

DEAR CLERK,

ENCLOSED, PLEASE FIND APPELLANT'S TIMELY  
NOTICE OF APPEAL FILED UPON YOUR COURT. THANK YOU FOR YOUR  
TIME AND ASSISTANCE IN THIS MATTER.

DATE: 8-25-2019

S/ Darnell Hudson  
APPELLANT

RECEIVED  
AUG 29 2019  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM ANDERSON  
COUNTY

COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CHIEF  
ADMINISTRATIVE JUDGE

CASE NO: 2018-CP-04-01305

RECEIVED

AUG 29 2019

S.C. SUPREME COURT

DARNEIL E. HUDSON # 227328 . . . . . APPELLANT

v.

STATE OF SOUTH CAROLINA . . . . . RESPONDENT

NOTICE OF APPEAL

PURSUANT TO RULES 203, 206, 227 (c) AND 243 (c) OF S.C. APP. CT. RULES THE APPELLANT DARNEIL E. HUDSON APPEALS THE COURT DECISION OF THE HON. R. SCOTT SPROUSE, CHIEF ADMINISTRATIVE JUDGE FOR THE TENTH JUDICIAL CIRCUIT OF ANDERSON COUNTY, COURT OF COMMON PLEAS, ORDER OF DISMISSAL DATED AUGUST 5<sup>TH</sup>, 2019 IN CASE NO: 2018-CP-04-01305 DISMISSED WITH PREJUDICE. APPELLANT RECEIVED A COPY OF THE ORDER OF DISMISSAL ON AUGUST 9<sup>TH</sup>, 2019, THIS NOTICE OF APPEAL IS TIMELY FILED. APPELLANT'S ORDER OF DISMISSAL IS HEREBY ATTACHED TO THIS SAID NOTICE OF APPEAL.

OTHER PARTIES OF THE RECORD

1. LILLIAN L. MEADOWS, ASSISTANT ATT. GEN  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 11549  
COLUMBIA S.C. 29211
2. RICHARD A. SHIRLEY  
CLERK OF COURT FOR ANDERSON COUNTY  
P.O. BOX 8002  
ANDERSON, S.C. 29622

s/ Darnell E. Hudson  
APPELLANT

DATED: 8-25-2019

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM ANDERSON  
COUNTY  
COURT OF COMMON PLEAS  
R. SCOTT SPROUSE, CHIEF  
ADMINISTRATIVE JUDGE  
CASE NO: 2018-CP-04-01305

RECEIVED  
AUG 29 2019  
S.C. SUPREME COURT

AUGUST 25, 2019, FILED

DARNEIL E. HUDSON #227328 ..... APPELLANT  
V.  
STATE OF SOUTH CAROLINA ..... RESPONDENT

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED NOTICE OF APPEAL UPON THE FOLLOWING PARTIES 1). LILLIAN L. MEADOWS, ASSISTANT ATTORNEY GENERAL AND 2). RICHARD A. SHIRLEY, CLERK OF COURT FOR ANDERSON COUNTY, STATE OF SOUTH CAROLINA BY DEPOSITING COPIES OF SAME NOTICE OF APPEAL IN THE U.S. POSTAL MAILBOX ON THIS DAY OF AUGUST 25TH, 2019...

OTHER PARTIES OF THE RECORD

1. LILLIAN L. MEADOWS, ASSISTANT ATT. GEN  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 11549  
COLUMBIA, S.C. 29211
2. RICHARD A. SHIRLEY  
CLERK OF COURT FOR ANDERSON  
COUNTY  
P.O. BOX 8002  
ANDERSON, S.C. 29622

s/ Darneil E. Hudson  
APPELLANT

DATED: 8-25-2019

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

Darnell E. Hudson, #227328, )  
Applicant, )

v. )

State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-01305

**FINAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed by Darnell E. Hudson, a.k.a Darnell Hudson East (Applicant) on July 3, 2018, and an amendment thereto filed September 12, 2018. The State made its return and motion to dismiss on or about March 5, 2019, requesting the application be summarily dismissed based upon filing after the statute of limitations had expired, the successiveness of the application, and it being barred by the principles of *res judicata*.

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 on March 8, 2019, and filed March 14, 2019, provisionally denying and dismissing this action, while giving 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 April 5, 2019, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On April 3, 2019, Applicant filed a document entitled "Opposition to Court Conditional Order of Dismissal." In this response, he argued that his PCR application was not successive because "the court ignores the lawful and constitutional right that lack of subject matter can be raised at any time." Applicant further argues that "because [he] presents facts that the court lacked

of subject matter jurisdiction in this matter which have established an exception to statute of limitation and successive application.” On June 30, 2019, Applicant filed a document entitled “Motion for an Evidentiary Hearing and Appointment of Counsel.” In this motion, he similarly argued he is entitled to an evidentiary hearing and appointment of counsel because the trial court lacked subject matter jurisdiction.

This Court has reviewed Applicant’s response to the Conditional Order of Dismissal in its 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. This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed as untimely filed, successive to his previous filings, barred under *res judicata*; and because his subject matter jurisdiction claim is without merit.

#### I. ISSUES RAISED IN CURRENT ACTION

In his *fourth* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Trial court subject-matter jurisdiction violations;
  - a. Prosecutor and court constructed amended Applicant’s indictments.
2. Violations of S.C. Code Ann § 17-25-45(H) & 16-3-910; [and]
  - a. Trial court imposed an excessive sentence on kidnapping indictment;
3. Violations of Due Process and Equal Protection rights.
  - a. Trial court violated Applicant’s Const rights when imposed sentences.

In his amendment to the application for post-conviction relief, Applicant raises the following additional grounds for relief:

1. The trial court of Anderson County General Sessions lacked subject matter jurisdiction over Applicant’s criminal charges for

the offense(s) of armed robbery and kidnapping pursuant to the Federal Hate Crime Act, 18 U.S.C.A. § 245(b)(1)(2) & (F)

In his response to the Conditional Order of Dismissal, Applicant asserts the Order should not become final, alleging:

1. The trial court did not have subject matter jurisdiction over the charges Applicant was convicted of because the case should have been turned over to the federal authorities for investigation and prosecution under the Hate Crimes Act, 18 U.S.C. § 249 (2009).
  - a. Specifically, Applicant claims his case required federal investigation and prosecution because (1) the statute of 18 U.S.C.A. § 245 gives federal jurisdiction only to those cases which arise under federal law which the Hate Crime Act or multiple charges arising out of racial motive is federal law (2) the state of South Carolina does not have jurisdiction over Hate Crime Acts or multiple charges arising out of racial motive and (3) under the 13<sup>th</sup> Amendment of the U.S. Constitution prosecution implicate a substantial federal interest.”
2. The trial court did not have subject matter jurisdiction to sentence Applicant to life without parole on an indictment for kidnapping because the solicitor failed to file and serve notice of the State’s intent to seek life without parole in violation of S.C. Code Ann. § 17-25-45(H).<sup>1</sup>

## II. DISCUSSION

The Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final on Applicant’s allegations that the trial court lacked subject matter jurisdiction (1) pursuant to the Hate Crimes Act; and (2) to the State’s non-compliance with S.C. Code Ann. § 17-25-45(H).

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<sup>1</sup> In Applicant’s first PCR action, his trial attorney testified at the evidentiary hearing that the State’s notice of intent to seek life without parole was timely served on her and Applicant.

### 1. *Statute of Limitations*

The Court finds this application shall 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 conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, section 17-27-70(c) of the South Carolina Code 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.”

Applicant was convicted as indicted on August 9, 2001, and the remittitur from his direct appeal was issued on April 2, 2003. The application was, therefore, due on or before April 3, 2004. This application was not filed until July 3, 2018—**more than fourteen years**—after expiration of the statutory filing period. Accordingly, this application is summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

### 2. *Successive*

This Court further finds the application shall be summarily dismissed because it is successive to Applicant's previous post-conviction relief applications. Courts disfavor successive

applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in an earlier application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991 ("[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules."). 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).

In this case, Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences in a published opinion on March 17, 2003. *State v. Darnell Hudson East*, 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003). The remittitur was

issued on April 2, 2003. Applicant filed his first application for post-conviction relief on October 29, 2003, which was denied on September 7, 2007. Applicant appealed the denial of his first application and on February 12, 2008, the South Carolina Supreme Court dismissed the appeal for Applicant's failure to provide the Court with the date on which he first received notice of entry of the order as requested. Applicant filed his second application for post-conviction relief on May 19, 2008, and the Court issued an order granting Applicant a belated appeal from the denial of his first post-conviction relief application on November 3, 2009. Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals subsequently denied Applicant's petition for a writ of certiorari by written order on July 11, 2012. Applicant filed his third application for post-conviction relief on August 14, 2012. On September 2, 2014, Petitioner filed a petition for writ of mandamus to the South Carolina Supreme Court. Thereafter, the Court informed Petitioner it would take no action on the writ. Subsequently, on April 27, 2015, Respondent filed an amended return and motion to dismiss, again requesting the application be summarily dismissed as untimely and as successive. The Court issued a conditional order of dismissal on May 1, 2015, of which Applicant failed to respond within the allotted time. Applicant did not appeal the final order. Applicant subsequently filed a petition for writ of habeas corpus in the Anderson County Court of Common Pleas, which was denied on June 9, 2015. Finally, Applicant filed a petition for writ of habeas corpus in the United States District Court, District of South Carolina on February 18, 2015. The Court granted the State's motion for summary judgment, and dismissed the petition without an evidentiary hearing.

Applicant's current allegations of ineffective assistance of counsel, prosecutorial misconduct, and lack of subject matter jurisdiction could have been, or were in fact, raised in Applicant's direct appeal, prior applications, or petition for writ of habeas corpus. Applicant has

wholly failed to establish any sufficient reason why he could not have raised these current allegations in one of his numerous previous applications for post-conviction relief. Therefore, Applicant has failed to meet the burden imposed upon him, and the application is summarily dismissed as successive to Applicant's prior post-conviction relief action.

### 3. *Res Judicata*

This Court similarly finds the application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all of his allegations in his prior actions. Applicant's current claims allege and arise from the same convictions as his previous PCR applications. Moreover, Applicant's present allegations as to subject matter jurisdiction are virtually indistinguishable from those set forth in his previous applications

Specifically, Applicant raised the same allegations in this application which were not only raised in his original application for post-conviction relief but also raised at the evidentiary hearing. Indeed, Applicant voluntarily chose to waive his allegations of subject-matter jurisdiction at the evidentiary hearing for his first post-conviction relief application. Accordingly, these issues were fully litigated and were ruled upon by the post-conviction relief court. The finality of the previous court rulings should be respected, and this Court finds the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

#### ***4. Subject Matter Jurisdiction***

Furthermore, an applicant's contention of lack of subject matter jurisdiction is without merit. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. The regularity of proceedings in a court of general jurisdiction "will be assumed" absent evidence to the contrary. *Pringle v. State*, 287 S.C. 409, 410-411, 339 S.E.2d 127, 128 (1986). Thus, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside.

The Anderson County Grand Jury indicted Applicant for seven counts of kidnapping and one count of armed robbery, which allege the criminal offenses occurred in Anderson County. Moreover, Applicant was tried and sentenced in the Anderson County Court of General Sessions. Therefore, Applicant's allegations regarding jurisdiction are baseless and offer him no relief from the grounds for dismissal set forth in the Conditional Order.

#### **III. CONCLUSION**

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 showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

As a final matter, this Court notes both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases.

The Court in *Aice* explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. *See Butler v. State*, 397 S.E.2d 87 (S.C.1990). **We can envision successive PCR applications filed for the purpose of delaying a just execution in a capital case, as well as other abuses of the reviewing system *Aice* urges that we establish.** For these reasons, we hold the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90. This Court has implied such a holding in the past. *See Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980) (applicant pointed to his attorney's "inadequate" performance; held not a "sufficient reason" warranting a successive application).


*Aice*, 305 S.C. at 451, 409 S.E.2d at 394. (emphasis added).

The United States Supreme Court has explained that "the principle of finality ... is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). This Court finds that Applicant's attempt to litigate his successive and time-barred applications is contrary to the recognized need for finality of litigation.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant he must file and serve a Notice of Appeal within thirty 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 day of August, 2019.

  
R. SCOTT SPROUSE  
Chief Administrative Judge  
Tenth Judicial Circuit

Waltham, South Carolina

'19 AUG 8 AM 11:19:10  
Anderson, SC COC, CP/GS

DARNELL E. HUDSON # 227328  
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THE SUPREME COURT OF  
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RECEIVED

AUG 27 2010

P.C.I. MAILROOM

LEGAL MAIL