

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael J. Cline, ) Case No.: 2014-CP-26-07019  
S.C.D.C. No. 156213, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**FINAL ORDER OF DISMISSAL**

**FILED**  
**HORRY COUNTY**  
2017 JUL -5 PM 2:49  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed October 20, 2014. The Respondent made its return on or about July 13, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 July 15, 2015 and filed July 24, 2015, provisionally denying and dismissing this action, while giving the Applicant thirty (30) 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 August 19, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

On September 8, 2015, Matthew M. McGuire, Esquire, on behalf of Applicant filed a document titled “Objection to Conditional Order of Dismissal” in which he argues that trial counsel’s failure to object to the unlawful enhancement clearly constitutes ineffective assistance of counsel. Applicant filed several motions titled “Request for Emergency Hearing,” “Motion to

Appoint Petitioner Counsel,” and “Petitioner Motion to Change Venue,” on October 14, 2015, in which Applicant requests that if a hearing is held that it be moved because of a conflict of interest and that he requires an attorney be appointed as the attorney that filed the objection to the conditional order will not be representing him at any hearing.

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

This Court finds that the doctrine of *res judicata* bars the Applicant's claims of ineffective assistance of trial counsel and more specifically this issue of using prior offenses to enhance Applicant’s charge. *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.* This exact issue was presented during Applicant’s first PCR hearing held on May 22, 2006. Accordingly, this application must be dismissed.

In his motions, Applicant requests an order appointing counsel and his application placed on the roster for a hearing. Because Applicant’s allegations do not warrant a hearing to determine a question of law or fact, there is no requirement that he be appointed counsel, and Applicant’s motions are hereby denied.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

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

AND IT IS SO ORDERED this 5<sup>th</sup> day of June, 2017



BENJAMIN H. CULBERTSON  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

Conway, South Carolina