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MAR 06 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY

CLIFTON NEWMAN CHIEF ADMINISTRATIVE JUDGE

CASE NO. 2018-CP-02-02522

Noel Gray

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

NOTICE OF APPEAL

Noel Gray appeals the Order of the Honorable Clifton Newman dated December 30, 2019. Appellant received the Order by the South Carolina Department of Corrections on March 2, 2020

March 3, 2020

Noel Gray  
Noel Gray #307590  
BRCI/Marion #152  
4460 Broad River Rd.  
Columbia, SC 29210

Pro-se

cc/Hon. Newman, P.O. Box 576 Kings tree, SC. 29556

Breanna L. Schill AAG. P.O. Box 11549 Columbia, SC, 29211  
CERT. Mail No. 2019-1640-0001-7655-3856

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MAR 06 2020

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APPEAL FROM AIKEN COUNTY

CLIFTON NEWMAN, CHIEF ADMINISTRATIVE JUDGE

CASE NO. 2018-CP-02-02522

NOEL GRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Ms. Brianna L. Schill Asst. Atty. General by depositing a copy of it in the United States Mail, postage prepaid on March 3, 2020 addressed below P.O. Box 11549 Columbia SC. 29211 by Certified Mail No. 7019-1640-0001-7655-3856

March 3, 2020

Noel Gray  
Noel Gray #307590  
BRCI/Marion #152 B  
4460 Broad River Rd.  
Columbia, SC. 29210

cc/File, Hon. Clifton Newman Chief Admin. Judge, P.O. Box 516 Kingstree, SC. 29556  
Robert J. Nante, 2nd Judicial Circuit Clerk of Court, P.O. Box 583 Aiken, SC. 29802-0583

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated E. King (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )

COUNTY OF Richland )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 2<sup>nd</sup> day of MARCH ~~2019~~ <sup>2020</sup>, I served the Conditional Order of Dismissal, on Inmate Noel Eugene Gray, Jr., SCDC Inmate #307590, by delivering personally and leaving a copy of the same at Broad River Correctional Institution. Deponent is not a party to this action.

s/ E. King  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 2<sup>nd</sup> day of MARCH, ~~2019~~ <sup>2020</sup>

Lisa Brown-Alston (L.S.)  
Notary Public for South Carolina

**LISA BROWN-ALSTON**  
Notary Public, State of South Carolina  
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

**ADMISSION OF SERVICE**

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Broad River Correctional Institution), Richland County, SC this 2<sup>nd</sup> day of MARCH, 2020.

s/ Noel Gray  
Inmate  
SCDC Inmate #: 307590

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS )  
FOR THE SECOND JUDICIAL CIRCUIT )

Noel Gray, #307590, )  
Applicant, )

Case No.: 2018-CP-011422

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
I, Robert J. Harte, Clerk of Court of Common Pleas and General )  
Sessions for Aiken County, South Carolina do hereby certify )  
that the foregoing constitutes a true and correct copy of the )  
original documents which have been filed in my office this )

v. )  
State of South Carolina, )  
Respondent. )

CONDITIONAL ORDER OF DISMISSAL

JAN 15 2020

*Robert J. Harte*  
C.C.P. & G., Aiken County, S.C.  
*Charla Gifford Plouffe*  
Deputy Clerk

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Noel Gray (Applicant) on October 25, 2018. Respondent made its return, requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In August 2004, the Aiken County Grand Jury indicted Applicant for two counts of second-degree criminal sexual conduct with a minor (2004-GS-02-1333 & 1334). Kelley P. Brown, Esquire, represented Applicant. Assistant Solicitors Everett K. Chandler and Brenda Brisbin, Esquires, prosecuted the case. On January 31, 2005, Applicant proceeded to a jury trial before the Honorable Jackson V. Gregory. The jury found Applicant guilty as indicted. On February 2, 2005, Judge Gregory sentenced Applicant to life imprisonment for each count of second-degree criminal sexual conduct with a minor.

Applicant filed a timely notice of appeal. Eleanor Duffy Cleary, Esquire, of the Office of Appellate Defense perfected the appeal. On September 21, 2006, Ms. Cleary filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Subsequently, Applicant filed a "Final Pro Se Brief of Appellant." The South Carolina Court of Appeals affirmed Applicant's

FILED January 15 2020

*Robert J. Harte* CNP  
C.C.P. & G.S.  
*Charla Gifford Plouffe*  
Deputy Clerk

conviction on January 11, 2008. State v. Gray, Op. No. 2008-UP-040 (S.C. Ct. App. filed January 11, 2008). The remittitur was issued on January 30, 2008.

**First PCR Application: 2008-CP-02-00734**

Applicant subsequently filed an application for PCR on April 18, 2008, in which he alleged the following grounds for relief:

1. "Violation of Federal Interstate Agreement on Detainers Act."
2. Ineffective assistance of counsel; and
3. Subject matter jurisdiction

Respondent made its return on December 29, 2008. An evidentiary hearing into the matter was convened on February 2, 2009, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Bradley Boni, Esquire. Mary S. Williams, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On April 6, 2009, the Honorable Doyet A. Early, III, issued an order of dismissal denying Applicant's application for post-conviction relief.

On December 2, 2009, Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense, filed a Johnson petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. On December 2, 2010, by written order the South Carolina Supreme Court denied the petition. The Remittitur was issued on December 21, 2010.

**Federal Habeas Corpus Petition: 4:11-227-CMC-TER**

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on March 25, 2011. Respondent filed its Motion for Summary Judgment on July 20, 2011. On January 24, 2012, the Honorable Thomas E. Rogers, III, issued the Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied.

On February 15, 2012, the Honorable Cameron McGowan Currie, United States District Judge adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition.

**Second PCR Application: 2011-CP-02-2776**

Applicant filed his second application for post-conviction relief on December 9, 2011, in which he alleged the following grounds for relief:

1. Newly discovered evidence.
  - a. "Trial counsel failed to record any statements (in writing, or by audio or video), from any conversation with any neighbors or anyone who knew Mike Williams..."
  - b. "... failed to interview any know acquaintances of Linda Brown and Mike Williams to authenticate or disprove what they told the police and the jury."
  - c. "... failed to interview Mike Williams, (Linda Brown's lover), or at least disclose any evidence of bad blood against applicant and evidence of bad blood between Linda Brown and applicant."
  - d. "... failed to conduct an interview with any other occupants that lived within Mike Williams residence before, during, and after the alleged incidents to gather salient information concerning the alleged victim and Mike Williams..."
  - e. Failed to investigate "the total circumstance" of Mike Williams residence and any eyewitnesses to various aspects of the case, including but not limited to: where he was at time of sexual misconduct, his relationship with the victim, relationship of his wife and Linda Brown, his "real purpose of being a clown," and Mike Williams as the anonymous caller.
  - f. Failed to convey plea offer.
  - g. Discovery of trial counsel's resume which shows inexperience.
  - h. Ineffective assistance of trial counsel in:
    - i. Failed to challenge subject matter jurisdiction.
    - ii. Violated due process by not presenting IADA agreement issue as a pre-trial motion.
    - iii. Failed to subpoena and investigate witnesses. (Several named individuals.)
    - iv. Failed to discuss lesser included offense of plea offer.
    - v. Failed to have applicant evaluated by psychologist.
    - vi. Failed to move for trial where Linda Brown was not prosecuted but there was an inference to the jury she would be.
    - vii. "...failed to impeach Dr. Bethea's hearsay testimony that was not supported by material facts, nor was it even scientifically researched, nor does it even exist."
    - viii. "...failed to challenge trial court's denial of directed verdict motion that was preserved for appellate review."
    - ix. "...failed to impeach Mike Williams testimony that impermissibly bolstered the State's case and was prejudicially unconstitutional."

- x. "...failed to impeach Linda Brown's testimony that was unconstitutionally used to inflame the minds of the jury and the trial court, in which it was extremely prejudicial and harmful error by prosecution and bolstered the State's case."
    - xi. Failed to object to statement that "Linda Brown is not on trial today."
- 2. Ineffective assistance of PCR counsel.
  - a. Failed to address all issues.
  - b. Inadequately raised IADA issue.
  - c. Failed to raise incomplete police investigation.
  - d. Failed to subpoena witnesses (several specific witnesses listed).
  - e. Failed to properly present subject matter jurisdiction issue.
  - f. "...failed to argue that applicant did address the directed verdict motion that was preserved for appellate review."
- 3. Ineffective assistance of PCR counsel on collateral appeal.
  - a. "...failed to address that PCR counsel failed to alter or amend PCR to include all grounds."
  - b. "...failed to address that PCR counsel failed to insert applicant's claim, inadequately raised in his original application PCR."
  - c. "...failed to address that PCR counsel failed to subpoena witnesses..."
  - d. "...failed to address that PCR counsel failed to file a Rule 59(e) as required by law."
  - e. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
  - f. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
  - g. "...failed to address that PCR counsel was incompetent to represent applicant in a civil/criminal procedural review..."
  - h. "...failed to move the court that the applicants records were incomplete and were fatally defective, in violation of Rule 609."

Respondent made its return and motion to dismiss on January 20, 2012. The Honorable Doyet A. Early, III, issued a conditional order of dismissal on January 25, 2012. Applicant filed various objections to the conditional order of dismissal. Judge Early issued the Final Order of Dismissal dated June 26, 2012 and filed on July 5, 2012.

Subsequently, Applicant filed a timely notice of appeal. By order dated April 30, 2012, the South Carolina Supreme Court dismissed Applicant's appeal for failing to show an arguable basis for asserting the determination of the lower court was improper under Rule 243(c). The

remittitur was issued on September 19, 2012.

On September 24, 2012, Applicant submitted a motion for new trial pursuant to Rule 29, SCRCrim.P; in the Aiken County Court of General Sessions asserting, inter alia, he was entitled to a new trial based upon after-discovered evidence; specifically, Applicant claimed that in October 2011, he “discovered” information relating to what he characterized as “plea agreements” that were not communicated to him by trial counsel before trial. The South Court of Appeals affirmed Applicant’s conviction and sentence. State v. Gray, Op. No. 2014-UP-036 (S.C. Ct. App. filed January 29, 2014). The remittitur was issued on February 24, 2014.

### **Third PCR Application: 2013-CP-02-00478**

Applicant filed his third application for post-conviction relief on February 27, 2013, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. Failure to convey two plea agreements
2. Prosecutorial Misconduct
  - a. Using state witness to commit perjury and failure to expose deal for testimony.
3. Ineffective Assistance of PCR Counsel
  - a. Failure to prepare and aid applicant to present procedural barred constitutional issues

Subsequently, Applicant filed various documents and motions:

1. “Motion for the Honorable Judge Doyet A. Early, III, to recuse himself...” dated March 13, 2013.
2. “Motion for Rule 59(e) to Alter or Amend Judgment and Rule 60(b)(1) Relief from Judgment or Order...” dated March 13, 2013.
3. “Motion for Appointment of Post-Conviction Relief Counsel” and “Motion for Order Compelling Complete Discovery of trial counsels file...” dated April 15, 2013
4. “Motion for Production of Complete Discovery” dated April 24, 2013.
5. “Motion for Production of Documents and Things Pursuant to Rule 34 S.C.R.Civ. P.” filed May 15, 2013.
6. “Motion for Discovery Compelling Discovery Pursuant to SCRCIVP Rule 37” dated June 17, 2013.
7. “Motion to Dismiss PCR until pending appeal is complete” dated July 12, 2013.
8. “Motion to Strike Motion for Appointment of Counsel filed on February 5, 2014 to represent self pro-se” filed April 16, 2014.

9. "Motion to pull PCR application dated March 20, 2013 Appellate Case No. 2012-213607 and open for post-conviction hearing and amend jurisdictional issues to PCR application."
10. "Motion to Replace PCR application dated February 27, 2013 with Subject Matter and Supplemental Jurisdiction Amendment dated January 23, 2014 with exhibits" filed April 24, 2014
11. "Motion to Transfer Motion to Grant Funding from Court Costs and Expenses of Representation to 2013-CP-02-00478 to Represent Self..."
12. "Declaration of entry of default pursuant to Rule 55(A)(2) on the Honorable Doyet A. Early, III Circuit Court Judge and Respondent" filed July 2, 2014.

Respondent made its return and motion to dismiss on July 15, 2014. The Honorable Perry M. Buckner issued a conditional order of dismissal. Applicant filed various responses to the conditional order of dismissal including; "Complaint, Notice and Request Against Honorable Doyet A. Early, III, Circuit Court Judge For The Second Judicial Circuit Pursuant to Cannon 3 Rule 501 S.C.C.O.J.C. with Affidavit in Good Faith" dated July 14, 2014, "Applicants Objections to Respondents Return and Motion to Dismiss and Conditional Order of Dismissal and Grant PCR by Written Order Pursuant to Anderson v. Anderson, 299 SC. 110, 115, 382 SC.2d.987.900 (1989); Lillard v. Searson, 170 S.C. 304 S.C. 499 (1933) with Affidavit in Support of" filed July 22, 2014, "Applicant's Addendum pursuant to Rule 71.1 (e) SCRPC Citing: Bell v. State; \_\_\_ S.E.2d \_\_\_ (2014) WL5654265(S.C.App.Ct.2014) and S.C. Code Ann. 17-27-20(a)(4) 1976" filed November 26, 2014, "Motion for Appointment of Counsel Pursuant to Rule 71.1 (d) and Davie v. State, 381 S.C. 601, 675 S.E.2d. 416 (2009); Missouri v. Frye, 132 s.Ct. 1399 (2012); Bell v. State, WL5654265 (2014); SC. Code Ann. 17-27-20 (a) (4)" and filed February 23, 2015.

On September 17, 2015, The Honorable Perry M. Buckner filed the Final Order of Dismissal denying and dismissing the Application with prejudice.

#### **Fourth PCR Application: 2015-CP-02-01730**

Applicant filed his fourth application for post-conviction relief on July 9, 2015, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel
  - a. Failure to convey plea offer
2. Subject matter jurisdiction

Respondent made its return and motion to dismiss on September 29, 2015. On November 16, The Honorable Maite Murphy filed the conditional order of dismissal. Applicant filed several objections to the conditional order of dismissal. After reviewing the objections, The Honorable Doyet A. Early, III, found them all meritless and filed a Final Order of Dismissal denying and dismissing the Application with prejudice on July 31, 2017.

Applicant filed a timely notice of appeal. By written order, the South Carolina Supreme Court dismissed the appeal, because Applicant failed to provide a proof of service showing that a copy of the notice of appeal was served on the opposing counsel as required by Rules 243(b) and 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules. Applicant filed a "Motion for Leave of Court to Reinstate Writ of Certiorari" on October 25, 2018. By written order, filed on October 29, 2018, the South Carolina Supreme Court dismissed the motion.

#### **CURRENT APPLICATION**

In his fifth and current application for post-conviction relief, Respondent interprets Applicant's allegations as follows:

1. Ineffective Assistance of Counsel
  - a. "Trial Counsel went before the Honorable Reginald L. Lloyd Chief Administrative Judge for the Second Judicial Circuit Court with the intent to commit "Fraud; Perjury; deceit and misrepresentation of the Applicant's federal IADA contract,"
  - b. Failure to communicate plea offer
  - c. "... failure to consult an expert,"
  - d. "... failure to conduct an relevant research,"

- e. "... failure even to request copies of the underlying studies relied on by Dr. Lisa Bethea contributed significantly to her ineffectiveness"
  - f. "... failing to subpoena Attorney George Bush..."
2. 6<sup>th</sup> Amendment Violation
- a. Right to a fast and speedy trial was violated
3. Newly Discovered Evidence
- a. "In the Rule 5 Brady disclosure provided by trial counsel on October 12, 2011, the Applicant found Document #13 a formal plea offer that was never communicated to the applicant for two counts of lewd act on a minor, and grand larceny, that offered 29 years in prison, 10 years probation and a \$3,000.00 Restitution"
  - b. "... the medical records of the alleged victim and a DNA test that was done on the alleged victim on October 4, 2004 at the Aiken Regional Medical Center that was clearly exculpatory evidence that was not at trial..."
  - c. "In the Rule 5 Brady disclosure dated October 12, 2011, the following documents were inclosed"
    - i. "Letter to Trial counsel dated December 25, 2004 see PCRTr. Pg. 13 at 8-10, Page 16 at 23-24"
    - ii. "Letter to Judge Early dated December 29, 2004 see PCRtr. Pg. 9 at 2-5."
    - iii. "Letters to Ms. Wallis Alves dated January 10<sup>th</sup> and 19<sup>th</sup> 2005 PCRtr. p. 9 at 6"
    - iv. "Statement from Lore Becky Williams wife of Mike Williams dated Sept. 22. 2001"
    - v. "Statement from Michael Williams, son of Mike Williams dated Nov. 20. 2001."
    - vi. "Subpoena of evidence that was not at trial dated Jan. 11. 2005."
    - vii. "A fake criminal domestic violence warrant F-718985 S.C. Code Ann § 16-25-20 dated September 29. 2002"
    - viii. "Statement from Michael Jr. again:"
    - ix. "Statement from Mike Williams dated Sept. 30. 2004"
    - x. "Grand Larceny Documentation S.C. Code Ann. § 16-13-30(B) dated Dec. 12.2002."
    - xi. "Official Police Report dated Sept. 11. 2002 to show Inv. David Blevins see Tr. pg. 100 to 112 lied Tejeda v. Dubois, 142 F.3<sup>rd</sup> 18 (CA 1998)"
    - xii. "Alleged victims Medical Records dated November 6, 2002 that Trial Counsel failed to secure at trial Exculpatory Evidence that could have impeached the alleged victims testimony Tucker v. Prelesnk, 181 F.3d 747 (CA 1999)"
  - d. "The newly discovered evidence obtained from the Honorable Clerk of Court on September 28, 2018. Terms of Court for October 2004 Judge Lloyd was not in open court and neither Court Reporter was present."
4. Judicial Misconduct
- a. "...Jude Early refused to give the applicant a hearing that is a state created statutory right."
  - b. "Trial court erroneously denies the Motion on lines 12-18, this was an abuse of discretion..."

5. Ineffective Assistance of PCR Counsel
  - a. "PCR Counsel failed to get trial transcripts..."
  - b. "PCR Counsel raised a IADA issue, but did not have the contract there at the PCR."
  - c. Failed to "file for funds to hire a Investigator or Expert Services pursuant to S.C. Code Ann. §17-3-50(B),(C)(2003) because of his lack of criminal or trial court experience."
  - d. Failure to file a Rule 59(e) motion
6. Ineffective Assistance of Appellate Counsel
  - a. "Appellate counsel was ineffective for filing a no merits brief, Constructive denial of counsel..."
  - b. "Anders mandate not followed.."
  - c. "Counsel failed to Prosecute the Appeal..."
  - d. "Appellate Attorney failed to raise Insufficient Evidence..."
  - e. "Appellate Counsel was ineffective for abandoning the Relevant issue that does require vacation of sentence and conviction and a New Trial."
7. Ineffective Assistance of PCR Counsel on Collateral Appeal
  - a. "Appellate counsel Wanda H. Carter SC. Appellate Defense Counsel even violated the Applicant's Sixth Amendment to effective assistance of Appellate Counsel..."
  - b. Failure to raise the "IADA and Subject Matter Jurisdiction issues."
8. Actual Innocence
9. Prosecutorial Misconduct
  - a. "This harmful testimony of a State's witness Linda Brown was a clear unfair Prosecutorial Tactic and Prosecutorial Misconduct..."
10. Lack of Subject Matter Jurisdiction
  - a. "And genuine material facts do exist that this court does not have the jurisdiction over the subject matter due to trial counsel lying to a Chief Administrative Judge and obtaining an illegal and unconstitutional continuance..."

Before this Court are records of the Aiken County Clerk of Court regarding subject convictions, Applicant's records from the South Carolina Department of Corrections, and the current application.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

### **Statute of Limitations**

This Court finds the current 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. 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 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). 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, 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.”

Applicant was found guilty of two counts of criminal sexual conduct with a minor, second degree on February 2, 2005. Remittitur from the direct appeal was issued on January 30, 2008. This application was filed on October 25, 2018, well beyond the one-year statutory filing period. Therefore, this Court summarily dismisses the application for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

### **Successiveness**

This Court finds the current application shall be summarily dismissed because it is successive to Applicant's previous PCR applications. 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). 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. 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).

Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant’s current application contains allegations that are nearly identical to his four prior actions, plus a myriad of additional allegations. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief or in his federal

habeas corpus petition. Therefore, he has failed to meet the burden imposed upon him, and this Court summarily dismisses the application as successive to Applicant's previous PCR applications.

### **Res Judicata**

This Court further finds the current application shall also be dismissed as 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 his allegations in his prior actions. Applicant's present allegations of newly discovered evidence, ineffective assistance of counsel, and lack of subject matter jurisdiction have been previously litigated and denied. The records reflect Applicant has repeatedly raised the same issues in multiple prior PCR applications. The prior PCR Court issued a final judgement on the merits on many of the same issues Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and this Court summarily dismisses the current application as barred by the doctrine of *res judicata*.

### **CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service

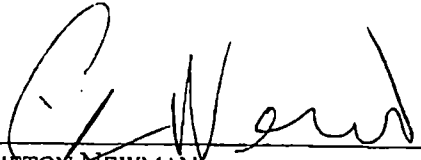
of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Aiken County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Brianna L. Schill  
PCR Division -2<sup>nd</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Aiken County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 30<sup>th</sup> day of December, 2019.

Columbia, South Carolina

  
CLIFTON NEWMAN  
Chief Administrative Judge  
Second Judicial Circuit