

South Carolina Supreme Court

James Michael Lucas
Petitioner,

Vs.

State of South Carolina
Respondent.

Case No. 2018-001963

Motion to submit
Documents to the
Court for review.

RECEIVED

MAY 15 2019

S.C. SUPREME COURT

Petitioner submits these documents to the court signed by the PCR judge and dismissed with prejudice. Petitioner never one time had a chance with the lower court. Petitioner never got an order from the court to do a proposed order, still petitioner submitted one on Monday the 6th even tho petitioner had gotten the order of dismissal on Monday the 6th, Petitioner still sent an proposed order with this courts order and all exhibit evidence. This has went on for 19 years, knowing that the Respondents had all the documents and still they have done all they could to keep petitioner in prison by breaking their own laws to do so. Petitioner is at the end of the road here and don't know who to bring this great miscarriage of justice to. Petitioner is working on a writ of certiorari for this court, appealing the lower courts decision. Petitioner has had to deal with this malicious prosecution for the past 19 years, and the respondents have won over and over again, breaking laws and have gotten away with it, while others have to suffer for their illegal acts.

The PCR judge said that she would get back to petitioner at the end of the hearing held on August 7, 2017, now she is dismissing petitioner's case after petitioner brought to this court's attention what was going on. The PCR judge sided with the respondents without even looking at the petitioner's evidence and proposed order. Petitioner's Due Process rights have been violated.

South Carolina Supreme Court
James Michael Lucas
S.C.D.C. No: 276323
Petitioner

V.

State of South Carolina
Respondent

In the South Carolina
Supreme Court.

Case No: 2018-001963

AFFIDAVIT OF
SERVICE BY
MAIL.

1. I am the Pro se Petitioner 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 this motion on the above captioned matter on the following person's by depositing same in the United States mail, postage prepaid;

Dated this 13th day of May 2019

James M. Lucas
Pro se Petitioner

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

James Michael Lucas,)
S.C.D.C. No. 276323,)

Case No.: 2015-CP-32-04175

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

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Applicant James Michael Lucas filed a post-conviction relief application on December 1, 2015. On March 6, 2017, the State filed a return and moved to dismiss the action on several grounds: 1) ineffective assistance of PCR counsel claims are not cognizable; 2) the action was untimely under the one-year statute of limitations in S.C. Code Ann. §17-27-45(A); and 3) the action was barred by laches; 4) the action was successive to Applicant's prior 2003 PCR action; and 5) the action was barred by the doctrine of *res judicata*.

The State submitted its motion to dismiss in a motion hearing convened on August 7, 2017, in Lexington County. At that time, the undersigned considered whether the State's motion may be granted without the necessity of an evidentiary hearing for factual development, or if counsel should be appointed and an evidentiary hearing scheduled. See S.C. Code Ann § 17-27-70 (b) and (c) (summarily dismissal appropriate where no issue of material fact and further proceedings not warranted); *see also McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) (hearing necessary in cases of "factual dispute" of "critical issue"). Senior Assistant Deputy Attorney General Melody Brown represented Respondent at the motion hearing. Mr. Lucas was present and addressed the Court. The Court took the matter under advisement.

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ATTORNEY GENERAL'S OFFICE

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ADMINISTRATIVE INSTRUCTIONS

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 ORDER TRANSCRIPT

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 OTHER:

After consideration of the pleadings, the records provided, and Applicant's comments at the August 7, 2017 hearing,¹ this Court has determined that the State's motion will be GRANTED without the necessity of an evidentiary hearing and without the appointment of counsel. The above captioned PCR action is DISMISSED WITH PREJUDICE.

This Court sets out the following in support of its decision:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2001 term of the Lexington County Grand Jury for murder (2001-GS-32-1182). Robert T. Williams, Sr., Esquire, represented Applicant. Applicant proceeded to trial before the Honorable R. Markley Dennis, Jr., and a jury. The jury found Applicant guilty as indicted on June 28, 2001. Judge Dennis sentenced Applicant to imprisonment for a term of life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, Esquire, filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed unpublished opinion on February 5, 2003. *State v. Lucas*, Op. No. 2003-UP-103 (Ct. App. 2003). The Court of Appeals issued the Remittitur on March 18, 2003.

¹ After the motion was submitted, Applicant sent a September 2018 letter to the Court, as did his mother, Debra Lucas. Applicant also submitted additional materials for the Court's consideration. cursory review of the documents would tend to support many of these documents are likely already a part of the record, in particular, what appears to be portions of trial or hearing transcripts. This Court, however, does not file documents on behalf of a party. Should Applicant wish to make these documents a part of the record, copies should be made and filed with the Lexington County Clerk of Court. Further, these letters and documents were not considered as the motion was submitted in August 2017 and Respondent had no opportunity to respond to the arguments and/or comment on the information presented. Copies of these two letters and documents were sent to the Attorney General's Office.

The 2003 PCR Action: C/A 2003-CP-32-00771

Applicant, by and through counsel Tara Dawn Shurling, Esquire, filed his first application for post-conviction relief on February 26, 2003 (2003-CP-32-00771). Counsel amended the application on October 7, 2005, July 20, 2006, and July 21, 2006 raising multiple allegations of ineffective assistance of counsel:

1. Ineffective Assistance of Trial Counsel:
 - A. failed to adequately investigate the case prior to trial;
 - B. failed to adequately prepare and present witnesses;
 - C. failed to recognize and present objections to errors which occurred during trial;
 - D. failed to develop and present viable defenses to the charges against the Applicant prior to and during his trial;

(Original Application)

1. Defense counsel was ineffective for failing to request that the circuit court authorize funding for necessary experts in the Applicant's defense where the Applicant himself was clearly an indigent, counsel's legal fees were being paid by his parents who bore no legal responsibility therefore and where the parents did not have the means to pay for necessary experts even if they had been willing to do so.
2. Trial counsel was ineffective for failing to obtain the services of a firearm examiner in the case before the Court where the testimony of such an expert would have been beneficial to the defense.
3. Trial counsel was ineffective for failing to obtain the services of a forensic pathologist in the case at bar where the testimony of such an expert would have been supportive of the defense's theory of the case.
4. Trial counsel was ineffective for failing to hire a crime scene examiner for the purpose of evaluating the evidence found at the scene of the shooting where the testimony of such an expert could have supported the defense position.
5. Trial counsel was ineffective for failing to present psychiatric testimony in present of the Applicant's defense where such testimony would have been beneficial to the defense in that it would have explained some behavior by the Applicant which was otherwise argued by the prosecution as clear evidence of guilt.

through the payment of this life insurance policy were consumed by the young woman's burial expenses.

15. Trial counsel was ineffective for failing to introduce copies of the coroner's report and the autopsy report into evidence where these documents would have demonstrated that these authorities ruled this death to be accidental.

16. Trial counsel was ineffective for failing to call the deceased's father, as a witness for the defense where his testimony could have explained certain behavior that was otherwise argued by the State as incriminating.

17. Trial counsel was ineffective for failing to call the Applicant's grandparents as witnesses.

(Amendment dated October 7, 2005).

18. Trial counsel was ineffective for first mentioning the alleged sexual relationship between the victim's mother and the Applicant in his opening statement, erroneously stating that the Solicitor had claimed that "there was some sort of relationship between the Defendant and the mother" while the Solicitor made no such claim in *his* opening statement to the jury.

19. Trial counsel was ineffective for failing to object to Solicitor Swarat's unconstitutional shifting of the burden of proof onto the Applicant during *his* closing argument when he implied to the jury that the fact that the State "put up about 16, 17 witnesses" as compared to only one witness for the defense should be an important consideration for the jury.

(Amendment dated July 20, 2006).

20. Trial counsel was ineffective for failing to locate and introduce into evidence at trial evidence of Applicant's suicide attempt that occurred in the moments immediately following this tragedy.

(Amendment dated July 21, 2006).

An evidentiary hearing was held November 28 and 29, 2006, before the Honorable Diane S. Goodstein. Applicant was present at the hearing and was represented by retained counsel Tara D. Shurling, Esquire. Sabrina C. Todd of the South Carolina Attorney General's Office represented Respondent. Applicant called the following witnesses to testify: Robert T. Williams, Sr., Esquire, Kelly Fite, Donald C. Girndt, Thomas V. Martin, MD, Carol L. McMahon, MD,

David K. Toole, Timothy J. Wise, Ronnie Hook, Minnie Lucas, James Milo Lucas, and Deborah A. Lucas. Respondent called the following witnesses to testify: Mr. Williams, Steven M. Derrick, and David Collins. Applicant testified in reply. In addition to the testimony and pleadings, the PCR Court had before it the trial transcript, the Lexington County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and Petitioner's appellate records. On May 23, 2007, the Honorable Diane S. Goodstein entered an Order of Dismissal. Applicant, through counsel, moved to alter or amend, which was denied on August 4, 2008. Applicant timely appealed.

On appeal, Applicant was initially represented by M. Celia Robinson, Esq., who filed an amended petition in this Court on August 2, 2010, asserting the following claims:

1. Did the PCR judge err in denying relief despite trial counsel's providing ineffective assistance of counsel in failing to seek funds for the cost of retaining experts and in failing to consult or retain experts where counsel's failure to present expert testimony prejudiced the defense and contributed to the negative result at trial?
2. Did the PCR judge err in denying relief despite trial counsel's ineffectively failing to introduce the autopsy and coroner's reports which indicated that the shooting was accidental in evidence to the clear prejudice of the defense?
3. Did the PCR judge err in denying relief despite trial counsel's providing ineffective assistance of counsel by failing to present evidence of petitioner's good character which prejudiced the defense?
4. Did the PCR judge err in denying relief despite trial counsel's failure to object to the State's closing argument wherein the prosecutor commented on the defendant's failure to present witnesses as compared to the State's presentation of too many witnesses to count?
5. Did the PCR judge err in denying relief despite trial counsel's providing ineffective assistance of counsel by failing to obtain or present evidence as to the use of the insurance policy or evidence to explain for the victim's father's looking at the policy after her death?

6. Did the PCR judge err in denying relief despite trial counsel's providing ineffective assistance of counsel by failing to present evidence explaining petitioner's parents' allowing the victim's mother to stay in their home in an effort to protect the credibility of the defense and defense witness, DiAnn Spurck, to the prejudice of the defense?
7. Did the PCR judge err in denying relief despite trial counsel's providing ineffective assistance of counsel by failing to present evidence of the State's witness's bad character to the prejudice of the defense?

The State, through Assistant Attorney General A. West Lee, made a Return to the Petition on November 12, 2009. On January 7, 2011, the Supreme Court of South Carolina granted the petition and set a briefing schedule on all issues. On April 29, 2011, substitute appellate counsel Tristen M. Shaffer, Esq., filed the Brief of Petitioner. On September 12, 2011, Assistant Attorney General Kaelon May submitted the Brief of Respondent. On December 5, 2011, the Court dismissed as improvidently granted. *Lucas v. State*, Memo. Op. No. 2011-MO-034 (S.C.S.Ct. December 5, 2011). The Court subsequently issued the remittitur on December 21, 2011. Applicant thereafter pursued federal habeas review.

The Federal Habeas Action: 1:12-2879-TMC-SVH

Applicant filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the Federal District Court, District of South Carolina, on October 1, 2012, and amended the petition on February 21, 2013 (C.A. No. 1:12-2879-TMC-SVH). In his Petition, Applicant set forth the following grounds for relief:

1. "Ineffective assistance of counsel"
 - a. "Failed to introduce into evidence the autopsy and coroner's report to show accident."
 - b. "Failed to seek funds for the costs of retaining experts and in failing to consult or retain experts, such as a crime scene expert and psychiatrist."
 - c. "Failed to present evidence of use of insurance policy or evidence to explain the victim's father looking at the policy after her death."
 - d. "Failed to present evidence of Petitioner's good character."

- e. "Failed to present evidence of state witness Brenda Stevenson's bad character."
 - f. "Failed to present evidence explaining why petitioner's parent allowed the victim's mother to stay in their home in an effort to protect the credibility of the defense and defense witness DiAnn Spurck."
 - g. "Failed to object to State's closing argument where prosecutor commented on Petitioner's failure to present witnesses as compared to the state's presentation of too many witnesses to count."
 - h. "Failed to object to an improper jury instruction, (preserve for appellate review), that had the effect of shifting the burden of proof by creating a rebuttable presumption of malice from the use of a deadly weapon."
2. "Actual innocence"

Respondent filed its Return and Motion for Summary Judgment on March 25, 2013. On September 26, 2013, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a Report and Recommendation that Respondent's motion for summary judgment be granted. *Lucas v. McCall*, 1:12-2879-TMC-SVH, 2013 WL 6780567 (D.S.C. 2013) (as incorporated in District Court order). The Honorable Timothy M. Cain, United States District Judge, accepted the Report and Recommendation, granted Respondent's motion for summary judgment, and denied the petition. *Id.* Applicant timely sought an appeal, but was denied a certificate of appealability. *Lucas v. McCall*, 571 Fed.Appx. 215 (4th Cir. 2014). His petition to the Supreme Court of the United States was denied on January 20, 2015. *Lucas v. Reynolds*, 135 S.Ct. 1170 (2015).

II. CURRENT PCR ACTION

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

1. Ineffective assistance of trial counsel, in that;
 - a. "Counsel failed to move to squash the defective murder indictment;"
 - b. "Trial counsel failed to file pre-trial motion in regards to the speaker from the crime scene being removed from the room of the house;"

- c. "Trial counsel failed to pre-trial the matters of the State's witness who testified before the grand jury to obtain the true bill indictment based upon by a person who was a convicted felon and the disclosure of the information was at the later and not received for trial, etc.;"
2. Ineffective assistance of appellate counsel, in that;
 - a. "Appellate counsel Carter failed to raise all trial issues to the appeal court, the trial issues are preserved by trial counsel and the rules were violated by the appeal attorney;"²
3. Ineffective assistance of PCR counsel, in that;
 - a. "PCR counsel failed to procure the record evidence from trial counsel regarding the plea deal consisted of three (3) years offered from the state counsel, etc."
 - b. "PCR counsel failed to procure all necessary case files to raise the needed amended issues that should have been raise to guarantee the Applicant a completed one bite at the apple in his PCR case matters presented before the Court, etc."

Before this Court are the Lexington County Clerk of Court records regarding the instant action and the subject convictions; records from the South Carolina Department of Corrections; Applicant's current and prior PCR records, to include the PCR Appeal Records.

III. DISCUSSION

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." "When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant." *McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). "Where an applicant alleges facts that would establish an exception to

² Respondent, in the return and motion to dismiss, advised the Court that it can find no record of Wanda H. Carter, Esq., representing Applicant in any appellate or post-conviction proceeding. Applicant has not advised the Court differently. The records submitted to the Court do not reflect Ms. Carter's involvement.

either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.” *Id.*

This Court finds the State’s motion to dismiss should be granted without an evidentiary hearing for reasons clearly established in the record before the Court. All the claims that have been raised in the current application, apart from claims of ineffective assistance at PCR, could have been addressed during the 2003 PCR action in which Ms. Shurling represented Applicant. Specifically, Applicant’s claims regarding the speaker and witness impeachment were claims in the prior PCR action. (May 23, 2007 Order, pp. 5-6 and p. 15). The remaining claims against trial counsel reference materials and arguments available for presentation at the prior proceedings. As to ineffective appellate counsel, not only could that have been raised, the claim is based on an incorrect reading of the law: it is well-settled that counsel does not have raise to all preserved claims in the appeal. *See, e.g., Gilchrist v. State*, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) (“Appellate counsel is not required to raise every nonfrivolous issue that is presented by the record.”) (citing *Tisdale v. State*, 357 S.C. 474, 594 S.E.2d 166 (2004)). The remaining claims regarding ineffective assistance of PCR counsel cannot be raised at this point as the law does not generally allow a PCR action based upon claims of ineffective PCR counsel. Lastly, to the extent Applicant’s claims may be construed to allege “new evidence,” such an allegation would be without merit based upon the fact that all his claims and arguments rely on documents or facts known or knowable during the first PCR.

Again, all the claims set out in the instant action are either procedurally barred or not cognizable. Therefore, this Court has determined further proceedings are not necessary and this

matter should be summarily ended.³ In support of its summary of findings of facts and conclusions of law, the Court further sets out the following in support of summary dismissal:

Ineffective Assistance of PCR Counsel Claims

Applicant alleges he is entitled to relief on grounds that his prior PCR counsel, Tara Dawn Shurling, Esquire, was ineffective. Ineffective assistance of PCR counsel is not a ground for relief. Once an applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not generally make successive applications based on ineffective assistance of PCR counsel. *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). The Supreme Court of South Carolina has recently reiterated there is no “right to file a successive PCR application by merely alleging ineffective assistance of prior PCR counsel.” *Robertson v. State*, 418 S.C. 505, 516, 795 S.E.2d 29, 34 (2016).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel in non-capital actions is found in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). *Austin* recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. That exception is not applicable here. Applicant received a two-day hearing in his first PCR action and timely appealed therefrom. It is clear Applicant enjoyed a complete adjudication on the merits of his original application—“one full bite at the apple.” Therefore, Applicant’s allegations of ineffective assistance of PCR are not cognizable and this Court GRANTS the state motion on this basis. The remainder of the claims,

³ Because an evidentiary hearing is not warranted, this Court declines to appoint counsel. See *Gary v. State*, 347 S.C. 627, 630, 557 S.E.2d 662, 664 (2001) (“...counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under § 17-27-45(A) and the PCR applicant raises an issue of material fact regarding the applicability of the one-year limitation”); Rule 71.1 (d), SCRPC (“If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent.”).

though cognizable, are procedurally barred as untimely, successive, and alternatively, barred by laches and *res judicata*.

The Action is Untimely

This Court also finds the current Application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant was convicted on June 28, 2001, and the remittitur from his direct appeal issued on March 18, 2003. The current application was not filed until December 1, 2015—more than 11 years after the one-year statutory filing period expired. This Court GRANTS the State's motion to dismiss because the action is barred under the statute of limitations.

The Action is Barred as Successive

This Court finds the current Application must be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. *See, e.g., Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) provides:

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 point to a ‘sufficient reason’ why new grounds for relief were not raised, or were not raised properly” in the previous application. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* In short, “as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application.” *Id.* The applicant bears the burden of showing that the allegations could not have been raised previously. *Id.*

Other than the ineffective assistance of PCR counsel claims, Applicant could have raised each of his current grounds (or, as noted, in some instances did raise the substance of his position) in his prior PCR action. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief action, or why he should be allowed to re-raise the substance of those prior claims previously litigated. Therefore, this application is barred as successive. *See also Mangal v. State*, 421 S.C. 85, 100, 805 S.E.2d 568, 576 (2017)(“As we stated in *Odom* and repeated in *Robertson*, “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.”) (quoting *Robertson*, 418 S.C. at 513, 795 S.E.2d at 33; *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999)) (emphasis added). This court GRANTS the State’s motion to dismiss because the action is barred as successive.

Other Procedural Bars

Respondent has also asserted both laches and *res judicata*. The Court agrees that each these doctrines also apply to bar the action.

Where an applicant fails to exercise reasonable diligence, the State may seek summary dismissal through the equitable doctrine of laches, which is a “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)). Applicant filed the instant action nearly 14 years after his conviction. Absent some explanation or justification for the delay, laches will prevent an applicant from seeking such review, especially where delay affects availability of evidence. Applicant has offered no justification for the delay. Further, because of the delay, witness memories and physical evidence will have naturally faded and degraded. Given the great length of time at issue, this Court finds that laches would also apply to bar the action. *See Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held).

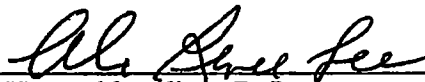
Lastly, Respondent submits the action is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). Applicant had a full opportunity to litigate his allegations of ineffective assistance of trial and appellate counsel in his prior action. Indeed, PCR counsel in Applicant's first collateral action *exhaustively* probed and challenged the performance of trial counsel on 20 different grounds over the course of a two day evidentiary hearing. This Court finds the finality of the previous Court rulings should be respected and the application should also be summarily dismissed as barred by the doctrine of *res judicata*.

Accordingly, this court also GRANTS the State's motion to dismiss, in the alternative, based on laches and *res judicata*.

IT IS THEREFORE ORDERED:

1. The State's Motion to Dismiss is GRANTED;
2. The Application for Post-Conviction Relief is DISMISSED WITH PREJUDICE;
3. Applicant is remanded to the custody of the Department of Corrections to complete the remainder of his sentence.

AND IT IS SO ORDERED this 24th day of April, 2019.


The Honorable Alison R. Lee
Presiding Judge

ATTACHMENT TO ORDER FOLLOWS
(Copy of Order of Dismissal from C/A 2003-CP-32-00771)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

James Michael Lewis,)
S.C.D.C. No. 276323,)

Case No. 2015-CP-32-04175

Applicant,)

vs)

CERTIFICATE 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 *Order of Dismissal filed April 24, 2019* along with the *Form 4 Order dated April 24, 2019* in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James Michael Lucas, #276323
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

DATED this 2nd day of May, 2019.



Angela Bennett, Legal Assistant for
Melody J. Brown, Senior Assistant Deputy Attorney General

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3204175**

James Michael Lucas #276323		State of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- 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 (List amount(s) below)

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date 4/24/2019
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For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James Michael Lucas #276323

Melody Jane Brown P.O. Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

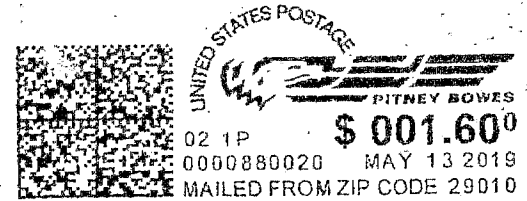
E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

del Lucas # 276323

Hwy
S.C. 29010



Urgent Matter

The Supreme Court of South Carolina