

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Clarendon County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Lower Court Case Number: 2018-CP-14-00382

RECEIVED
OCT 14 2019
S.C. SUPREME COURT

ANTHONY WOODS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

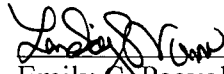
RESPONDENT.

NOTICE OF APPEAL

Petitioner, Anthony Woods, appeals the Honorable Benjamin H. Culbertson's June 3, 2019 order dismissing his capital post-conviction relief ("PCR") action and the order summarily denying Woods motion to alter or amend judgment filed on September 25, 2019. A copy of the orders on appeal are attached to this notice.

The PCR Court dismissed the PCR application as impermissibly successive and time-barred. A statement of why the lower court's decision was improper and this appeal should be allowed to proceed is also attached. *See* Rule 243(c), SCACR.

Respectfully submitted,



Emily C. Paavola, SC Bar No. 77855

Lindsey S. Vann, SC Bar No. 101408

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

Counsel for Petitioner

October 10, 2019.

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Anthony Woods, #06023)

Applicant,)

vs.)

The State of South Carolina,)

Respondent.)

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NUMBER 2018-CP-14-00382

ORDER GRANTING
MOTION TO DISMISS

In this case, the applicant seeks post-conviction relief (PCR) from his death sentence on the grounds that he is intellectually disabled and, therefore, the sentence is constitutionally prohibited "cruel and unusual punishment" as held in *Atkins v. Virginia*, 534 U.S. 304, 122 S.Ct. 2242 (2002). This PCR action was assigned to the undersigned judge by Order of the South Carolina Supreme Court dated November 8, 2018.

Now before this court is the Respondent/State's Motion to Dismiss on the grounds that this PCR action is successive, barred by the statute of limitations, and barred by the doctrine of *res judicata*. A formal hearing was held on the State's motion on February 7, 2019, in Georgetown, S.C..¹ Appearing for the State were Senior Assistant Attorney General William Edgar Salter, III and Assistant Attorney

¹ The Supreme Court Order assigning this case to the undersigned states, "Judge Culbertson shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled."

MAC

General Joseph Maye. Appearing on behalf of the applicant were attorneys Emily C. Paavola and Lindsey S. Vann of the Justice 360 Law Firm. Both parties presented memorandums and made oral arguments. Further, the parties were allowed 10 days to submit additional briefs.

Based upon the pleadings, memorandums, briefs and arguments of counsel, I do hereby make the following findings of fact and conclusions of law.

BACKGROUND

The applicant was indicted and convicted by jury trial of murder, burglary in the first degree and criminal sexual conduct in the first degree. He received sentences of death for murder and consecutive sentences of life without parole for first degree burglary and 30 years for first degree criminal sexual conduct. The applicant's conviction and death sentence were affirmed by the South Carolina Supreme Court in *State v. Woods*, 382 S.C. 153, 676 S.E.2d 128 (2009). The South Carolina Supreme Court denied rehearing and sent the remittitur to the lower court on May 13, 2009. The applicant's intellectual disability was not raised at trial, during sentencing or on appeal.

On November 23, 2009, the applicant filed an Application for Post-Conviction Relief in case number 2009-CP-14-00654 ("2009 PCR"). On May 9, 2012, the applicant filed an Amended Application for Post-Conviction Relief in the 2009 PCR alleging ineffective assistance of trial counsel in failing "to conduct a

reasonable investigation into [applicant's] cognitive and adaptive functioning and history resulting in their failure to raise the issue of [applicant's] mental retardation." That Amended Application for Post-Conviction Relief is the first time the applicant raised the issue of his intellectual disability. However, the applicant filed a second Amended Application for Post-Conviction Relief on January 7, 2014, that replaced the allegation of intellectual disability with the following allegation:

Ineffective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, South Carolina Law and Constitution...This dereliction flowed directly from counsel's failure to conduct a reasonable and thorough social history...The verifiable and objective facts of [applicant's] social and medical and scholastic history demonstrate beyond reasonable dispute that [the applicant] is...a brain damaged and cognitively impaired man with borderline mental retardation/intellectual functioning...In light of the overwhelming evidence of brain damage, mental illness, and borderline intellectual functioning, Counsels' actions were unreasonable, prejudicial, and require vacation of Applicant's sentence of death.

The parties stipulate that the applicant abandoned his allegation of intellectual disability in the 2009 PCR action but sought post-conviction relief on other grounds.

By Order of the Honorable George C. James, Jr., Circuit Court Judge, dated May 6, 2015, the applicant's application for post-conviction relief in the 2009 PCR action was denied. That order was appealed and, by Order of the South Carolina Supreme Court dated December 13, 2017, certiorari was denied.

On September 19, 2018, the applicant filed this second PCR action seeking post-conviction relief based upon the following allegations:

Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that he is intellectually disabled. Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which began before he was eighteen years old, he is ineligible for capital punishment. *Moore v. Texas*, 137 S.Ct. 1039 (2017), *Hall v. Florida*, 134 S.Ct. 1986 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

Applicant was denied the right to effective assistance of counsel – guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution – during his capital trial.

On October 22, 2018, the State filed its Return and Motion to Dismiss the Applicant's application for post-conviction relief.

LAW AND DISCUSSION

The State seeks dismissal of this PCR action on the grounds that the application is: 1) barred by the statute of limitations; 2) successive to the 2009 PCR; and 3) barred by *res judicata*. The applicant argues that his intellectual disability is a freestanding claim under *Atkins* and, therefore, an exception to the prohibition against successive PCR actions. As such, the applicant argues that the one year statute of limitations does not apply and the action is not successive.

Code of Laws of South Carolina, 1976 § 17-27-45 states as follows:

(A) 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.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

Code § 17-27-90 prohibits successive PCR applications "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." "A successive postconviction [sic] relief application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings." *Odom*, 337 S.C. 256, 523 S.E.2d 753 (1999). In *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991), the South Carolina Supreme Court held that an applicant could not maintain a successive application for post-conviction relief on the ground that the first PCR application was insufficient due to ineffective PCR counsel. However, the Supreme Court has held that exceptions exist to the statute of limitations and prohibition against successive PCR applications. See *Norris v. State*, 335 S.C. 30, 515 S.C. 523 (1999) – State is estopped from asserting

the statute of limitations defense to a subsequent PCR application after it had previously consented to a dismissal of the original PCR application and agreed that the petitioner could re-file his application; *Odom v. State, supra* – statute of limitations did not apply to *pro se* petitioner's appeal from summary denial of his application for post-conviction relief based on denial of his right to appeal, which was procedural error; *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016) – applicant convicted of murder and sentenced to death could maintain a successive PCR application alleging that prior PCR counsel was not qualified under the *South Carolina Effective Death Penalty Act*.

Contrary to the applicant's argument in this case, this court rules as a matter of law that this PCR action is barred by the statute of limitations and is successive to the applicant's 2009 PCR action. Therefore, the State's Motion to Dismiss should be granted.

This PCR action was filed on September 19, 2018, more than one year after the Supreme Court issued the remittitur following the applicant's appeal of his criminal trial and sentencing. The United States Supreme Court's decision in *Atkins* (holding that the execution of an intellectually disabled person is constitutionally prohibited "cruel and unusual punishment") was the law at the time of the applicant's criminal trial and 2009 PCR. The applicant withdrew his allegation of intellectual disability as grounds for relief in his 2009 PCR, thus indicating that the applicant

knew of his intellectual disability and could have ascertained facts supporting the allegation during his 2009 PCR. No appellate decision exists which holds intellectual disability to be an exception to the one-year statute of limitations or bar against successive PCR actions. Therefore, this PCR action is barred by Code §17-27-45 and §17-27-90.

Since the applicant's alleged intellectual disability has never been litigated, this action is not barred by the doctrine of *res judicata*.

To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) **adjudication of the issue in the former suit.** (emphasis added.)

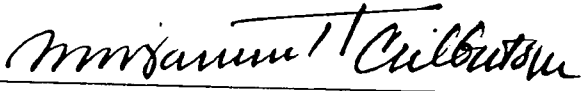
Reidman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992).

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the State of South Carolina's Motion to Dismiss this action is GRANTED.

AND IT IS SO ORDERED.

June 3, 2019


Benjamin H. Culbertson
Presiding Judge

STATE OF SOUTH CAROLINA
 COUNTY OF CLARENDON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-14-00382

Anthony Woods, #06023

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : Plaintiff Defendant
 or
 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:

Applicant's Motion to Alter or Amend Judgment is DENIED.
(This motion is decided on briefs without oral arguments.)

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

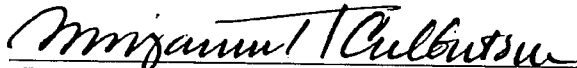
INFORMATION FOR THE JUDGMENT INDEX

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)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

e 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.


Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Sept. 25, 2019
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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), SCRPC.

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.

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S.C. SUPREME COURT

Appeal from Clarendon County

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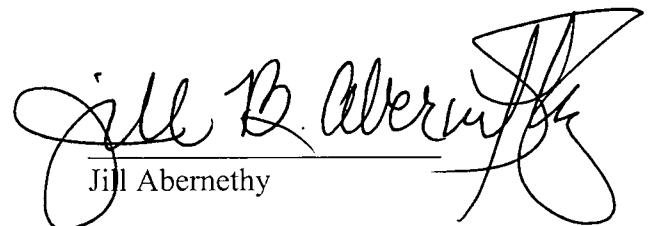
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petitioner's Notice of Appeal was served by first class United States mail, postage prepaid, this 10th day of October, 2019, upon the following:

William Edgar Salter
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jill Abernethy



USA
NON-MACHINEABLE SURCHARGE

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JUSTICE 360 ADVANCING EQUALITY IN THE
CRIMINAL JUSTICE SYSTEM

900 ELMWOOD AVENUE
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COLUMBIA, SC 29201

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

