

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEE )  
 )  
 Robert L. Robinson, #186611, )  
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 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

C.A. No. 2019-CP-31-0201

**CONDITIONAL ORDER OF DISMISSAL**



This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Robert Robinson (Applicant) on June 18, 2019. The State made its Return, requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the August 2000 term of the Lee County Grand Jury for Assault with Intent to Commit Sexual Conduct (CSC), 1st degree (1999-GS-31-0311). Bryan Doby, Esquire, represented Applicant.

On October 10, 2000, Applicant proceeded to a jury trial before the Honorable Thomas W. Cooper and was found guilty as indicted. On October 11, 2000, Judge Cooper sentenced Applicant to life imprisonment for assault with intent to CSC, 1st degree.

A timely notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. The Remittitur was issued on July 15, 2002. *State v. Robinson*, Op. No. 02-UP-496 (S.C. Ct. App. Filed July 15, 2002).

**2002-CP-31-0229**

Applicant filed three PCR applications between 2002 and 2003. Prior to the evidentiary

hearing, the State moved to have the three proceedings merged since an applicant may not have three active PCR proceedings in regard to the same conviction. The State moved to have the initial PCR application (2002-CP-31-0229) be the surviving case and applications 2003-CP-31-0069 and 2003-CP-31-0301 be considered amendments to the original. The Order of Merger was signed May 21, 2004.

On June 10, 2004, an evidentiary hearing into the matter was convened at the Sumter County Courthouse. Applicant originally moved to withdraw his application at the hearing; however, the Honorable Howard P. King concluded Applicant did not know the repercussions of withdrawing and denied this motion. On August 20, 2004, Judge King issued an order denying post-conviction relief and dismissing the application with prejudice.

A timely notice of appeal was filed in the Supreme Court of South Carolina. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant on appeal. On August 2, 2005, Ms. Carter filed a *Johnson*<sup>1</sup> Petition for Writ of Certiorari based on the following issue:

1. Trial counsel erred in failing to object to having Applicant appear in prison garb at trial.

On November 2, 2006, the South Carolina Supreme Court issued its Order denying certiorari and granted Applicant's appellate counsel's request to be relieved as counsel. The Remittitur was issued on November 20, 2006.

#### CURRENT APPLICATION

In his *second* and current application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

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

- a. "Failing to ensured (sic) that the applicant had proper representation for his appealed process from the S.C. Commission on Indigent defense."
- b. "Sending the applicant inadequate information concerning the applicant appeal that was misleading and confusing."
- c. Failing to properly prepare the applicant for trial."
- d. "Not arguing any mitigating circumstances during sentencing."

Applicant requests his convictions be vacated and a new sentence imposed.

Before the Court are the records from the South Carolina Department of Corrections, the applicable records from the Lee County Clerk of Court, Applicant's appellate records, records pertaining to the previous PCR actions and PCR appeals, and the records from this post-conviction relief action.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Successiveness**

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous applications for post-conviction relief. 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" 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. If an applicant could



have raised these allegations in a previous application, then an 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).

This Court finds Applicant could have raised the grounds for relief he now alleges in his prior PCR application, as he is raising only allegations regarding events that occurred before or during his trial, and therefore, were known to Applicant during the pendency of his prior PCR action; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the application must be summarily dismissed with prejudice as successive to Applicant's previous PCR applications.

#### ***Res Judicata***

This Court finds Applicant's PCR application is barred by the doctrine of *res judicata*. The doctrine of *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.* Thus, a successive claim, pursuant to Rule 12(b)(6), SCRCPP, can be dismissed as barred by *res judicata*.

In this case, Applicant previously asserted claims of ineffective assistance of counsel in his first application for post-conviction relief and the subsequent appeal. Accordingly, any such allegations should have been brought in Applicant's first post-conviction relief application. Likewise, Applicant could have brought the claims of ineffective assistance of appellate counsel



in his first application for post-conviction relief. Therefore, this application is summarily dismissed with prejudice under the doctrine of *res judicata*.

### Statute of Limitations

This Court further finds that this PCR application 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, *et. seq.* Section 17-27-45(a) of the South Carolina Code of Laws 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). 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 sentenced for the offenses he challenges in this application on October 11, 2000. The South Carolina Court of Appeals affirmed Applicant’s conviction and sentence, and the Remittitur was sent on July 15, 2002. Accordingly, Applicant had until on or before July 16, 2003 to file an application pursuant to Section 17-27-45(a), as he did here. This application was filed on June 18, 2019, nearly *sixteen* years after the statutory filing period had expired. Therefore, this Court finds that the current PCR application is summarily dismissed with prejudice for failure to file within the time mandated by statute.

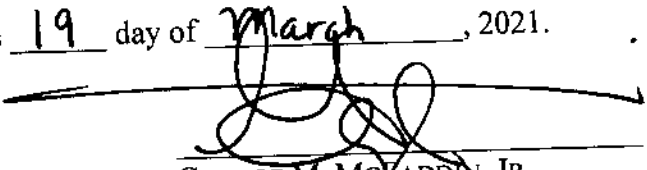


**CONCLUSION**

Pursuant to S.C. Code Ann. §17-27-70(b), 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 Lee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Brianna L. Schill, Esquire  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 19 day of March, 2021.

  
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GEORGE M. MCADDIN, JR.  
Chief Judge for Administrative Purposes  
Third Judicial Circuit