

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

September 4, 2019

INMATE LINE
(803) 732-6542

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

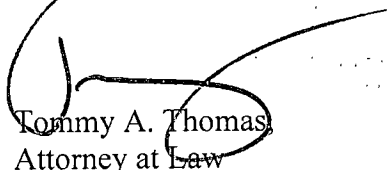
RE: James Jones #210933 v. State of South Carolina
Docket No.: 2016-CP-43-2223

Dear Mr. Shearouse:

Enclosed please find an original and a copy of a Notice of Appeal, Explanation pursuant to Rule 243 (c) as well as a Certificate of Service. This matter was dismissed without a hearing so there is no transcript to be requested.

Kindly return the clocked copy to me in the enclosed envelope. Thank you and please feel free to contact me should you have any questions or require additional information.

Yours truly,


Tommy A. Thomas
Attorney at Law

TAT/jem
cc: Janell Gregory, Esq.
James Jones #210933

RECEIVED

SEP 06 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post Conviction Relief

R. Ferrell Cothran, Jr., Circuit Court Judge

Lower Court Case No.: 2016-CP-43-2223

James Daniel Jones #210933,..... Appellant,

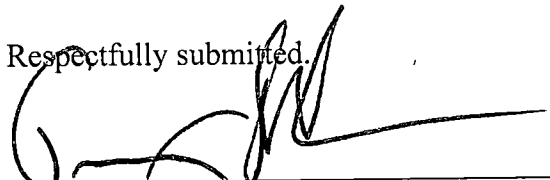
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, James Daniel Jones #210933 , appeals the Final Order of the Honorable R. Ferrell Cothran, Jr., dated and filed on August 26, 2019. Appellant received written notice of entry of this order on August 29, 2019.

Respectfully submitted.



Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
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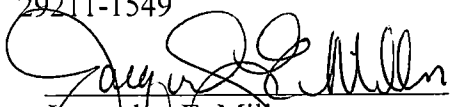
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal and Explanation Pursuant to Rule 243 (c) with postage prepaid and the return address clearly shown on said envelope to Janell Gregory, Esq. of the Attorney General's Office, at:

Janell Gregory, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
September __, 2019

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SEP 06 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) IN THE THIRD JUDICIAL CIRCUIT

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James Daniel Jones, #210933,)
Applicant,) Case No.: 2016-CP-43-2223
JAMES C. CAMPBELL)
CLERK OF COURT)
SUMTER COUNTY, S.C)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed December 5, 2016. Respondent made its return on or about July 7, 2017, requesting the application be summarily dismissed for failing to file within the one-year statutory time period, for being successive, for failing to make a *prima facie* showing regarding the newly discovered evidence claim, and for being barred by the doctrine 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 signed and filed September 19, 2018, provisionally denying and dismissing this action, while giving the Applicant 20 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 January 29, 2019, serving the above-mentioned Conditional Order of Dismissal on Applicant's PCR counsel.

Applicant filed his response on February 15, 2019. 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.

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SEP 06 2019

S.C. SUPREME COURT

In his initial application, Applicant asserts a claim of newly discovered evidence. Applicant did not address this claim in either his amended application or his response to the Conditional Order of Dismissal. Accordingly, this Court denies and dismisses Applicant's claim of newly discovered evidence with prejudice.

Procedural History

In his response to the Conditional Order of Dismissal, Applicant requested additional information be included in this Order regarding the procedural history of Applicant's charges. This Court acknowledges that Applicant's charges were *nol prossed* with leave to restore on or about July 22, 1992. This Court further acknowledges that the prosecution issued a document entitled "Notice to Restore," which indicated that Applicant's charges were being restored for trial.

Statute of Limitations

In Applicant's response to the Conditional Order of Dismissal, Applicant asserts the statute of limitations should not apply to Applicant because he was not re-indicted after his charges were *nol prossed*. This Court disagrees.

The Uniform Post-Conviction Procedure 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 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). Our courts have held that "statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Moates explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id.

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). Pelzer explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights." Id. However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. Id. The one-year statute of limitations does not apply to claims of lack of subject matter jurisdiction.

Here, Applicant alleges the one-year statute of limitations should not apply because an invalid indictment suggests that the trial court was without jurisdiction to hear Applicant's case, and the one-year statute of limitations does not apply to claims of lack of jurisdiction. While Applicant is correct that the one-year statute of limitations does not apply to claims of lack of subject matter

jurisdiction, an insufficient indictment does not mean that the trial court lacked jurisdiction to hear Applicant's case. State v. Gentry, 363 S.C. 93, 101 (2005), citing United States v. Cotton, 535 U.S. 625 (2002) (“[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). Additionally, although Applicant relies on Mackey v. State of South Carolina to support his argument, the South Carolina Supreme Court in Mackey held, “A requirement of re-indictment upon charges *not proessed* should not be based upon a subject-matter-jurisdiction analysis.” 357 S.C. 66 (2004). Therefore, even assuming *arguendo* Applicant's indictment was invalid¹, this Court finds this issue would not be resolved under a jurisdiction analysis, and therefore, the one-year statute of limitations applies to Applicant's case.

Applicant's sixth and current post-conviction relief application was filed December 5, 2016. The Remittitur was sent on February 29, 1996. Accordingly, Applicant filed his PCR application 19 years, 9 months, and 4 days after the one-year statute of limitations had expired. Applicant has not presented any reason why he should be entitled to any equitable tolling in this case. Accordingly, this Court dismisses Applicant's case for failing to comply with the statute of limitations.

Successiveness

In Applicant's response to the Conditional Order of Dismissal, Applicant also asserts his application should not be dismissed based on successiveness because he was not re-indicted after his charges were *not proessed*. This Court disagrees.

¹ In the January 22, 1997, Order dismissing Applicant's first PCR application, Judge Shuler noted that the trial court found that the charges were properly restored.

Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous 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. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

Here, Applicant filed six previous actions to include five applications for post-conviction relief and a federal writ of habeas corpus. Applicant has not provided any legitimate explanation as to why he could not raise this issue in his initial application for post-conviction relief. Additionally, Applicant asserted this claim in his third application for post-conviction relief.² After a hearing for Respondent’s motion to dismiss, The Honorable Paula Thomas dismissed Applicant’s application for being successive and barred by the one-year statute of limitations. Accordingly, this Court dismisses Applicant’s application for being successive to his five previous applications for post-conviction relief.

² Applicant’s allegation asserted, “The State failed to re-indict me before trial and conviction on charges that were *nol prossed*.”

Res Judicata

In his response to the Conditional Order of Dismissal, Applicant argues the doctrine of *res judicata* does not apply to his application because he was not re-indicted after his charges were *not proessed*. More specifically, Applicant argues *res judicata* does not apply to Applicant because Applicant's allegation was not heard on its merits. This Court disagrees.

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). Notably, *res judicata* also bars any issues that could have been raised in the former action. Id.

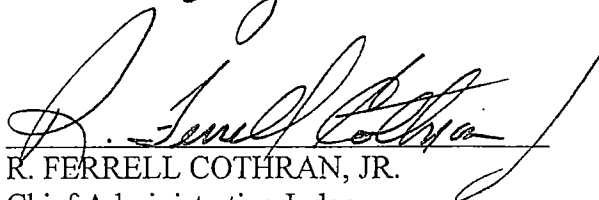
Applicant's allegation has been previously decided on several occasions. First, in the January 22, 1997, Order dismissing Applicant's first PCR application, Judge Shuler noted that the trial court found that the charges were properly restored. Second, Applicant previously asserted this allegation in his third application for post-conviction relief. After a hearing for Respondent's motion to dismiss, The Honorable Paula Thomas dismissed Applicant's application for being successive and barred by the one-year statute of limitations. Accordingly, this issue has been previously ruled upon and, therefore, is barred by the doctrine of *res judicata*.


Moreover, even if this allegation had not been previously ruled upon, Applicant's allegation would be barred by *res judicata* because Applicant could have and should have raised his claim in his initial application for post-conviction relief. Applicant has not provided any reason why he could not have raised this issue in his initial application. Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in both the state and federal courts. Accordingly, this Court dismisses Applicant's application as barred by *res judicata*.

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 that 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 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 26 day of Aug, 2019.


R. FERRELL COTHAN, JR.
Chief Administrative Judge
Third Judicial Circuit

, South Carolina.

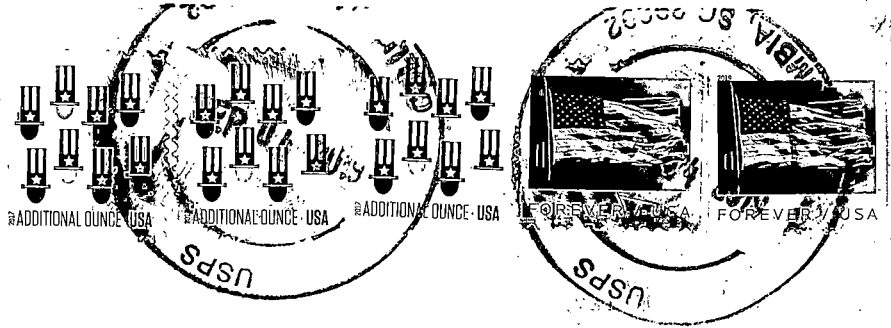
Tommy A. Thomas, P.C.

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HARRINGTON BUILDING

POST OFFICE BOX 88

IRMO, SOUTH CAROLINA 29063



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Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211