

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
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 )  
 Max J. Knoten, #253916, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-4638

**CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FIFTH JUDICIAL CIRCUIT  
 2021 JUN 18 PM 12:06  
 COURT REPORTER

This matter comes before the Court by way of Applicant Max J. Knoten’s application for post-conviction relief (PCR) filed on August 29, 2018. Respondent made its return<sup>1</sup> and motion to dismiss on June 2, 2021. The Court grants Respondent’s motion to dismiss because the action is untimely, successive to Applicant’s prior PCR action, and fails to establish a *prima facie* showing of newly discovered evidence.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In December 1997, the Richland County Grand Jury indicted Applicant for two counts of murder (1997-GS-40-27596; -27620), two counts of kidnapping (1997-GS-40-27621; -27623), and first-degree criminal sexual conduct (1997-GS-40-27624). Jeffrey Bloom, Douglas Stricker, Lesley Coggiola, and Nathan Roberson, Esquires, represented Applicant. On October 19, 1998, Applicant proceeded to a jury trial before the Honorable Joseph J. Watson. The jury found Applicant guilty

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<sup>1</sup>Respondent’s return was originally due on November 28, 2018. However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts the return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

as indicted. On October 30, 1998, Judge Watson sentenced Applicant to consecutive life sentences for the murder offenses, and a consecutive sentence of thirty years for first-degree criminal sexual conduct.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Dudek perfected the appeal. The South Carolina Supreme Court reversed Applicant's conviction for one of the murder charges (1997-GS-40-27596) and affirmed the remaining convictions and sentences. *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001). The Court denied Applicant's petition for rehearing on December 12, 2001. The remittitur was issued on December 12, 2001.

i. First PCR Application (2003-CP-40-0885)

The Applicant subsequently filed an application for PCR on February 18, 2003, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. "At trial, trial counsel failed to object to inadmissible evidence at trial. In which a reasonable judge would have construed to applicant's favor,"
  - b. "Trial counsel had character witnesses testify at the sentencing phase instead of at trial in which the witness made pertinent statement."

Respondent filed its return and motion to dismiss on January 29, 2004, arguing that Applicant's application was untimely. On March 17, 2004, Applicant filed his reply and motion to dismiss. An evidentiary hearing into the matter was convened on May 24, 2004, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Melissa Kimbrough, Esquire. On June 14, 2004, the Honorable Alison Renee Lee, issued the order of dismissal denying Applicant's application for post-conviction relief.

On June 18, 2004, Applicant filed a notice of appeal. Appellate Defender Aileen P. Claire filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant.

By written order dated April 19, 2006, The Supreme Court of South Carolina denied the petition. The Remittitur was issued on May 5, 2006.

### **CURRENT APPLICATION**

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Newly Discovered Evidence
  - a. Great Seal of State of S.C. missing from applicable laws: 1996 Act No. 317, 1993 Act No. 184; 1995 Act No. 7.

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records regarding Applicant's conviction, Applicant's SCDC records, Applicant's appellate records, and the records of the current PCR action.

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

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

#### **Statute of Limitations**

The Court finds that this PCR shall 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 to -160. Specifically, the act requires as follows:

(A) 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.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

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). 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). Additionally, 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.”

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations of newly discovered evidence. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was sentenced October 30, 1998 and pursued a direct appeal. The Remittitur issued December 12, 2001. Pursuant to section 17-27-

4(A), Applicant needed to file his application for post-conviction relief on or before December 13, 2002. Applicant did not file this application until August 29, 2018, well beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively, and cannot establish a *prima facie* showing of newly discovered evidence. Accordingly, this application is untimely pursuant to Section 17-27-45 and shall be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

#### **Successive**

The Court further finds the application must be summarily dismissed because it is successive to Applicant's previous PCR 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 earlier 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.

Pursuant to section 17-27-90, successive PCR actions are barred 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). The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the

original petition, one bite at the apple as it were.” *Id.* at 452, 409 S.E.2d at 395 (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, “[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” *Id.* at 451, 409 S.E.2d at 395. 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 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).

Here, Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous action for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant’s previous post-conviction application.

i. Newly discovered evidence / Great Seal

The Court further finds Applicant’s claim he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentences and be released, to be without merit. The Uniform Post-Conviction Procedure Act states a person may institute a PCR 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 the applicant contends there is evidence of a material fact not previously

presented, the PCR 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). An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

*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)).

Applicant alleges there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1996 Act No. 317, 1993 Act No. 184; 1995 Act No. 7. . In support of this allegation, Applicant cites Article III, Section 18 of the South Carolina Constitution, “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. . . .”

However, our Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903). Further, 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 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); *see also 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 and unimpeachable).

Other jurisdictions have upheld acts challenged because there was not strict compliance with a constitutional provision. *See Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state's constitution); *Commr's of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Similarly, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. *Id.*

Moreover, section 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm'n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

Applicant's discovery of the missing Great Seals under Article III, Section 18 does not constitute newly discovered evidence. This evidence is not material to the issue of guilt or innocence, and would not have changed the result of a new trial.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing 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). Applicant has failed to make a showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. As such, this matter shall be summarily dismissed with prejudice.

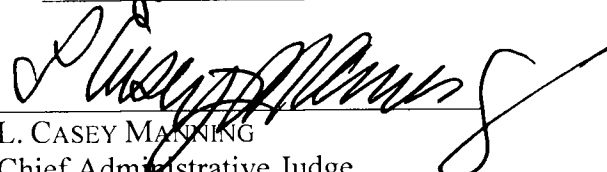
**CONCLUSION**

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 (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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Yasmeen E. Klein, Assistant Attorney General  
PCR Division – Fifth Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 8 day of June, 2021.

  
L. CASEY MANNING  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina