

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT

Ricardo Fishburne, #279661,

) C. A. No. 2019-CP-15-111  
)

Applicant,

)

v.

)

**FINAL ORDER OF DISMISSAL**

)

State of South Carolina,

)

Respondent.

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)

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COLLETON COUNTY  
COMMON PLEAS COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 17, 2019. Respondent made its Return and Motion to Dismiss on October 14, 2020, requesting that the application be summarily dismissed. 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 filed November 23, 2020, provisionally denying and dismissing this action, while giving Applicant twenty 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 December 17, 2020, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On December 22, 2020, Applicant filed a "Motion to Invoke Discovery" and "Motion to Amend." In these documents Applicant reiterates his contentions the State withheld evidence, namely incident reports and crime scene photos that were discussed at trial; that there is some unspecified "newly discovered evidence" in the State's files; and that Applicant's trial counsel was later disbarred.

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All of these claims are successive to Applicant's multiple previous collateral actions and barred by the statute of limitations. 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. at 450, 409 S.E.2d at 394. Applicant could have raised, and in fact did raise, these allegations in his previous PCR and habeas applications, and therefore, Applicant may not raise these grounds now. Id.; see also Graham v. State, 378 S.C. 1, 3-4, 661 S.E.2d 337, 337 (2008) (finding Petitioner was barred from raising claim he was denied a direct appeal in successive application because he could have raised it in first application). Moreover, none of the evidence Applicant presents as proof of his claims is truly "newly discovered," as it all pertains to issues was on notice of at the time of trial or at least at the time of his previous collateral actions.<sup>1</sup> See 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) (setting forth the five factors to be analyzed when considering a newly discovered evidence claim)).

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court has reviewed Applicant's responses to the Conditional Order of Dismissal and Respondent's motion to dismiss in their entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. All of the issues Applicant now raises were or could have been raised in his

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<sup>1</sup> Applicant raised a broad claim of Rule 5 and Brady violations in his federal habeas action, and this specific claim regarding Pringle's incident report in his state habeas action.

previous applications. Therefore, these allegations are barred by the prohibition against successive applications, for failure to comply with the statute of limitations, and because Applicant has failed to make a prima facie case of newly discovered evidence so as to warrant an evidentiary hearing.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal and above, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant 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 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 5<sup>th</sup> day of March, 2021.



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

Charleston, South Carolina  
at chambers

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