

STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER )  
) )  
) )  
Calvin Lyndale Gaddy, #323551, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTH JUDICIAL CIRCUIT

2015-CP-29-0637

CLERK OF COURT  
LANCASTER, SC

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FILED  
CLERK OF COURT

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Calvin Lyndale Gaddy (Applicant) on May 13, 2015 and amended on July 22, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed because the action is untimely; successive; and fails to make a *prima facie* showing of newly discovered evidence or lack of subject matter jurisdiction. For the reasons discussed below, the Court grants Respondent’s motion.

**PROCEDURAL HISTORY**

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted by the Lancaster County Grand Jury in August 2007 for murder (2007-GS-29-880). William P. Frick, Esquire, represented Applicant. On August 17, 2007, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter before Judge Kenneth G. Goode. Judge Goode accepted Applicant’s guilty plea and sentenced him to serve twenty-five years’ imprisonment. Applicant did not appeal his plea or sentence.

**2008-CP-29-0154**

Applicant commenced his first PCR action on February 11, 2008. Applicant raised the following grounds for relief:

1. Ineffective assistance of counsel;
2. Involuntary guilty plea; and
3. Lack of subject matter jurisdiction.

Respondent made its return on April 23, 2008. On August 24, 2009, an evidentiary hearing was convened at the Fairfield County Courthouse before Judge Roger M. Young, Sr. Applicant was present and represented by Charles T. Brooks, III, Esquire. Applicant voluntarily withdrew his application on the record. Judge Young granted Applicant's motion to withdraw his application on October 21, 2009. Because Applicant withdrew his action, relief was denied and dismissed with prejudice. Applicant appealed.

Appellate Defender Wanda H. Carter perfected Applicant's appeal by submitting a *Johnson*<sup>1</sup> petition. On April 7, 2010, our Supreme Court denied certiorari. *Gaddy v. State*, S.C. Sup. Ct. Order dated April 7, 2010. The case was remitted back to the circuit court on April 23, 2010.

**8:10-CV-01743-JFA**

Applicant filed a *pro se* petition for a writ of habeas corpus with the United States District Court, District of South Carolina, on July 6, 2010. Respondent made its return and moved for summary judgement on October 13, 2010. United States Magistrate Judge Jacquelyn D. Austin issued her report and recommendation, recommending Respondent's motion for summary judgement be granted, on August 23, 2011. On September 27, 2011, United States District Judge

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<sup>1</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

Joseph F. Anderson, Jr. adopted the report and recommendation, and granted Respondent's motion for summary judgment.

### **CURRENT APPLICATION**

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

1. Newly discovered evidence
  - a. "No Grand Jury convene in terms of General Sessions"

In his supplemental letters and memos, Applicant additionally alleges lack of subject matter jurisdiction and prosecutorial misconduct while maintaining the alleged ineffective indictment.

### **DISCUSSION**

Before this Court are the records of the Lancaster County Clerk of Court regarding the subject conviction, Applicant's prior PCR records, Applicant's PCR application, and Respondent's return and motion to dismiss. This Court has reviewed the pleadings and records pertaining to the PCR action and finds the action shall be summarily dismissed for the reasons below.

#### **Statute of Limitations**

Applicant's allegations, except for his claim of newly discovered evidence and subject matter jurisdiction, shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (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).

Our 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 pleaded guilty to the lesser included offense of voluntary manslaughter on August 17, 2007. Applicant did not appeal his plea or sentence. The application was therefore due on or before August 18, 2008. This application was filed on May 13, 2015, well beyond the statutory filing period. Therefore, Applicant’s allegations, except for newly discovered evidence and subject matter jurisdiction, shall be summarily dismissed because they are untimely.

Successive

Additionally, Applicant’s allegations, except for newly discovered evidence and subject matter jurisdiction, shall be summarily dismissed because the allegations are successive to Applicant’s previous PCR action.

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 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 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 PCR actions 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 allegations, except for newly discovered evidence and subject matter jurisdiction, could have been raised in the prior PCR action; thus, the allegations are successive and barred by section 17-27-90. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous PCR application. Accordingly, Respondent’s motion for summary dismissal is granted.

#### Newly Discovered Evidence

Applicant’s claim of newly discovered evidence shall be summarily dismissed, as it fails to make a *prima facie* case that Applicant is entitled to relief.

Under subsection 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea

and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. *Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

"[I]n South Carolina, a guilty plea constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights." *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." *Brady v. U.S.*, 397 U.S. 742, 757 (1970).

In *Jamison*, our Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. 410 S.C. at 470, 765 S.E.2d at 130. Here, Applicant's claim of newly discovered evidence fails to present a *prima facie* claim for relief, nor does it sufficiently or clearly present a "rare case" requiring a vacation in the interest of justice. Applicant's claim does not assert the existence of actual new evidence, but instead raises legal claims unsupported by any "newly discovered" factual allegations.

In his application, Applicant asserts the indictment is not effective because the date on the indictment does not match the date when the grand jury was supposed to meet. This information was or could have been available to Applicant before he pled guilty. Moreover, a grand jury may

meet at any time ordered by a circuit judge. *See* S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. *See State v. Jeffcoat*, 26 S.C. 114, 1 S.E. 440, 441 (1887)(“[M]erely changing the time for holding the court did not make the grand jury illegal.”) Therefore, Applicant has failed to meet his burden showing newly discovered evidence.

Before the circuit 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). Because Applicant has failed to make such a showing, this application shall be summarily dismissed.

#### Subject Matter Jurisdiction

Applicant further alleges the court lacked subject matter jurisdiction and did not have the authority to accept the plea from Applicant or impose a sentence. The basis for Applicant’s claim is the alleged ineffective indictment.

Subject matter jurisdiction and the sufficiency of the indictment are two distinct concepts. The indictment is a notice document. Any insufficiency or defect in the indictment must be challenged before the jury is sworn. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Edwards v. State*, 372 S.C. 493, 642 S.E.2d 738 (2007)(holding the plea court, as a court of general sessions, has subject matter jurisdiction to accept guilty pleas and to sentence defendants). Defects in the indictment do not affect subject matter jurisdiction. *See Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *U.S. v. Cotton*, 535 U.S. 625, 122 S.Ct. 1791 (2002). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry*, 363 S.C. 93; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

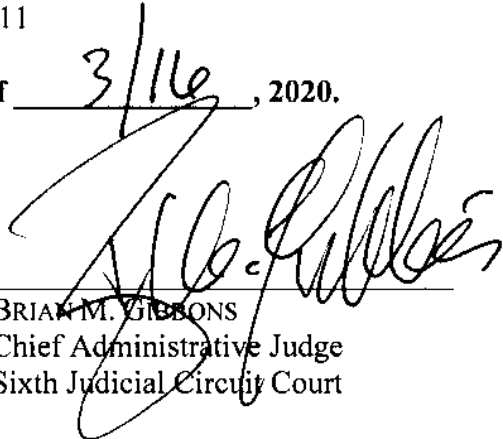
The Lancaster County Grand Jury indicted Applicant for murder, and Applicant pleaded guilty to the lesser included offense of voluntary manslaughter. Therefore, the Lancaster County Court of General Sessions had subject matter jurisdiction to hear the case, and Applicant's claim of lack of subject matter jurisdiction shall be summarily dismissed.

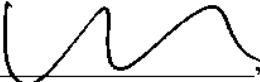
**CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this action with prejudice unless Applicant provides specific reasons, factual or legal, why the action 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 Lancaster County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Samuel Key, Esquire  
Post-Conviction Relief Division—6<sup>th</sup> Circuit  
Post Office Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this \_\_\_\_ day of 3/16, 2020.

  
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BRIAN M. GIBBONS  
Chief Administrative Judge  
Sixth Judicial Circuit Court

  
\_\_\_\_\_, South Carolina