

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Shane K. Young, #357849,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-0909

CONDITIONAL ORDER OF DISMISSAL

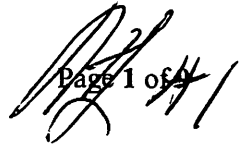
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 HONORABLE CLERK OF COURT
 THIRTEENTH JUDICIAL CIRCUIT
 GREENVILLE, SOUTH CAROLINA

This matter comes before this Court by way of an application for post-conviction relief filed by Shane K. Young (Applicant), on February 13, 2020. The State (Respondent) made its return on or about June 1, 2020, requesting therein that the application be dismissed summarily with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. 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 (same), 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), and 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 accordance with the State's sentencing recommendation, Judge Verdin sentenced Applicant to


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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

Applicant filed his first application for post-conviction relief on June 17, 2014, 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 argued 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 PCR hearing, and (3) Judge Miller erred in denying Applicant's motion to continue the PCR hearing so that he could acquire new representation. Ratigan represented

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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

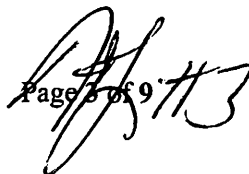
In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for multiple reasons, which this Court interprets as follows: (1) plea counsel was constitutionally ineffective for failing to conduct an adequate investigation into 1993 Act 184, (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 that the Court would grant post-conviction relief and vacate his sentences and remand for a new trial.

Before this Court are the records of the Greenville County Clerk of Court regarding Applicant's convictions; the records from Applicant's first application for post-conviction relief and its appeal; Applicant's records from the South Carolina Department of Corrections; and this second and current application for post-conviction relief and Respondent's return thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. This Court finds the application shall be dismissed summarily for the reasons that follow.

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

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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)). The 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 them 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)).

First, this present application for post-conviction relief shall be dismissed summarily for its non-compliance with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (the Act). 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 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,

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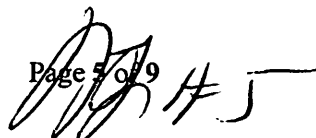
therefore, due on or before October 7, 2012. This application was not filed until February 13, 2020, over seven years after the statutory filing period expired. Therefore, the application shall be dismissed summarily for Applicant's failure to file within the time mandated by Act and by Peloquin.

Second, this present application for post-conviction relief shall be dismissed summarily because it is a successive 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 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.

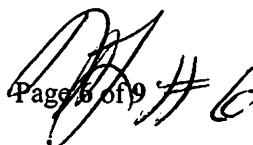
Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" that new grounds were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a 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).

Although Applicant raises multiple claims in his application, they are all essentially based

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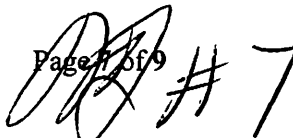
on his argument that some aspect of his convictions and sentences was improper because a particular act of the state legislature lacks a visible impression of the Great Seal. Applicant has not shown any reason that he could not have raised this issue in his first PCR action or on direct appeal, which precludes him from raising the issue now. See Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (“A petitioner may allege constitutional violations in PCR proceedings . . . unless the issue could have been raised by direct appeal.”); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (applying precedent establishing that an applicant for post-conviction relief cannot challenge errors that could have been raised in earlier proceedings, including in post-trial motions or on appeal). Applicant’s framing of one of his claims as one of newly discovered evidence does not serve to protect the application from summary dismissal due to its successiveness because his argument is based upon his reading of public records, and the content of public records cannot serve as a basis for a claim of newly discovered evidence. See State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981) (“[T]he theory of after-discovered evidence does not extend to evidence available or attainable from public record before the time of trial.” Reversing a trial court’s granting Allen’s motion for a new trial based on newly discovered evidence 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.) (citations omitted). Therefore, Applicant has failed to meet the burden imposed upon him, and this Court shall dismiss the application summarily due to its being successive.

Third, this Court shall dismiss the application summarily because the claims raised therein are 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 (S.C. Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new

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action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (S.C. 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) (approving of PCR 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 PCR action, but he did not do so. Therefore, the doctrine of res judicata precludes Applicant from raising these claims now.

Fourth, this Court shall dismiss the application summarily because there is no genuine issue of fact and Respondent 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 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). Furthermore, 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) (“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).

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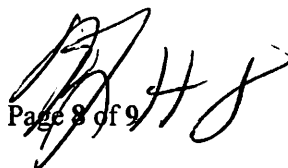
Applicant's claims concern 1993 Act 184, which went into effect on January 1, 1994. See 1993 Act 184 § 269 (noting the Act, with the exception of a section concerning a study committee, would take effect on January 1, 1994). The aforementioned authorities indicate the Act was enacted properly. There 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, Respondent is entitled to judgment as a matter of law because the law was still properly enacted. Therefore, this Court shall summarily dismiss the application due to the absence of a genuine issue of material fact.

CONCLUSION

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

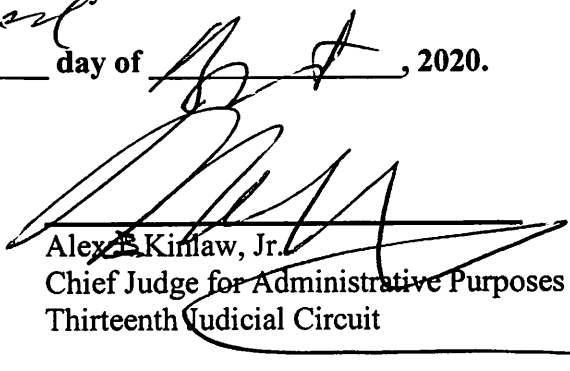
Office of the Attorney General
Attn: Taylor Zane Smith, Esquire
PCR Division – 13th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

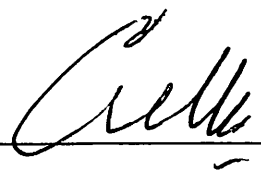
Applicant is cautioned that his response to this order must be actually received by the Greenville County Clerk of Court and opposing counsel within twenty (20) days, and the Court will not


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consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 3rd day of Sept, 2020.


Alex B. Kinlaw, Jr.
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

, South Carolina

Copy mailed to
Attorney general / JC
on 8 / 24 / 2020.