Court of Appeals decision and reinstated Applicant's conviction by written order dated April 9, 2007. The Remittitur was issued on April 25, 2007.

Applicant filed his first application for post-conviction relief on May 23, 2007 alleging ineffective assistance of counsel. The State made its Return on October 15, 2008. An evidentiary hearing into the matter was convened on November 16, 2009 before the Honorable Deadra L. Jefferson. Judge Jefferson dismissed the application with prejudice by written order dated December 21, 2009. Applicant did not file a timely appeal.

Applicant thereafter filed a second application for post-conviction relief on May 10, 2011 in which he alleged ineffective assistance of PCR counsel. This matter was heard by the Honorable Stephanie P. McDonald on July 24, 2012. Judge McDonald permitted Applicant to file a belated PCR appeal in accordance with Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) by order dated August 21, 2012. Applicant subsequently filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, however, the Court declined to grant certiorari. The Remittitur was issued on September 8, 2014.

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II. CURRENT APPLICATION

Applicant filed his third and current application for post-conviction relief on or about September 3, 2014. In this application and supporting memorandum, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence
 - a. "The victim testified positive for cannabinoids cross-reactives."
2. Subject matter jurisdiction
 - a. "The arrest warrant which gave trial court its jurisdiction to try defendant was invalid due to the defendant being arrested without probable cause, without an arrest warrant, February 4, 2001. Without valid arrest warrant, the trial court lacks jurisdiction to try the defendant for murder, also lacks jurisdiction to accept the jury verdict of guilty."
3. Ineffective Assistance of Trial Counsel
 - a. "Trial counsel fail[ed] to investigate toxicology report, also the unconstitutional arrest."

Respondent made its Return on or about June 5, 2017 requesting that the application be summarily dismissed as untimely, successive, and without merit. 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 June 8, 2017 and filed June 9, 2017, provisionally denying and dismissing this action while giving the Applicant twenty 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, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document titled "Motion to Amend Application PCR" on June 7, 2017. In this Motion, Applicant raised the following additional issues that were not previously addressed in his application for post-conviction relief:

1. "Trial counsel performance was deficient for going into an agreement that stipulated what the Forensic Pathologist would have testified to if they were called to testify in violation of a



suspect's 6th amendment right to confront witnesses, when he knew there was evidence that would have contradicted the SLED ballistics report that a bullet removed from the body of victim during autopsy was a silvertip nickel plated hollow point bullet. Trial counsel waived his client's right to confront the Forensic Pathologist without consent. Trial Counsel deficient performance prejudiced client in that it allowed the SLED ballistics report as the deciding factor between innocence and guilt. On January 28, 2013, Applicant was informed of the existence of a projectile that was severely deformed yellow metal jacketed bullet recovered from the body of the victim. See Thorax/Abdomen section of autopsy report, this bullet was enough to rebut the SLED ballistics report that stated the bullet removed from victim body was a silver tip nickel plated hollow point bullet. The stipulation that trial counsel agreed to did not include the yellow metal jacketed bullet that was recovered from Thorax/ Abdomen section, which was the only bullet recovered from victim's body during autopsy."

2. "Trial Counsel's performance was deficient by abandoning his client when he agreed to a stipulation with the State without his client's consent to waive his 6th Amendment right to confront the Forensic Pathologist about the only bullet that was removed from body during autopsy. Trial counsel's deficient performance for the abandonment of his client to side with the state on an agreement that kept the Forensic Pathologist from testifying to the jurors that the bullet that caused the injuries to victim was a severely deformed yellow metal jacketed bullet, not a silvertip nick plated hollow point bullet that the SLED ballistics report stated was removed from the body during the autopsy. The Forensic Pathologist's full testimony at trial would have been more than enough evidence to rebut the testimony of the SLED agent that the silvertip nickel plated hollow point bullets that were loaded in defendant's weapon was the ammunition that struck victim.



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In support of these allegations, Applicant cites to U.S. v. Williams, 632 F.3d 129, 133-34 (4th Cir. 2011)¹ and Old Chief v. U.S., 519 U.S. 172, 117 S. Ct 644 (1997).²

Applicant then filed a response to the Conditional Order of Dismissal on June 12, 2017. In this response, Applicant argues that his current PCR application is timely due to the discovery of a projectile that contradicts the SLED ballistics report, and clearly shows ineffective assistance of counsel as well as police misconduct. Applicant alleges that this new evidence was not discovered until January 23, 2013, but that he could not file a PCR application at that time because he was in the process of appealing the dismissal of his first PCR application. Applicant also alleges that his current application is not successive as the evidence he seeks to present is "newly discovered" and thus could not have been raised in his earlier PCR applications, filed on May 23, 2007 and May 10, 2011, respectively.

Applicant then argues that the Conditional Order of Dismissal fails to mention that the Applicant submitted the Thorax/Abdomen section of the autopsy report in support of his claim of newly discovered evidence. Applicant alleges that this section of the autopsy report states that "the bullet in victim's body was a severely deformed yellow metal jacketed bullet." Applicant argues that this particular bullet contradicts the SLED ballistics report which states that the bullet in the victim's body was a silvertip nickel-plated hollow point. Applicant further alleges that the author of the autopsy report, Dr. Kimberly Collins, was not present at his trial due to a stipulation between Applicant's trial counsel and the State. Applicant argues that he is entitled to a hearing so that he may present the autopsy report, which is "material to guilt and innocence." Applicant also reasserts

¹ In U.S. v Williams, the Fourth Circuit Court of Appeals held that a defendant's right confrontation under the Sixth Amendment was violated when the trial court admitted a stipulation as to weight and proof of a controlled substance over the defendant's objection. 632 F.3d 129, 133-34 (4th Cir. 2011).

² In Old Chief v. U.S., the U.S. Supreme Court held that a court may not spurn a defendant's offer to concede a prior judgment over his objection when the name or nature of the prior judgment raises the risk of a verdict tainted by improper considerations. 519 U.S. 172, 117 S. Ct 644 (1997).

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his claim that the arrest warrant was invalid and requests a hearing on subject matter jurisdiction as well.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Applicant's Response to the Conditional Order of Dismissal and Motion to Dismiss in their entirety, as well as the original pleadings, and finds that the Conditional Order of Dismissal should become final for the reasons detailed below.

Statute of Limitations

The Court holds that the instant application for post-conviction relief is hereby dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code. Ann. § 17-27-10 to § 17-27-160 ("The Act"). Specifically, the Act provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remitter 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, 1995. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on November 15, 2001. The South Carolina Supreme Court reinstated his conviction and sentence on April 9, 2007, and the Remittitur was issued on April 25, 2007. Applicant was, therefore, required to file this Application on or before April 25, 2008. However, Applicant did not file his current application for post-conviction relief until September 4, 2014 which was well beyond the statutory filing period.

A motion requesting summary judgment, like Respondent's Return, 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). Moreover, S.C. Code Ann. § 17-27-70(c) authorizes the



Court to "grant a motion by either party for summary disposition of [an] application [for post-conviction relief] where 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." Accordingly, this Court dismisses the Applicant's current application for failure to file within the time frame mandated by the Act.

Successive

This Court also finds that Applicant's current application for post-conviction relief is successive to his previous PCR applications. South Carolina 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. 614, 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 offense 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.

S.C. Code Ann. § 17-27-70.

Thus, 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 393 (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. That is to say, the applicant may not assert grounds for relief in a post-conviction application if he could have



asserted those same allegations in a previous application. See id. The applicant bears the burden of showing that the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant here has failed to establish that he could not have raised his current allegations in his previous two applications for post-conviction relief. Applicant could certainly have raised any issues he had with the arrest warrant in his previous PCR applications. After all, the arrest warrant was issued and served upon Applicant on or about February 5, 2001, and his previous PCR applications were filed in 2007 and 2011, respectively. Likewise, Applicant could also have set forth his "newly discovered evidence" (i.e. the autopsy report, NCPD forensic report, SLED report, and witness statement) in a previous PCR application. Though Applicant alleges that he discovered this evidence on January 28, 2013, these documents were all issued in 2001, and with due diligence, could easily have been obtained by Applicant at or before the time of trial. Applicant has not presented this Court with a sufficient reason as to why he could not have obtained this evidence and presented it the Court at an earlier date. Nor has Applicant set forth a sufficient reason as to why he waited until 2014 to challenge the validity of the arrest warrant issued and served upon him in 2001. Applicant's final allegation of ineffective assistance of trial counsel is also successive on its face as the Applicant made this very same allegation in his first PCR application, filed on May 23, 2007. The Court, therefore, concludes that the current application for post-conviction relief is successive and barred under S.C. Code Ann. § 17-27-90.

Subject Matter Jurisdiction

The Applicant's assertion that the trial court lacked subject matter jurisdiction is without merit. "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Evans v. State, 363 S.C. 495, 507, 611 S.E.2d

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510, 517 (2005). Applicant alleges that the trial court lacked jurisdiction to "try" him because the arrest warrant was invalid. In criminal cases, "the trial court acquires subject matter jurisdiction by way of a valid indictment." *Id.* The indictment is a notice document that is required by our state constitution and statutes. *Id.* The indictment at issue is facially valid and proper, thereby establishing the subject matter jurisdiction of the trial court. Additionally, a review of Applicant's record indicates that there is no basis for Applicant's claim that the trial court lacked subject matter jurisdiction.

Newly Discovered Evidence

Lastly, Applicant's assertion that he is being held in custody unlawfully as a result of newly discovered evidence is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year of the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). An applicant requesting a new trial based on newly discovered evidence after a conviction must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) had been discovered since the trial; (3) could not be the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).



The Applicant here has submitted the final autopsy report of the victim, the North Charleston Police Department forensic report, the witness statement, and the forensic report from SLED in support of his claim of "newly discovered evidence." Applicant alleges that he discovered this evidence on January 28, 2013. However, each of the aforementioned documents existed in 2001, and with, due diligence, could have been discovered at that time. Additionally, Applicant's claim of newly discovered evidence focuses on the discovery of cannabinoids in the victim's liver, the discovery of a small plastic Ziploc bag containing a green leafy substance, the discovery of gunshot residue on the victim's right palm, and, most recently, the type of bullet found in the victim's body. These findings were not only available to Applicant at the time of trial, but are also not likely to change the result of Applicant's trial if a new trial were to be had. Applicant has not offered even a scintilla of evidence that these findings are determinative of his guilt or innocence in the killing of the victim.

Accordingly, Applicant has failed to make a *prima facie* showing that he is entitled to relief based on the information set forth in his application, and therefore is not entitled to an evidentiary hearing in the matter. See Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is incumbent upon the Applicant to make at least a *prima facie* showing entitling him to relief."). This Court summarily dismisses Applicant's claim of "newly discovered evidence" with prejudice.

CONCLUSION

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their 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.

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IT IS THEREFORE ORDERED that for the reasons set forth herein, 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* SCACR 203. Applicant's attention is further directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 9th day of Nov., 2017.



The Honorable Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina.
November 11, 2017



2
AB
AT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)
)

Lord Byron Slater, #279992,

) Case No.: 2014-CP-10-5357
)
)

Applicant,

v.

) **CONDITIONAL ORDER OF DISMISSAL**
)
)

State of South Carolina,

Respondent.

FILED
2017 JUN -9 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Lord Byron Slater (Applicant) on September 3, 2014.¹ Respondent made its Return requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections pursuant to an order of commitment of the Charleston County Clerk of Court. Applicant was indicted at the May 2001 term of the Charleston County Grand Jury for murder (2001-GS-10-3221). Applicant proceeded to a jury trial before the Honorable Edward B. Cottingham on November 13-15, 2001. Applicant was represented by Ashley Pennington, Esquire, and S. Boyd Young, Esquire, of the Charleston County Public Defender's Office. Dale DuTremble, Esquire and Elizabeth Sumner, Esquire, of the Ninth Circuit Solicitor's Office, prosecuted the case. During the trial, Judge Cottingham submitted to the jury the lesser-included offense of voluntary manslaughter to the jury, but the jury convicted him for murder. On November 15, 2001, Judge Cottingham sentenced Applicant to life imprisonment. Applicant appealed his conviction and sentence.

¹ Respondent recently completed an audit of the 9th Circuit PCR files and discovered through inadvertence that a responsive pleading never went out.

On appeal, Applicant was represented by Assistant Appellate Defender Robert M. Dudek. The South Carolina Court of Appeals in a published Opinion filed on August 9, 2004, reversed Applicant's conviction. Respondent made a timely Petition for Rehearing on August 24, 2004. On September 23, 2004, the Court of Appeals denied Respondent's Petition. State v. Slater, Opinion No. 3855 (S.C. Ct. App. filed Aug. 9, 2004). On October 25, 2004, Respondent filed a Petition for Writ of Certiorari. On March 23, 2006, the South Carolina Supreme Court granted certiorari. By written order on April 9, 2007, the South Carolina Supreme Court reversed the Court of Appeals decision and reinstated the conviction. The Remittitur was issued on April 25, 2007.

2007-CP-10-2160

Subsequently, Applicant filed his first post-conviction relief application on May 23, 2007, alleging that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.

Respondent made its Return on October 15, 2008. An evidentiary hearing into the matter convened on November 16, 2009, at the Charleston County Courthouse. Applicant was present at the hearing and represented by William Runyon, Esquire. Respondent was represented by Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office. By written order on December 21, 2009, the Honorable Deadra L. Jefferson dismissed the application with prejudice. Applicant failed to timely serve a notice of appeal, and on April 18, 2011, the South Carolina Supreme Court dismissed the appeal.

2011-CP-10-33

Applicant filed his second application for post-conviction relief on May 10, 2011, and amended on September 27, 2013. Applicant raised the following allegations:

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1. Ineffective assistance of prior PCR counsel.
 - a. Did not notify Applicant of [a] judgment until March 25, 2011.
 - b. Denied Applicant the right to file a 59(e) to amend the order to include things that were not addressed in order.
 - c. Failed to file appeal in a timely manner. See *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respondent made its Return on November 3, 2011. An evidentiary hearing into the matter was convened on July 24, 2012, at the Charleston County Courthouse before the Honorable Stephanie P. McDonald. Applicant was present and represented at the hearing by Charles T. Brooks, III. Respondent was represented by Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office.

On August 21, 2012, Judge McDonald by written order granted the belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Subsequently, a Petition for Writ of Certiorari Pursuant to *Austin v. State* was filed on Applicant's behalf by Assistant Appellate Defender, David Alexander, Esquire. By written order on August 21, 2014, the South Carolina Supreme Court denied certiorari. The Remittitur was issued on September 8, 2014.

CURRENT APPLICATION

In his *third* and current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
 - a. "The victim tested positive for cannabinoids cross-reactives."
2. Subject matter jurisdiction.
 - a. "The arrest warrant which gave trial court its jurisdiction to try defendant was invalid due to the defendant being arrested without probable cause, without an arrest warrant, February 4, 2001."
 - b. "without valid arrest warrant, the trial court lacks jurisdiction to try the defendant for murder, also lacks jurisdiction to accept the jury verdict of guilty."
3. Ineffective assistance of trial counsel.
 - a. "Trial counsel fail[ed] to investigate toxicology report, also the unconstitutional arrest."



Also before this Court are the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief actions, Applicant's appellate records, and the records from this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of limitations

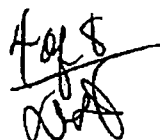
The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense 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). Applicant was convicted and sentenced on November 15, 2001. The South Carolina Supreme Court reinstated his conviction and sentence on April 9, 2007. The Remittitur was issued on April 25, 2007. Accordingly, Applicant was required to file this Application on or before April 25, 2008. Applicant did not file this Application until September 3, 2014, which was well beyond the statutory filing period.

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 . . .

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that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, this application is dismissed for failure to file within the time mandated by the Act.

Successive

The application should be summarily dismissed because it is successive to Applicant’s previous PCR applications. 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 offense 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.

S. C. Code Ann. § 17-27-70. 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).

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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. Applicant could have raised these allegations in either his first application for post-conviction relief filed May 23, 2007, or in his second application on May 10, 2011. Therefore, the current application is successive and barred under S.C. Code Ann. § 17-27-90.

Newly Discovered Evidence

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence such that he should be entitled to an evidentiary hearing is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Here, Applicant has submitted, in support of his claim of "newly discovered evidence," the final autopsy diagnosis of the victim, the North Charleston Police Department forensic report, the



witness statement and the forensic report from SLED. Applicant's claim primarily focuses on the discovery of cannabinoids cross-reactives in the victim's liver, the discovery of a small plastic Ziploc bag containing a green leafy substance, and gunshot residue on the victim's right palm. However, these findings are not likely to change the result of Applicant's trial if a new trial were had. Applicant alleges that he discovered this evidence on January 28, 2013. However, each of the documents existed in 2001, and with due diligence, could have been discovered before Applicant's trial. Furthermore, the evidence offered is not material to the guilt or innocence of the Applicant. Also, the evidence is merely impeaching or cumulative.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this Court summarily dismisses Applicant's claim of "newly discovered evidence" with prejudice.

Subject Matter Jurisdiction

Lastly, Applicant's assertion that the trial court lacked subject matter jurisdiction is without merit. "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Evans v. State, 363 S.C. 495, 507, 611 S.E.2d 510, 517 (2005). Applicant alleges that the trial court lacked jurisdiction to "try" him because the arrest warrant was invalid. In criminal cases, "the trial court acquires subject matter jurisdiction by way of way of a valid indictment." Id. The indictment is a notice document that is required by our state constitution and statutes. Id. Applicant's indictments are facially valid and proper, therefore, establishing the subject matter jurisdiction of the trial court.

A handwritten signature in black ink, appearing to be "T. J. S.", is written over the page number.

A review of the applicant's records indicates that there is no basis for Applicant's claim that the trial court lacked subject matter jurisdiction. Accordingly, this Court summarily dismisses Applicant's claim with prejudice.

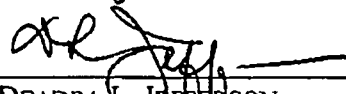
CONCLUSION

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

Office of the Attorney General
Attn: Rasheeda Cleveland, Esquire
PCR Division – Staff Attorney
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Charleston 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 8th day of June, 2017.


DEADRA L. JEFFERSON
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina