THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY,CIRCUIT COURT JUDGE

2020-CP-23-0909

SHANE YOUNG,.....APPELLANT,

V.

THE STATE,.....RESPONDENT.

NOTICE OF APPEAL

SHANE YOUNG APPEAL'S THE HONORABLE PERRY GRAVELY'S FINAL ORDER OF DISMISSAL FILED MAY 7, 2021.

THIS 7th DAY OF June 2021

S/ Shane Young

SHANE YOUNG
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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Shane K. Young, #357849, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-23-0909 **FINAL ORDER OF DISMISSAL**

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC
2021 MAY 14 AM 10:29

This matter comes before the Court by way of an application for post-conviction relief filed by Shane K. Young ("Applicant") on February 13, 2020. The State ("Respondent") filed its return on July 28, 2020, moving for the summary dismissal of the application with prejudice. For the reasons provided in this order, Respondent's motion to dismiss is granted.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its July of 2013 term, the Greenville County Grand Jury indicted Applicant for first-degree burglary (2013-GS-23-6419), murder (2013-GS-23-6424), the possession of a weapon during the commission of a violent crime (2013-GS-23-6424), and eight counts of attempted murder (2013-GS-23-6411; -6413; -6414; -6416; -6420; -6423; -6425; -6426). Applicant was represented by John I. Mauldin, Esquire ("plea counsel"). Thirteenth Circuit Solicitor William Walter Wilkins, III, prosecuted the case. On October 6, 2011, Applicant appeared before the Honorable Letitia H. Verdin, and pleaded guilty as indicted to all offenses except for the possession of a weapon during the commission of a violent crime. One term of the plea agreement reached between Applicant and the State was that the State would dismiss eight remaining charges once Applicant entered his guilty pleas to the aforementioned offenses. In

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accordance with the State's sentencing recommendation, Judge Verdin sentenced Applicant to imprisonment for consecutive terms of thirty years for each of the attempted murder offenses and for consecutive terms of life for murder and first-degree burglary.

Applicant did not appeal his convictions or sentences.

2014-CP-23-3381

On June 17, 2014, Applicant filed his first application for post-conviction relief, claiming therein that he was entitled to relief because he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. Respondent made its return on October 30, 2014, requesting therein that a PCR hearing be convened regarding the claims. A hearing was held at the Greenville County Courthouse on April 23, 2015, before the Honorable Edward W. Miller. Applicant was present and represented by Brian P. Johnson, Esquire. Senior Assistant Attorney General Karen C. Ratigan of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant clarified he would proceed upon two grounds, abandoning all others. Those claims were (1) that Applicant did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences and (2) that Applicant's guilty pleas were not knowingly and voluntarily entered because Applicant had previously sustained injuries to his head. Judge Miller issued an order of dismissal on June 4, 2015, denying the application and dismissing it with prejudice.

Johnson filed a timely notice of appeal. L. Whitney Thwaites, Esquire, represented Applicant on appeal. Thwaites filed a petition for a writ of certiorari arguing (1) Judge Miller erred in finding plea counsel was not constitutionally ineffective, (2) Johnson had supplied Applicant with the constitutionally ineffective assistance of post-conviction relief counsel by failing to adequately prepare for Applicant's post-conviction relief hearing, and (3) Judge

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Miller erred in denying Applicant's motion to continue the hearing so that he could acquire new representation. Ratigan represented Respondent on appeal, arguing that the petition should be denied because (1) Judge Miller did not err in finding Applicant failed to demonstrate he received the constitutionally ineffective assistance of counsel from plea counsel, (2) the constitutional effectiveness of Johnson was not properly before the South Carolina Supreme Court, and (3) Judge Miller did not err in denying Applicant's motion to continue. The Supreme Court denied Applicant's petition for a writ of certiorari. Young v. State, S.C. Sup. Ct. Order filed May 31, 2017. The remittitur was issued on June 16, 2017.

CURRENT APPLICATION

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for multiple reasons, which this Court interprets as follows: (1) plea counsel was constitutionally ineffective for failing to conduct an adequate investigation into 1993 Act 184, (2) Applicant has newly discovered evidence concerning 1993 Act 184, and (3) fraud was committed upon the court by way of the Act's application to Applicant's convictions and sentences. Applicant prays in his application that the Court would grant post-conviction relief and vacate his sentences and remand for a new trial.

Respondent filed its return to the application on July 28, 2020, moving for the summary dismissal of the application because it was not timely filed, it is a successive application, its claims are barred by the doctrine of res judicata, and it does not present a genuine issue of fact and Respondent is entitled to judgment as a matter of law.

On August 3, 2020, the Honorable Alex Kinlaw, Jr., issued a conditional order of dismissal, conditionally granting Respondent's motion to dismiss and giving Applicant twenty days after the service of the order upon him in which to file a response providing reasons, factual

or legal, that the dismissal should not become final. That order was filed in this matter with the Greenville County Clerk of Court on August 24, 2020, and mailed to Applicant by the Clerk of Court on that same day. On September 16, 2020, Applicant was personally served with the order, as is shown by the attached affidavit of personal service, which is incorporated into this order.

On August 14, 2020, Applicant filed a response to the conditional order of dismissal. Applicant argues therein that his application should not be dismissed as untimely because he filed it within one year of discovering that the Great Seal is not affixed to 1993 Act 184. Applicant argues that his application should not be dismissed as successive because plea counsel's failure to investigate the issue and inform Applicant of it left Applicant unaware of the Act's invalidity. Applicant argues that the doctrine of res judicata does not apply because he has not raised the claim about the Act in a previous application for post-conviction relief. Applicant argues that there is a genuine issue of material fact in this matter because the Act authorized the State to impose a harsher sentence on Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the records of the Greenville County Clerk of Court for Applicant's convictions and sentences, the records from Applicant first application for post-conviction relief and its appeal, Applicant's records from the Department of Corrections, and all filings in this matter. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court makes the following findings of fact and conclusions of law.

Pursuant to S.C. Code Ann. § 17-27-70(c), this Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law.

The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). This Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Respondent moved for the summary dismissal of the application on the ground that the application was not timely filed. 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). The Uniform Post-Conviction Procedure 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 offense 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 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) (per curiam). One who was convicted and sentenced prior to the effective date of the statute of limitations must file the application within one year of the effective date of the statute, which was July 1, 1995. Id. at 470, 469 S.E.2d at 607. Applicant was convicted and sentenced on October 6, 2011. Applicant did not appeal his convictions and sentences. The application was, therefore, due on or before October 7, 2012. This application

was not filed until February 13, 2020, over seven years after the statutory filling period expired. Judge Kinlaw's conditional order of dismissal included a finding that the application was not timely filed.

In response, Applicant is arguing that he filed the application within one year of discovering that the Great Seal is not affixed to Act 184. 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 an applicant contends there is evidence of a 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). Even if this Court accepts as true Applicant's allegations that Act 184 lacks the Great Seal and that Applicant did not learn of that lack until January of 2020, Applicant has still failed to show that the statute of limitations should not serve as a procedural bar to his application. Applicant has failed to explain that this issue is not one that he could have discovered earlier upon the exercise of reasonable diligence on his part. Applicant's argument is based upon the alleged discovery of the status of a public document, which cannot serve as a basis for the application of the discovery rule exception to the statute of limitations. See State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981) (instructing that "the theory of after-discovered evidence does not extend to evidence available or attainable from public record before the time of trial" and reversing a trial court's grant of Allen's motion for a new trial and reinstating the sentence when Allen's motion was based upon his discovery that an adverse witness had a previous conviction for extortion, which would have been discoverable before trial by inspection of public records)

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(citations omitted). This Court finds that the applicant was not timely filed and that the discovery rule exception does not apply.

Respondent moved to dismiss the application on the ground that it is successive. 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 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" that new grounds 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 the 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 argues that his application should not be dismissed as successive because plea counsel's failure to investigate the issue and inform Applicant of it left Applicant unaware of the Act's invalidity. Applicant does not dispute that the claim that Act 184 lacks the Great Seal

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could have been raised in his first application or that the claim was available to him in that application. Instead, Applicant argues that he was unaware of the existence of the claim. This claim is not one that "could not have been raised . . . in the previous application." Aice, at 450. And, as previously noted in this order, Applicant's ignorance of an alleged defect in a public document was something that would have been discoverable with the exercise of reasonable diligence on his part. This Court finds that Applicant has failed to meet his burden to prove that the claim could not have been raised in his first application, and finds that the application is impermissibly successive.

Respondent moved to dismiss the application because the claim about Act 184 was precluded by the doctrine of res judicata. Applicant argues that the doctrine of res judicata does not apply because he has not raised the claim about the Act in a previous application for post-conviction relief. Applicant's argument misses the point. Res judicata bars any issues that could have been raised in a former action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (S.C. Ct. App. 1993); see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (approving of the post-conviction relief court's finding that claims raised or that could have been raised in a prior federal habeas corpus proceeding were barred by res judicata). Applicant could have raised the issue of the alleged lack of a visible impression of the Great Seal in his first application, but he did not do so. Therefore, the doctrine of res judicata precludes Applicant from raising these claims now.

Finally, Respondent moved to dismiss the application because there is no genuine issue of material fact and it is entitled to judgment as a matter of law. Pursuant to the South Carolina Constitution, Article III, Section 18:

No Bill or Joint Resolution shall have the force of law until it shall have been read

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> three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

The South Carolina Supreme Court has held that absolute literal compliance is not essential to ensure the validity of legislation, but has found that substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of the Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) (instructing that "when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete an unimpeachable").

Applicant's claims concern Act 184, which went into effect on January 1, 1994. See 1993 Act 184 § 269 (noting the Act, with the exception of a section concerning a study committee, would take effect on January 1, 1994). The aforementioned authorities indicate the Act was enacted properly. There is no genuine issue of material fact regarding the lack of validity of the Act as applies to Applicant's convictions and sentences because, even if Applicant's allegation that the Act lacks a visible impression of the Great Seal is true, Respondent is entitled to judgment as a matter of law because the law was still properly enacted. Applicant's response does not include any argument that refutes these findings, but merely asserts that the application of the Act to him resulted in negative consequences for him. This Court finds that there is no genuine issue of material fact and that Respondent is entitled to

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judgement as a matter of law.

IT IS THEREFORE ORDERED that Respondent's motion for the summary dismissal of the application is granted and this application is denied and dismissed with prejudice for the reasons stated in this order. This Court hereby advises the Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 11th day of May, 2021.

Perry H. Gravely
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Greenville, South Carolina.

Copy mailed to
Attorney General/ B. Johnson
on 5 / 14 / 2021.