STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	
Joseph H. Gibbs,	)	Case No.: 2012-CP-27-0691
	)	
Petitioner,	)	
	)	**ORDER DISMISSING**
v.	)	**"PETITION FOR HABEAS CORPUS"**
	)	
State of South Carolina	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court pursuant to the filing of a document entitled "nunc pro tunc Writ of Habeas Corpus ad subjiciendum" on November 7, 2012, by Joseph H. Gibbs ("Petitioner"). Respondent made its Return on June 22, 2018, moving to deny and dismiss the petition without prejudice to the filing of an action in the original jurisdiction of the South Carolina Supreme Court. This Petition must be denied because it is filed as a petition for writ of habeas corpus in the Circuit Court which does not have jurisdiction of the subject matter in this setting pursuant Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) and Section 17-27-20. The Petitioner must file this matter in the original jurisdiction of the South Carolina Supreme Court, not a circuit court since the Petitioner had prior PCR actions which were dismissed.

Current Petition for Writ of Habeas Corpus

In his pro se petition, Petitioner alleges he is being held unlawfully for the following reasons:

1. "The Grand Jury of Jasper County never returned a true bill indictment on the warrants and charges, nor was a timely presentment made; nor waiver had through arraignment, preliminary hearing, bond hearing, or psychological evaluation/competence hearing, rendering the court without

subject matter jurisdiction, and jury without personal matter jurisdiction; and the State without authority to prosecute; denying me due process and equal protection of the law under the 5th and 14th [amendments] and Article 1, Sections 3 and 11 of the S.C. Constitution. Neither prosecutor, defense counsel, or judge informed me or objected."

I.

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. In 1992, Petitioner was indicted for murder (1992-GS-27-002) and first-degree burglary (1992-GS-27-003). Marva Hardee-Thomas, Esquire, represented him. Stephen T. Plexico, Esquire, represented Petitioner at trial. On March 10, 1992, Petitioner proceeded to trial before the Honorable William Howard and was found guilty of both charges. Judge Howard sentenced Petitioner to imprisonment for life without parole for each offense.

Petitioner filed a timely notice of appeal. Appellate Defender Robert M. Dudek, Esquire, filed a brief on Petitioner's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The Supreme Court of South Carolina dismissed the appeal by a memorandum opinion filed May 14, 1993. State v. Gibbs, Case No. 93-MO-111 (1993).

3:93-cv-02921

Petitioner filed his first petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in federal district court on November 3, 1993. The petition was dismissed on September 14, 1994.

First PCR Action: 1994-CP-27-309

Petitioner subsequently filed an application for post-conviction relief (PCR) on November 4, 1994, in which he alleged the following grounds for relief:

1. Trial Court Errors
2. Denial of Due Process Rights
3. Ineffective Assistance of Trial Counsel

4. Ineffective Assistance of Appellate Counsel

The State made its Return on January 25, 1995. An evidentiary hearing was convened on March 20, 1995 before the Honorable Larry R. Patterson. Petitioner was present and represented by Albert L. Kleckley, Esquire, and Charles Stephen Bennett, Esquire. Judge Patterson denied and dismissed the application with prejudice by written order dated April 30, 1995. Petitioner filed a petition for writ of certiorari, which was denied by the South Carolina Supreme Court on November 8, 1996.

1998-CP-27-0267

Petitioner filed a document captioned "Petition for Writ of Habeas Corpus" on October 8, 1998, in the Jasper County Court of Common Pleas. The State made its Return and Motion to Dismiss on March 4, 1999. Petitioner subsequently submitted a reply. After reviewing all pleadings in the matter, the Honorable Donald W. Beatty denied and dismissed the petition by an order of dismissal signed April 21, 1999, because it failed to allege sufficient facts to show why other remedies such as PCR were unavailable or inadequate. Petitioner's appeal from this dismissal was also dismissed on June 28, 2000. Petitioner subsequently filed a petition for writ of certiorari. The Supreme Court of South Carolina denied the petition on July 3, 2001.

2003-CP-27-0184

Petitioner filed documents captioned "Notice & Intent to Seek Court Action: Under the 'Administrative Procedures Act'" and "Petition for Declaratory Judgment" in May 2003. In an order filed January 5, 2004, the action was dismissed pursuant to Rule 41(b), SCRCP, for failure to show any right to relief and no defendant was named in the lawsuit.

November 2010 Petition – 2010-OR-00455

On or around November 4, 2010, Petitioner filed a petition seeking original jurisdiction in the United States Supreme Court. The petition was denied on March 28, 2011.

II.

Petitioner has filed a petition for writ of habeas corpus in the Court of Common Pleas in Jasper County in the Circuit Court and not in the original jurisdiction of the South Carolina Supreme Court. The South Carolina Supreme Court has not entered an order accepting jurisdiction of the case in its original jurisdiction nor referred the matter to any circuit judge pursuant to its original jurisdiction for fact finding or legal conclusions. The Circuit Court of Jasper County has no jurisdiction in this subject matter in this setting.

The availability of habeas corpus has been severely limited by the Uniform Post Conviction Procedure Act. *See* S.C.Code Ann. §§ 17-27-10 to 17-27-120. First, "The Act 'takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.'" Gibson v. State, 329 S.C. 37, 40–41, 495 S.E.2d 426, 428 (1998) (quoting S.C.Code Ann. § 17-27-20(b)). The Act therefore supersedes and encompasses the prior habeas corpus procedure provided by statute before the PCR Act was enacted. *See* S.C. Code Ann. §§ 17-17-10 to 17-17-200.

This Court finds all of the Petitioner's factual or legal assertions were presented or could have been presented in prior PCR actions and therefore could not be raised in the circuit court, but must be presented before the South Carolina Supreme Court in an petition for writ of habeas corpus in its original jurisdiction and seek to determine whether each is able to show "a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)

(emphasis in original) (internal citation omitted). See McWee v. State, 357 S.C. 403, 404, 593 S.E.2d 456, 456 (2004) (seeking a petition in the original jurisdiction of the Supreme Court unsuccessful).

This Circuit Court shall make no findings or conclusions as to the merits of the claims raised as it lacks authority to do so. Rather, the Court's review of the procedural history should reveal the strength of the State's argument that the Court cannot address the grounds. Since 1998, it has been consistently held that "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court." Id. The soundness of this conclusion should be clear. The Uniform Post-conviction Relief Act provided the statutory remedy for the circuit courts to address issues related to South Carolina convictions. As the Supreme Court stated:

> Section 17-27-20(b) states that the Act "comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence," and provides the Act "shall be used exclusively in place of them." We acknowledge we have stated that habeas corpus is available once the petitioner has exhausted all post-conviction remedies. Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994); Slack v. State, 311 S.C. 415, 429 S.E.2d 801 (1993). In Tyler v. State, 247 S.C. 34, 145 S.E.2d 434 (1965), however, this Court stated that habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors for which a criminal defendant had an opportunity to avail himself. Because we believe the rule in Tyler is the appropriate rule, we now hold that a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.4 See Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998).

Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998).

The Circuit Court does not have the discretion to ignore the precedent of the South Carolina Supreme Court and its proper interpretation of the exclusive effect of the Uniform Post-Conviction Relief Act. To accept the Petitioner's potential argument on the merits in his petition would make meaningless the PCR Act's provisions concerning statute of limitations or successiveness. The Supreme Court's precedent in this area is clear and unequivocal. Merely changing the title of a pleading from a "post-conviction relief application" to a "petition for a writ of habeas corpus" in the South Carolina circuit does not create a new remedy that was expressly foreclosed by the PCR Act. The Circuit Court does not have the requested discretion to do otherwise where it is conceded that the particular grounds are those which could have been raised in the prior post-conviction relief applications.[1]

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[1] The following general rules are interwoven with the PCR Act and its procedural concepts of successiveness and the statute of limitations. "Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal–Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). In Wal–Mart Stores, Inc., the Supreme Court adopted the general rule set forth in the Restatement (Second) of Judgments § 27 (1982). Id. "Section 27 provides that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Id. (emphasis added).Stated another way, "[t]he party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009).

The doctrine of collateral estoppel is also known as "issue preclusion." In re Crews, 389 S.C. 322, 698 S.E.2d 785 (2010); Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008); Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (1997). Issue preclusion bars the relitigation of only the particular issues that were actually litigated and decided in the prior suit. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997). As a result, the doctrine of collateral estoppel is inapplicable when the argument turns on an assertion that the other party should have litigated a particular issue in the prior action. See id. at 216, 493 S.E.2d at 835.

The doctrine of res judicata is a distinguishable concept. Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 n. 1 (Ct.App.1984). Res judicata encompasses both issue preclusion

and claim preclusion. Crestwood Golf Club, Inc., 328 S.C. at 216, 493 S.E.2d at 834. However, res judicata is more commonly referred to simply as claim preclusion. Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). Claim preclusion bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated. Crestwood Golf Club, Inc., 328 S.C. at 216, 493 S.E.2d at 835.

The Court has reaffirmed the following statement of the doctrine:

> Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit."

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (alteration in original) (citations omitted), cited with approval in Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011).

Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250–51, 452 S.E.2d 832, 833 (1994). The doctrine of res judicata is not an "ironclad bar," however, to a later lawsuit. Judy, 393 S.C. at 167, 712 S.E.2d at 412; Garris, 333 S.C. at 449, 511 S.E.2d at 57; Clark v. Aiken Cnty. Gov't, 366 S.C. 102, 109, 620 S.E.2d 99, 102 (Ct.App.2005). Catawba Indian Nation v. State, 407 S.C. 526, 536–38, 756 S.E.2d 900, 906–07 (2014).

"Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (citing 5 C.J.S. Appeal & Error § 991 (2007)). In other words, "[t]he doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case." Ross v. Med. Univ. of S.C., 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997); see In re Grossinger's Assocs., 184 B.R. 429, 434 (Bankr.S.D.N.Y.1995) ("Closely related to the doctrines of claim and issue preclusion is the doctrine of law of the case, which holds that a decision on an issue of law made at one stage of a case becomes binding precedent to be followed in subsequent stages of the same litigation." (quotation marks omitted)). While the doctrine has been referenced as discretionary, it is recognized that principles "of authority ... do inhere in the 'mandate rule' that binds a lower court on remand to the law of the case established on appeal." 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 4478 (2d ed.2002).

"The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." United States v. U.S. Smelting Ref. & Mining Co., 339 U.S. 186, 198, 70 S.Ct. 537, 94 L.Ed. 750 (1950). "Law of the case rules have developed to maintain consistency and avoid reconsideration of matters once

This Court agrees with Respondent that the claims made in the present Petition for Writ of Habeas Corpus could have been previously raised in their earlier post-conviction relief applications. As the procedural history reflects, if these same claims had been brought in 2016 or 2017 under the Uniform Post-conviction Relief Act, each would have been barred as untimely under the §17-27-45 one-year statute of limitations or the successive petition bar under the Court's mandates in 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." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Petitioner could have raised these allegations in a previous application, then the Petitioner may not raise those grounds in successive applications. Id.

Petitioner cannot file a petition in the circuit court, but must instead file in the original jurisdiction of the Supreme Court should he choose to do so. Therefore, these particular claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina in this setting. Accordingly, the Petition shall be dismissed.

Under Art. 5, § 5 of the South Carolina Constitution, the South Carolina Supreme Court retains the ability to entertain writs of habeas corpus in their original jurisdiction and grant relief in those unusual instances where "there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler v. State, 302

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decided during the course of a single continuing lawsuit. These rules do not involve preclusion by final judgment; instead, they regulate judicial affairs before final judgment." In re Grossinger's Assocs., 184 B.R. at 434. See Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015). It thus serves the same objective as the 'newly discovered' requirement in Rule 60(b)(2)." (citation and quotation marks omitted)); id. ("In this case, [the appellant] is seeking to reopen factual issues finally laid to rest by the Ninth Circuit in 1982 on the basis of evidence it could have discovered with due diligence at least by the time of trial of this case in 1977. The district court was fully justified in rejecting this attempt." (emphasis added)).

S.C. 466, 397 S.E.2d 87 (1990); see also Simmons v. State, 322 S.C. 49, 471 S.E.2d 455 (1993); Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991) (Supreme Court will exercise its original jurisdiction where there is an extraordinary reason such as a question of significant public interest or an emergency).[2]

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby denied and dismissed without prejudice to the filing of an action in the original jurisdiction of the South Carolina Supreme Court. It is for that Court, not the Circuit Court, to determine whether Petitioner has made or ultimately proven "there has been a violation which, *in the setting*, constitutes a denial of a fundamental fairness shocking to the universal sense of justice."

AND IT IS SO ORDERED this 27 day of June 2018.

CARMEN T. MULLEN
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

[2] This Court would note that its decision to dismiss the petitions in this manner is not a matter of first impression in South Carolina. Courts which have consistently found that no remedy exists in the circuit courts for similar challenges under a "habeas corpus" petition. See Ellerbe v. State, No. 2004-UP-644, 2004 WL 6339721, at *1 (S.C. Ct. App. Dec. 21, 2004); Barron v. State, No. 2010-UP-239, 2010 WL 11506693, at *1 (S.C. Ct. App. Apr. 14, 2010); Ford v. State, No. 2010-UP-276, 2010 WL 10079934, at *1 (S.C. Ct. App. May 19, 2010); Fishburne v. State, No. 2009-UP-549, 2009 WL 9530299, at *1 (S.C. Ct. App. Nov. 23, 2009); Harrell v. State, No. 2009-UP-101, 2009 WL 9527551, at *1 (S.C. Ct. App. Feb. 26, 2009); Johnson v. State, No. 2008-UP-547, 2008 WL 9846485, at *1 (S.C. Ct. App. Oct. 9, 2008).