

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP1100466**

Donald Scott Jones, #336980		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. Nonstuit);
 - 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:

FILED IN OFFICE OF
CLERK OF COURT,
CHEROKEE COUNTY, SC.
2019 OCT -2 PM 4:31
BRANDY W. MCBEE

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)
N/A		

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.

S/ Grace G. Knie
Circuit Court Judge

2760
Judge Code

10/2/2019
Date

For Clerk of Court Office Use Only

This judgment was entered on 10/2/19 and a copy mailed first class or placed in the appropriate attorney's box on 10/2/19 to attorneys of record or to parties (when appearing pro se) as follows:

Donald Scott Jones, #336980
Perry Ci,
430 Oaklawn Rd.
Pelzer, SC 29669

Alan McCrory Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Brandy W. McBee
Brandy W. McBee - 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.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 OCT -2 PM 4:21
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 CASE NO: 2019-CP-11-00466

DONALD S. JONES, #336980

 Plaintiff,)
 vs.)
 STATE OF SOUTH CAROLINA)

 Defendant.)

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Donald S. Jones, #336980 Q1B-0218-T Perry Correctional Institution 430 Oaklawn Road Pelzer, SC 29669 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Johnny E. James Jr., Esquire. South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
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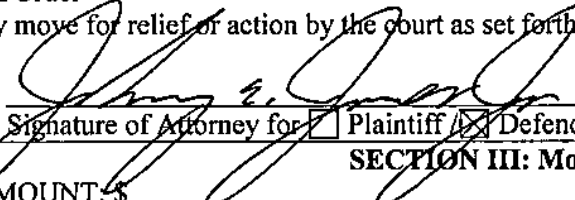
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant September 23, 2019
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 - Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____
- JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2019 OCT -2 AM 11:10
 BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE)	
Donald Scott Jones,)	Case No.: 2019-CP-11-00466
S.C.D.C. No. #336980,)	
)	
Applicant,)	
)	CONDITIONAL ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter comes before the Court by way of an application for post-conviction relief filed by Donald Scott Jones (Applicant) on June 24, 2019. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the July 2009 term of the Cherokee County Grand Jury for criminal sexual conduct, first degree (2009-GS-11-00840), assault and battery with intent to kill (2009-GS-11-00841). Thomas Shealy, Esq. represented Applicant. Kimberly L. Leskanic and Barry J. Barnette, Esqs., of the Seventh Circuit Solicitor’s Office, prosecuted the case. On May 25, 2010, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted on May 26, 2010. Pursuant to S.C. Code An. § 17-25-245, Judge Cole sentenced Applicant to imprisonment for concurrent terms of life without parole for each charge.

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Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda H. Carter, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which raised the following issue:

The trial judge erred in not allowing into evidence testimony regarding the prosecutrix's anger issues because this information was relevant to appellant's self defense claim since such evidence would have aided the defense in establishing it was the prosecutrix who was the aggressor that placed appellant in fear of serious bodily injury or loss of life during the altercation in question.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Jones, Op. No. 2012-UP-158 (S.C. Ct. App. filed March 7, 2012). The Remittitur was issued on March 23, 2012.

First PCR Application: 2012-CP-11-00574

Applicant filed his first application for post-conviction relief on August 6, 2012 (2012-CP-11-00574). He alleged the following grounds for relief in his application:

1. "Ineffective Assistance of Counsel"
 - a. "failure to investigate"

Respondent made its return on November 30, 2012, and an evidentiary hearing into the matter was convened on November 15, 2013, before the Honorable Robin B. Stilwell. Applicant was present at the hearing and represented by Shawn M. Campbell, Esq. Suzanne H. White, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and called three other witnesses: Thomas Shealy, Esq.; Lucille Wheelchel, and Susan Clary. By written order dated March 5, 2014, and filed March 6, 2014, Judge Stilwell denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), which offered the following issue:

Did the PCR judge err in refusing to find counsel ineffective in failing to object when the State moved to qualify a nurse as an expert in performing sexual assault exams and diagnosing sexual assaults and allowing the nurse to testify that the injuries she observed indicated non-consensual sex?

The Supreme Court of South Carolina denied Applicant's petition by unpublished order. Jones v. State. S.C. Sup. Ct. Order filed April 8, 2015. The Remittitur was issued on April 24, 2015.

Federal Habeas Petition: 4:15-4004-BHH-TER

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on December 11, 2015 (C.A. No. 4:15-4004-BHH-TER). In his Petition, Applicant set forth the following grounds for relief:

1. "Trial judge erred in not allowing witnesses testimony into evidence, and testimony not heard by jury."
 - a. "In trial, defense witness Lucille Whelchel, was asked by defense counsel "Does your sister have anger issues?" Witness began to testify, and an objection by the State led to the jury being dismissed for the testimony. (App. 247), (247-250 of App., the testimony was most important to the self-defense petitioner testified while on the stand, (App. 260-263). See Attachments of Ground One"
2. "Ineffective Assistance of counsel"
 - a. "Trial counsel affected by a Conflict of Interest"
 - b. "Trial counsel failed to investigate before trial the mental and medical records of state's witness Kay Spencer, the prosecutrix, to show anger issues and false testimony."
 - c. "Counsel failed to call key witnesses as experts, Dr. Karns, Detective Ramsey, and a defense witness Susan Clary, to show Misconduct of Pros."
 - d. "Counsel failed to object; to a motion to qualify a nurse as expert; ect;"
 - e. "Failure by counsel to investigate Forensic evidence and to add."
3. "PCR Court erred in refusing to find Trial counsel ineffective in failing to object to a nurse being qualified as expert."
4. "Prosecutorial Misconduct"
 - a. "Deputy Solicitor vindictively enhanced a prior charge to most serious to seek a Life w/out parole sentence in this case; using misrepresentation in the previous trial to convict."
 - b. "Prosecution neglected to stop false testimony by State's expert witness, and neglected to correct the inconsistency of prosecutrix's testimony."
5. "Ineffective Assistance of PCR Attorney:"
 - a. "On December 20, 2012 Shawn Campbell notified Petitioner that he took over PCR action on this case. Petitioner Lettered amendments to Mr. Campbell to add or amend to ill-prepared PCR application, and listed three subpoenas to be served."

- b. “On November 15, 2013, Petitioner met with Mr. Campbell in a pre-hearing conference at the courthouse. There, PCR Attorney told Petitioner that he did not amend the PCR application, and that he only wanted to raise the mental health records that trial counsel failed to obtain before trial. PCR attorney also neglected to subpoena the witnesses concerning conflict of interest claim and an expert witness concerning medical attention given to both Petitioner and prosecutrix. The failed amendments were conflict of interest by trial counsel, prosecutorial misconduct, and direct appeal claim. The subpoenaed witnesses were to be Kim Leskanic, the solicitor –Usha Bridges, family court Judge –and Dr. Karns of Upstate Medical”
 - c. “At the end of proceedings, PCR attorney asked to approach the Bench to present a deposition written by the prosecutrix’s son, the first cousin of Petitioner. The deposition cast question upon the credibility of the prosecutrix, and PCR judge allowed the hearing open for ten (10) days to present the witness for cross-examination. Both Judge and counsel knew the witness was incarcerated, and the Petitioner was, and is, in state custody. PCR Attorney, Shawn Campbell failed to subpoena the witness for testimony crucial for Petitioner’s relief. (Appx. 453).”
 - d. “PCR Attorney will not respond to Petitioner’s letters to retrieve the deposition or the letter of Amendments. Petitioner asked for an evidentiary hearing to face PCR attorney, along with the other witnesses Petitioner requested.”
6. “PCR Judge erred in ordering authentication of a written deposition and not allowing into evidence a material witness’ testimony.”
- a. “On November 15, 2013, at the PCR proceedings of this case, PCR Judge Robin B. Stilwell was handed a written deposition written by said victim’s son, the Petitioner’s cousin, James Eric Spencer. The testimonial calls into question the said victim’s credibility. (App. 453). Instead of ordering subpoena for the incarcerated witness, PCR judge held the hearing open 10 days for Petitioner, whom is in state custody, to present the material witness for authentication, (App. 456, Order of Dismissal). Petitioner asserts prejudice, in that, a material witness’ testimony was not allowed into the record, or into evidence. Petitioner raised in Supreme Court of South Carolina in a pro se response to a Johnson Brief in an appeal of the PCR dismissal.”

Respondent filed its Return and Motion for Summary Judgment on September 25, 2015. The Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued on April 25, 2016 a Report and Recommendation that Respondent’s motion for summary judgment be granted.

Jones v. McFadden, 4:15-4004-BHH-TER, 2016 WL 11410299 (D.S.C. 2016). The Honorable Bruce Howe Hendricks, United States District Judge, denied Applicant’s Petition on June 23,

and accepted the Report and Recommendation for summary judgment. Jones v. McFadden, 4:15-4004-BHH-TER, 2016 WL 3437608 (D.S.C. 2016). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals, which dismissed Applicant's appeal on June 2, 2017. Jones v. McFadden, 691 Fed.Appx. 117 (4th Cir. 2017). Applicant petitioned for writ of certiorari in the Supreme Court of the United States, which was denied on January 8, 2018. Jones v. Williams, 138 S.Ct. 678 (2018).

II. CURRENT APPLICATION

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

1. "New Evidence – Wrongly Excluded Exculpatory Evidence"
 - a. "Trial Lawyer failed to present Evidence"
2. "Prosecutorial Misconduct"
 - a. "Prosecution prevented cross-examination of Evidence"
3. "Ineffective trial Lawyer – Ineffective PCR Lawyer"
 - a. "Reserve the Right to Amend at later date"

Applicant requests relief as follows:

- "New trial"

Before this Court are the Cherokee County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final orders of Applicant's previous PCR and federal habeas actions, and the records of this current PCR action.

III. 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:

Newly Discovered Evidence

First, the Court finds Applicant's assertion that evidence excluded in prior proceedings constitutes newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed 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. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. First, Applicant is entirely non-specific as to the evidence to which he refers. To the extent Applicant refers to matters raised in greater detail in his federal habeas petition, each of Applicant's allegations implicitly involve "facts" that were, or could have been, discovered before his trial. Furthermore, each of Applicant's allegations have been raised *at least* once in his prior actions in state and federal courts. 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 *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the Court shall summarily dismiss this matter with prejudice.

Ineffective Assistance of PCR Counsel

The Court finds Applicant's claim he is entitled to relief on grounds that his prior PCR counsel, Shawn Campbell, Esq., was ineffective is not cognizable in an action for post-conviction relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not 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 only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel 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. Id. Austin "is limited to its particular factual situation" and is only applicable in limited circumstances to correct procedural defects where an applicant is denied his "one full bite at the apple." Id.; Aice, 305 S.C. at 452, 409 S.E.2d at 394; see also Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

Here, Applicant received a hearing in his first PCR action and timely appealed therefrom. Applicant further enjoyed to exhaustion the federal habeas corpus procedures, including an attempt to appeal to the United States Fourth Circuit Court of Appeals and the Supreme Court of the United States. 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 counsel do not fall within any exception to the rule barring such claims, and the Court shall dismiss the allegation as not cognizable under the Uniform Post-Conviction Procedure Act.

Successive

The Court finds the application must be summarily dismissed because it is successive to Applicant’s previous PCR application. 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, 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).

As noted in the prior section, once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395. The South Carolina Supreme Court held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, “[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” Id. at 451, 409 S.E.2d at 395. Aice further held that “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.” Id. at 452, 409 S.E.2d at 394. Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason to warrant a successive PCR application. Thus, Applicant has failed to show that a successive application is appropriate.

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 has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application

for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall dismiss the application as successive to Applicant's previous PCR application.

Res Judicata

The Court 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 his allegations in his prior actions. Each of Applicant's claims were brought up either in his prior application for post-conviction relief or in his petition for habeas corpus in federal district court. The finality of the previous Court rulings must be respected, and the Court shall dismiss the application as barred by the doctrine of *res judicata*.

Statute of Limitations

The Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 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).

Applicant was convicted on May 26, 2010, and the remittitur from his direct appeal issued on March 23, 2012. The current application was not filed until June 24, 2019—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

[Conclusion and signature on following page]


IV. 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 (20) 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 Cherokee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Cherokee County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 26th day of September 2019.



GRACE G. KNIE
Chief Judge for Common Pleas
Seventh Judicial Circuit

Spartanburg, South Carolina