STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH JUDICIAL CIRCUIT
Saul Williams, #235861, Applicant, v. State of South Carolina, Respondent.	)	2019-CP-07-1049 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Saul Williams (Applicant) on May 6, 2019. Respondent made its Return, requesting that the application be summarily dismissed for failure to comply with the statute of limitations, because it is impermissibly successive, and barred by *res judicata*.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. Applicant was indicted at the February 1996 term of the Beaufort County Grand Jury for five counts of armed robbery (1996-GS-07-250, -252, -264, -267, and -269); five counts of possession of a weapon during the commission of a violent crime (1996-CP-07-251, -253, -266, -268, and -270); and assault and battery with intent to kill (ABWIK) (1996-GS-07-265). Applicant was also indicted at the May 1996 term for armed robbery (1996-GS-07-847) and possession of a sawed-off shotgun (1996-GS-07-848). Samuel Bauer, Esquire, represented Applicant.

On November 18, 1996, Applicant pleaded guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced him to imprisonment for twenty-five years for three counts of armed robbery

(96-GS-07-250, -269 and -847), each of these sentences were ordered to run consecutive. Judge Cooper also sentenced Applicant to twenty-four years for another count of armed robbery (96-GS-07-267). This sentence was also ordered to run consecutive to the sentences he received on the previously mentioned armed robberies. Judge Cooper sentenced Applicant to twenty-five years, each for the two remaining counts of armed robbery, five years for possession of a sawed-off shotgun, and five years on each count of possession of a weapon during the commission of a violent crime, all of which were to run concurrently to his other sentences. Applicant did not appeal his convictions or sentences.

First Post-Conviction Relief Application (1997-CP-07-361)

Applicant subsequently filed an application for PCR on March 3, 1997, in which he alleged the following:

1. Denial of Fourth Amendment Rights: Ineffective assistance of counsel
2. Denial of Sixth Amendment Rights: "I was told by my lawyer I had to plea."
3. Denial of Fourteenth Amendment Rights: "was not competent to stand trial."

The State filed its Return on May 15, 1997. On September 27, 1999, an evidentiary hearing was held before the Honorable Jackson V. Gregory, at which Applicant was present and was represented by Sam Svalina, Sr., Esquire. By Order dated November 22, 1999, Judge Gregory denied relief and dismissed the application.

Appeal from Denial of First Post-Conviction Relief Application

A timely Notice of Appeal was filed on Applicant's behalf and a Petition for Writ of Certiorari was submitted by Wanda H. Carter of the South Carolina Office of Appellate Defense. In the Petition for Writ of Certiorari, Applicant's appellate counsel presented the following issue:

1. Was trial counsel ineffective in failing to secure a psychiatrist and a second opinion from a clinical psychologist in order to explore fully the issue of petitioner's mental competency?

On February 21, 2002, the South Carolina Supreme Court denied the Petition for Writ of Certiorari and remitted the case to the trial court on March 11, 2002.

2003 State Habeas Action (2003-CP-07-2324)

Applicant subsequently filed a Petition for Writ of Habeas Corpus on December 18, 2003. Respondent made its Return and Motion to Dismiss on August 20, 2004. A hearing was held April 25, 2005 at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Nicholas Felix, Esquire. Adrianne Turner of the Attorney General's Office appeared on behalf of the State. Upon agreement by the parties, and by Order signed July 14, 2005, by the Honorable Clifton B. Newman, the parties agreed Applicant's filing should be transferred for filing in the South Carolina Supreme Court, without prejudice to Applicant for the time delay.

Following the issuance of that Order, Applicant submitted a pro se "Notice of Removal" and a petition for the appointment of counsel. Subsequently, Applicant filed with the Supreme Court a "Voluntary Dismissal," requesting that his petition be dismissed without prejudice. The Supreme Court issued an order to that effect on October 21, 2005.

Second Post-Conviction Relief Application (2005-CP-07-1880)

Applicant filed a second PCR application on September 30, 2005, in which he made the following allegations:

1. Ineffective assistance of appellate counsel as a result of PCR counsel's failure to raise issues at original PCR hearing.
2. Ineffective assistance of PCR counsel for failure to raise specific grounds of relief, including:

a. Trial counsel failed to object that the State conducted a 6 man photograph lineup in the absence of Counsel.
b. Trial counsel failed to request a hearing pursuant to Neil v. Biggers or advise Applicant of the law of Neil v. Biggers.
c. Trial counsel failed to advise Applicant of trial strategy.
d. Trial counsel failed to advise that the State must prove that Applicant was eligible for sentencing under 17-25-45.
e. Plea was involuntary and unknowing based on erroneous advice by trial counsel regarding plea.

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3. *Ex post facto* violation.
4. Excessive sentence.
5. Illegal sentence.
6. Involuntary guilty plea.
7. Lack of subject matter jurisdiction.
8. Prosecutorial misconduct.

Respondent made its Return and Motion to Dismiss on February 6, 2006. The Honorable Roger M. Young, Sr. issued a Conditional Order of Dismissal on August 3, 2006. The Honorable Carmen T. Mullen issued a Final Order on June 16, 2009.

2007 Federal Habeas Action (3:07-923-HMH-JRM)

On June 7, 2007, Applicant filed a federal habeas corpus action. In the *pro se* Petition for Writ of Habeas Corpus, Applicant alleged the following:

1. Applicant claimed that his guilty plea was made involuntarily due to a Sixth Amendment violation of ineffective trial counsel. At the time of his guilty plea and when the crimes were committed, he was mentally retarded with an intelligence quotient (IQ) of 65. Under different circumstances, Applicant would have moved for a jury trial.
2. Ineffective Assistance of Trial Counsel is a violation of Applicant's Sixth Amendment and Fourteenth Amendment Due Process Clause as well as the Eighth Amendment's protections against cruel and unusual punishment.
3. Applicant was advised by his appointed trial counsel of the court's violation of *ex post facto* clause and the 1990 Disabilities Act.

Respondent filed its Motion for Summary Judgment on October 3, 2007. The Honorable Henry M. Herlong, Jr., United States District Judge, adopted Respondent's report and recommendation. Subsequently, the Federal Habeas Corpus Petition was dismissed on June 18, 2008. Williams v. Warden, 3:07-923-HMH-JRM (D.S.C.)

Third Post-Conviction Relief Application (2009-CP-07-1679)

Applicant filed a third PCR application on March 30, 2009, in which he made the following allegations:

1. Ineffective assistance of PCR counsel in that counsel failed to file a timely notice of intent to appeal the denial of Applicant's first PCR application. And Applicant is entitled to an Austin appeal.

Respondent made its Return and Motion to Dismiss on July 13, 2009. A Conditional Order of Dismissal was signed on July 17, 2009, giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. In a letter to the Court responding to the Conditional Order of Dismissal, Applicant alleged he was entitled to an evidentiary hearing for the following reasons:

1. Applicant is under influence of several prescription drugs.
2. Applicant cannot function mentally as a normal person.

On October 30, 2008, the Honorable J. Ernest Kinard Jr. issued a Final Order of Dismissal.

Appeal from Denial of Third Post-Conviction Relief Application

Applicant filed an appeal to the denial of his third application for post-conviction relief in the South Carolina Supreme Court. Applicant made a *pro se* response asserting the PCR court erred in dismissing his application as successive and barred by the statute of limitations for the following reasons:

1. Post-conviction relief attorney Sam Svalina, Applicant's first appointed post-conviction relief attorney, failed to perfect Applicant first application.
2. Under post-conviction rules, an applicant is entitled to a full adjudication on the merits of the original petition or "one bite of the apple" and this "bite" includes an applicant's right to appeal the denial of a post-conviction relief application and the right to assistance of counsel in that appeal.
3. The one-year statute of limitations did not apply to the *pro se* Applicant's appeal from summarily denial of his application for post-conviction relief based on denial of his right to appeal, which was a procedural error.

On February 25, 2010, the South Carolina Supreme Court issued an Order denying the Petition for Writ of Certiorari. The remittitur was issued on March 16, 2010.

2012 State Habeas Action

On October 31, 2012, Applicant filed a "Petition for Writ of Habeas Corpus" in the South Carolina Supreme Court alleging, *inter alia*, that the South Carolina Supreme Court erred in in denying his 2001 Petition for Writ of Certiorari because he claims he presented testimony he was

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"mentally retarded" and "mentally incompetent" to plead guilty. The South Carolina Supreme Court denied the petition on December 6, 2012.

2013 Federal Habeas Action (3:13-1042-OCN-JRM)

On June 21, 2013, Applicant filed another Petition for Writ of Habeas Corpus in the South Carolina Supreme Court. On July 3, 2013, Applicant requested he withdraw this application without prejudice. On July 11, 2013, The Honorable David C. Norton, United States District Judge, dismissed Applicant's petition without prejudice. Williams v. Warden, 3:13-1042-DCN-JRM.

Fourth Post-Conviction Relief Application (2013-CP-07-2286)

In his fourth application for post-conviction relief filed September 5, 2013, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Mental incompetency to help attorney at PCR hearing."
    a. "Petitioner suffers from hallucinations"
    b. "Petitioner was appointed a guardian ad litem who had no legal right to say he was competent to have his hearing"
2. "Denial of Due Process Rights"

In his amended application, filed March 24, 2014, Applicant further alleged his attorney was ineffective for advising him to plead guilty, and Applicant suffers from mental difficulties.

Respondent filed its Return and Motion to Dismiss dated September 24, 2015, requesting the application be summarily dismissed pursuant to S.C. Code Ann. § 17-27-70 on the basis there was no genuine issue of material fact to necessitate an evidentiary hearing. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal dated October 2, 2015, On March 14, 2016, after Applicant made no response, the Honorable Carmen T. Mullen issued a Final Order of Dismissal.

II. CURRENT APPLICATION

In his *fifth* application for post-conviction relief and *ninth* collateral action, Applicant alleges he is being held in custody unlawfully for the following reasons:

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1. Ineffective Assistance of Trial Counsel
   a. "repeatedly giving the applicant bad advice and expectations that were not followed through"
   b. "when trial counsel told the applicant if applicant plea guilty that all of the charges will run concurrent which it didn't occur"
   c. "improperly and unreasonably coercing and pressuring the applicant to plead guilty"
   d. "not filing a notice of appeal"
2. Newly Discovered Evidence

Before this Court are the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's previous collateral actions, the current application, and the State's return and motion to dismiss.

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 sections 17-27-70 and -80 of the South Carolina Code, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

The Court finds this application for post-conviction relief 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. Section 17-27-45(a) reads 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 upon an appeal, whichever is later.

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 of the offenses he challenges in this application on November 18, 1996. Therefore, Applicant was required to file a PCR application by November 18, 1997. This

application was filed on May 6, 2019, more than ***twenty years*** after the statutory filing period expired.

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) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was convicted and sentenced on November 18, 1996, and he did not appeal. The application was therefore due on or before November 18, 1997. This application was filed May 6, 2019, over twenty years beyond the statutory filing period. Therefore, this Court shall summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Successive Applications

The Court finds it must also summarily dismiss the current application because it is successive to Applicant's previous collateral actions. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). Section17-27-90 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 point to 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., 305 S.C. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have – and in fact has – raised these "new" grounds for relief in his prior collateral actions. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous collateral actions. Accordingly, the Court finds summary dismissal of this current action is appropriate because it is impermissibly successive.

Res Judicata

This Court further finds the doctrine of *res judicata* bars Applicant's claim. *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.

Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in his 1997, 2005, and 2009 PCR applications and 2012 State Habeas Corpus petition. Applicant specifically raised these exact issues in his prior actions. Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest in

finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court shall summarily dismiss this claim as barred by *res judicata*.

CONCLUSION

Pursuant to section 17-27-70(b) of the South Carolina Code, 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 Beaufort County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Lindsey A. McCallister, Esquire
PCR Division – 14th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Beaufort 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 21st **day of** October**, 2020.**

DEADRA L. JEFFERSON
Chief Administrative Judge - Common Pleas
Fourteenth Judicial Circuit

Chas., South Carolina
at chambers

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