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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Charleston County
Court of Common Pleas
The Honorable Jennifer B. McCoy, Chief Administrative Judge

Appellate Case No. 2021-000055

SAMUEL A. WILDER, #258295, PETITIONER,

vs.

STATE OF SOUTH CAROLINA, RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Petitioner's Statement of Issue on Petition for Writ of Certiorari

Whether Petitioner is being denied due process and equal protection of the law by denying him access to the court in violation of the 14th Amendment of the United States Constitution and parallel to the South Carolina Constitution Article 1, §3.

Respondent's Counterstatement of Issue on Petition for Writ of Certiorari

Did the lower court properly reject Petitioner's attempt to file a fourth post-conviction relief application against his 1999 convictions, where the Chief Administrative Judge relied on an unappealed Order Restricting Future Filings, where the application was not filed in compliance with the requirements listed in the existing Order Restricting Future filings, and where the Order Restricting Future Filings did not violate Petitioner's due process rights?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the February 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-1213) and possession of a firearm during the commission of a violent crime (1998-GS-10-1212). He was represented by Edward Brown, Esquire, and Rita Roache, Esquire.

On May 5, 1999, Petitioner proceeded to trial where he was found guilty as indicted. On May 7, 1999, Petitioner was sentenced by the Honorable Luke N. Brown to consecutive sentences of life for the murder charge and five years for the possession of a firearm during the commission of a violent crime charge.[1]

A timely notice of appeal was filed on Petitioner's behalf on May 14, 1999. On the same day, Petitioner filed a *pro se* Motion for a New Trial with the Charleston County Clerk of Court. On November 9, 1999, the Honorable Luke N. Brown heard a *pro se* post-trial motion filed by Petitioner. However, the hearing was continued for additional presentations.

Petitioner's counsel filed a motion to dismiss the appeal on April 24, 2001. By Order dated June 11, 2001, the South Carolina Supreme Court dismissed Petitioner's appeal without prejudice

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[1] In this Court's earlier opinion dismissing Petitioner's petition for writ of certiorari in this Court's original jurisdiction, the facts of the case were summarized as follows: "Petitioner and the victim were married for less than a year when she left him. There was evidence that petitioner's wife was afraid of him. Two days after moving out of the home they shared, the victim was shot dead. She was inside a club when shots were fired, and then patrons, including the victim, ran into the street. Several witnesses testified they observed a man with a gun in the club, and then saw him shoot the victim in the back once they were outside the club. These witnesses were unable to identify petitioner as the armed shooter. Another witness, Terrance Smalls, was inside the club, and did identify petitioner as the shooter. A bartender, Harold Wigfall, also identified petitioner as the man shooting the gun in the club. Witness Smith observed petitioner with the gun in the club, then saw him shoot the victim in the street, stand over her where she fell, and shoot her again. Witness Campbell also identified petitioner as the shooter, as did witness Washington. Moreover, other witnesses were able to identify the automobile in which the shooter fled the scene. When this car was found, it contained fired cartridges matching those found at the scene. The automobile belonged to petitioner." State v. Wilder, 388, S.C. 282, 284, 696 S.E.2d 587, 589 (2010). Notably, in finding no merit to Petitioner's appeal, this Court found the evidence of his guilt to be "overwhelming." Id. at 285, 696 S.E.2d at 589.

because the post-trial motion pending in the circuit court had not been ruled upon. The Remittitur was issued on June 28, 2001.

Before the hearing on the *pro se* post-trial motion was reconvened, Petitioner filed a Federal Habeas Corpus Petition on October 16, 2001. By Order dated June 6, 2002, the Honorable Margaret B. Seymour dismissed Petitioner's petition without prejudice to enable him to exhaust state remedies. Judge Seymour also denied Petitioner's motion for a preliminary injunction and motion for an emergency restraining order. Petitioner appealed the federal judge's ruling. The United States Court of Appeals for the Fourth Circuit denied Petitioner's certificate of appealability and dismissed the appeal.

The hearing on Petitioner's *pro se* post-trial motion was held on December 20, 2001. Judge Brown denied the *pro se* motion in a written order dated January 11, 2002, and subsequently denied a motion to reconsider.

Following the denial, Petitioner appealed his convictions and sentences and was represented by Milton Stratos, Esquire. By Order dated March 10, 2006, the South Carolina Court of Appeals dismissed Petitioner's direct appeal for failure to provide information regarding the transcript. The Remittitur was issued on March 29, 2006. The Supreme Court denied Petitioner's notice of appeal and motion to reinstate the appeal. However, the Court specifically included in its order that the denial was without prejudice to seek further relief under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Petitioner filed an application for post-conviction relief on September 5, 2006. In his application, Petitioner alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that trial counsel failed to
    a. Suppress all evidence from the search by the Charleston Police Department outside the city limits;

b. Suppress the photograph of the [Petitioner] as the fruit of an improper show-up;
c. Suppress all evidence seized from his car due to false information in the search warrant;
d. Inform the trial court of specific facts during the suppression hearing;
e. Impeach a State's witness with prior convictions;
f. Ensure the [Petitioner's] post-trial motion was timely heard;
g. Object to the testimony of Jerome Garland;

2. Ineffective assistance of appellate counsel in that appellate counsel failed to follow the appellate court's instructions, allowed the appeal to be dismissed, and failed to move to reinstate the appeal; and
3. Prosecutorial misconduct in that the prosecutor interviewed the victim's minor child without the [Petitioner's] attorney present and obtained and used fabricated testimony at trial.
4. The [Petitioner] also submitted amendments to the application in which he asserted trial counsel was ineffective for failing to hire an expert to examine the blood at the scene, the gunshot residue on the victim's clothing, and the angle of the bullet entry and exit.

The Respondent made its Return to the application on May 7, 2007. An evidentiary hearing was convened at the Charleston County Courthouse on September 11, 2007. Petitioner was present at the hearing and was represented by Charles Brooks, Esquire. The Respondent was represented by Salley W. Elliott of the South Carolina Attorney General's Office. By Order dated November 12, 2007, the Honorable John C. Few denied and dismissed the PCR application, but granted the Petitioner review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Petitioner filed a Federal Habeas Corpus Petition on February 26, 2008. The Petition was dismissed by the Honorable Margaret Seymour without prejudice to allow the Petitioner to exhaust his State remedies. Petitioner appealed Judge Seymour's Order to the Fourth Circuit Court of Appeals. The appeal was dismissed on October 21, 2009.

Petitioner's PCR counsel filed a Notice of Appeal Out of Time and a Motion to File Appeal Out of Time on May 14, 2008. On June 12, 2008, the Supreme Court issued an order construing Petitioner's motion and notice of appeal as a petition for writ of certiorari in the Court's original

jurisdiction even though the notice of appeal was untimely filed. Specifically, the Supreme Court ordered the following:

> "Ordinarily, we would deny the motion to file the notice of appeal out of time and petitioner would have to file another PCR application seeking relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). However, in order to conserve judicial and other resources, and in light of the State's consent to this matter proceeding in this Court, **we construe the motion and notice of appeal as a petition for writ of certiorari in the Court's original jurisdiction. The petition is granted.**
>
> Because we are reviewing this matter by way of a petition for original jurisdiction, the briefs and record shall be prepared, served and filed in accordance with the rules governing direct appeal. **Petitioner's initial and final briefs shall include any issues he seeks to raise from the denial of his PCR application,** including the issue of whether the PCR judge correctly granted White v. State review, as well as all direct appeal issues he seeks to raise." (emphasis added).

Private counsel was appointed; however, a Motion for Remand and to Relieve Appointed Counsel was filed on May 6, 2009. On June 11, 2009, the Supreme Court denied the motion to remand but relieved appointed counsel. Counsel was re-appointed and Petitioner was represented by Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense. Upon review of Petitioner's case, the Supreme Court dismissed the Writ of Certiorari. State v. Wilder, Op. No. 26841 (S.C. Sup. Ct. July 26, 2010) ("[T]his Court issued a writ of certiorari in our original jurisdiction to review this PCR order. Since we find no merit to the direct appeal, we dismiss the writ of certiorari."). The Remittitur was issued August 16, 2010.

Petitioner filed a Federal Habeas Corpus Petition on February 10, 2011. Respondent filed a Return and Memorandum of Law in Support of Motion for Summary Judgment in response on April 4, 2011. On February 21, 2012, the Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation that Respondent's motion for summary judgment be granted and the petition be dismissed without an evidentiary hearing. On March 12, 2012, the Honorable Margaret B. Seymour, Chief United States District Judge, issued an order adopting and

incorporating the report and recommendation by reference; denying Petitioner's motion for stay and abeyance; dismissing the action with prejudice; and denying a certificate of appealability. Petitioner did not appeal.

On February 10, 2012, Petitioner filed a second post-conviction relief application, alleging he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Failure to file a motion or make any objection to the sentence;
    b. Failure to do a reasonable investigation and file suppression motions;
    c. Failure to object or make motions to the unconstitutional jury charge of criminal intent;
    d. Failure to object to Judge dedicating his discretion to the Solicitor; and
    e. Waiving the [Petitioner's] fundamental right to decide whether or not to take a new appeal for the claim of ineffective assistance of appellate counsel.

In his amended application filed February 29, 2012, Petitioner alleges that he is being held in custody unlawfully for the following reasons:

1. [Petitioner] contends he did not knowingly and voluntarily waive his right to appeal the ruling from his last PCR application.

Respondent made its Return and Partial Motion to Dismiss the application on October 31, 2013. An evidentiary hearing was convened at the Charleston County Courthouse on July 23, 2015. Petitioner was present at the hearing and represented by Rodney D. Davis, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the State. By Order dated August 28, 2015, the Honorable Roger E. Henderson denied and dismissed the PCR application with prejudice.[2]

[2] In the Order of Dismissal, Judge Henderson found, "the Supreme Court agreed to review the denial of the [Petitioner's] first post-conviction relief application in its Original Jurisdiction even though the Notice of Appeal was untimely filed to avoid this court having to resolve the matter in a second post-conviction relief application. The South Carolina Supreme Court dismissed the [Petitioner's] appeal. State v. Wilder, Op. No. 26841 (S.C. Sup. Ct. July 26, 2010). The Remittitur was issued August 16, 2010. Therefore, this Court finds [Petitioner] has already had full review of his first PCR case. Thus, he is not entitled to a second, successive PCR appeal."

Petitioner filed a timely notice of appeal dated September 25, 2015. By letter dated, October 21, 2015, the Supreme Court of South Carolina requested Petitioner's counsel explain on what basis Petitioner was seeking a second Austin review from the Court. A Rule 243(c) Response and Request Time Limits be held in Abeyance dated December 30, 2015, was submitted to the Court by Appellate Defendant Laura R. Baer. On March 25, 2016, the Supreme Court of South Carolina dismissed the appeal for failure to show an arguable basis for asserting that the determination by the lower court was improper. The Remittitur was issued April 12, 2016. Subsequently, Petitioner filed a *pro se* Petition for Rehearing, dated April 6, 2016. The Court responded by letter on April 14, 2016, stating no action would be taken on the *pro se* Petition for Rehearing.

On May 3, 2016, Petitioner filed a Federal Habeas Corpus Petition and Motion for Authorization to File Second or Successive Application for Relief. The United States Court of Appeals for the Fourth Circuit denied the motion.

In Petitioner's third application for post-conviction filed on June 29, 2016, Petitioner alleged he was being held in custody unlawfully for the following reasons:

1. "Denied right to a direct appeal from his State conviction";
2. Denied right to have a review of denial of a PCR filed 2/10/2012";
3. "Denied the benefit of Ander's Brief and Johnson's Brief due to procedure error";
4. "Denied the benefits of the plea bargain" in that [Petitioner] had relied to his detriment on insurance monies;
5. "Denied the right to be heard on his new trial motion in violation of his Due Process Clause";
6. "Ineffective assistance of appellate counsel" in PCR appeal; and
7. "Ineffective assistance of appellate counsel" in failing to appeal issues from PCR.

The Respondent made its Return and Motion to Dismiss to the application on October 26, 2016, seeking summary dismissal of the application as barred by the statute of limitations and successive to Petitioner's prior PCR actions. The Court issued a Conditional Order of Dismissal,

filed November 21, 2016, provisionally denying and dismissing the action. Additionally, on November 21, 2016, the Honorable Roger M. Young, Sr., in his capacity as Chief Administrative Judge for the Ninth Judicial Circuit issued an Order restricting Petitioner from filing any future filings unless he paid the normal filing fee and filed an affidavit certifying in good faith that the action was not frivolous. The Order further set forth that any new application or filing was to be reviewed by the Chief Administrative Judge to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed (citing In re Maxton, 325 S.C. 3, 478 S.E.2d (1996)).

On April 6, 2017, Petitioner filed a notice of appeal from the Conditional Order of Dismissal and from the Order Restricting Future Filings. By Order dated April 11, 2017, the Supreme Court of South Carolina dismissed the appeal without prejudice as the circuit court had not issued a final judgment or decision in the case. The Remittitur was issued April 27, 2017.

In a Final Order of Dismissal dated May 9, 2017, the Honorable Judge Deadra Jefferson, acting in her capacity as Chief Administrative Judge for the Ninth Judicial Circuit, denied and dismissed the application for post-conviction relief. On May 24, 2017, Judge Jefferson filed an Order Vacating the Final Order of Dismissal. Subsequently, on May 31, 2017, a Final Order of Dismissal, signed by Judge Young was filed denying and dismissing the application, finding the application untimely and successive.

Petitioner filed a notice of appeal from the Final Order of Dismissal on June 29, 2017. By letter dated, June 30, 2017, the Supreme Court of South Carolina requested Petitioner provide a written explanation as to why Order of the circuit court was improper. A Rule 243(c) response, was received by the South Carolina Supreme Court on July 17, 2017. On September 28, 2017, the Supreme Court of South Carolina dismissed the appeal for failure to show an arguable basis for

asserting that the determination by the lower court was improper. Subsequently, on October 5, 2017, Petitioner filed a *pro se* Petition for Rehearing. By Order, dated November 14, 2014[3], the Court denied Petitioner's Petition for Rehearing. The Remittitur was issued November 14, 2017.

On May 15, 2019, Petitioner filed a Federal Habeas Corpus Petition and Motion for Authorization to File Second or Successive Application for Relief. On May 29, 2019, United States Magistrate Judge Mary Gordon Baker issued a Report recommending this matter be dismissed as successive. On June 24, 2019, the Honorable Cameron McGowan Currie, Senior United States District Judge, issued an Opinion and Order adopting and incorporating the report and recommendation by reference; dismissing the matter without prejudice and without requiring Respondent to file a return; and denying a certificate of appealability. Petitioner did not appeal.

On February 12, 2020, Petitioner filed a Writ of Habeas Corpus with the South Carolina Supreme Court. By Order dated, November 4, 2020, the Court denied the petition for writ of habeas corpus because Petitioner failed to show he was entitled to habeas relief.

On May 26, 2020, Petitioner filed a Federal Habeas Corpus Petition and Motion for Authorization to File Second or Successive Application for Relief. On June 15, 2020, the United States Court of Appeals for the Fourth Circuit denied the motion.

On August 14, 2020, Petitioner attempted to file his fourth post-conviction relief application[4]. By ex-parte Order[5] dated, October 20, 2020, the Honorable Jennifer B. McCoy, rejected Petitioner's filing for non-compliance of payment and for not submitting a proper affidavit

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[3] The date of signing of this Order is incorrectly noted as November 14, 2014, due to a scrivener's error. However, the Order reflects the correct appellate case number, 2017-001438, associated with the appeal and subsequent Petition for Rehearing.

[4] The Clerk of Court for Charleston County could not provide Respondent with a copy of the aforementioned application as it was returned to Petitioner unfiled. Within Petitioner's Attachment of Appendix, filed with this Court, is an unfiled copy of a post-conviction relief application dated August 14, 2020.

[5] Respondent did not have notice of Judge McCoy's Order rejecting Petitioner's application prior to Petitioner filing this appeal from it. Respondent did not have an opportunity to respond to this application as it was returned by letter from the Charleston County Clerk of Court dated December 16, 2020, to Petitioner unfiled.

with his application. Judge McCoy's Order rejecting the application relied on the prior Order Restricting Future Filings, filed November 17, 2016.

On January 14, 2021, Petitioner filed a notice of appeal from Judge McCoy's Order. On May 6, 2021, Petitioner filed a Petition for Writ of Certiorari. This Return follows.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The lower court properly rejected Petitioner's attempt to file a fourth post-conviction relief application against his 1999 convictions, where the Chief Administrative Judge correctly relied on an unappealed Order Restricting Future Filings, where the application was not filed in compliance with the requirements listed in the existing Order Restricting Future Filings, and where the Order Restricting Future Filings does not violate Petitioner's due process rights.

Petitioner contends he is being denied access to the courts in violation of his 14th Amendment Due Process rights. However, Judge Jennifer B. McCoy, acting in her capacity as Chief Administrative Judge of Common Pleas matters in the Ninth Judicial Circuit, pursuant to the unappealed Order Restricting Future Filings, properly rejected Petitioner's attempt to file his fourth post-conviction relief application.

Respondent notes Judge Young filed the Order Restricting Future Filings on November 21, 2016. Petitioner failed to appeal that Order following the Final Order of Dismissal disposing of the action[6]. That Order should have been appealed in 2017. To the extent Petitioner attempts to appeal it, Petitioner may not now challenge the Order Restricting Future Filings.

Pursuant to the law-of-the case doctrine, a ruling becomes the law of the case regardless of whether it is right or wrong when it is not appealed. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012). In light of that doctrine, an appellant is necessarily required to appeal *all* the grounds upon which a ruling is based when one is based on multiple independent grounds. State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010). Significantly, "should the appealing party fail to raise all of the grounds upon which a [circuit court judge]'s decision was based, those unappealed findings—whether correct or not—become the law of the case." Dreher v. S.C. Dep't

[6] Petitioner filed a notice of appeal from the Conditional Order of Dismissal and from the Order Restricting Future Filings before a final judgment was issued for the action. The Court dismissed the premature appeal without prejudice. A Final Order of Dismissal was filed denying and dismissing the application. Petitioner filed a notice of appeal **solely from the Final Order of Dismissal.** Thereafter, the Supreme Court of South Carolina dismissed the appeal.

of Health & Env't Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015). As a result, the unchallenged Order Restricting Future Filings logically should become law of the case, and, thus, there is no proper basis upon which to reverse the ruling on appeal, since it should be treated as correct pursuant to the law-of-the-case doctrine. Black, 400 S.C. at 28, 732 S.E.2d at 890.

Additionally, Judge McCoy correctly rejected Petitioner's application for non-compliance with the Order Restricting Future Filings. In his Petition, Petitioner argues he is "not even qualified to receive an order restricting future filing and the order denying applicant's filing PCR".

Though the Charleston County Clerk of Court never filed the subject application, nor was the application served on Respondent, the record reflects Petitioner attempted to file this successive PCR action on August 14, 2020, over three years after the issuance of the Order Restricting Future Filings. Pursuant to the Order Restricting Future Filings signed by Judge Young, Petitioner is prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees and providing a properly notarized affidavit certifying that the Petitioner believes in good faith that the matter raised is not frivolous. In light of Petitioner's extensive history of repetitive filings, both Judge Young's Order Restricting Future Filings and Judge McCoy's rejection of this successive, non-conforming application are appropriate and sound. see e.g., In re Whitaker, 513 U.S. 1 (1994); In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

In In re Maxton, our Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he, in good faith, believed the matters he was raising were non-frivolous and proper for the Court to consider. 325 S.C. 3, 478 S.E.2d 679 (1996). Other jurisdictions also require an abusive litigant to file an affidavit certifying he believes the petition

raises an original claim or is non-frivolous before accepting filings from the litigant. See, eg., In the Matter of Verdone, 73 F.3d 669 (7th Cir. 1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir. 1990); Green v. Warden, 699 F.2d 364 (7th Cir. 1983). When attempting to file his fourth application for post-conviction relief, Petitioner neither paid the requisite filing fee, nor certified by affidavit that his application was non-frivolous.

Moreover, courts disfavor successive applications like this one 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.

Section 17-27-90 is clear—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 or actions challenging these convictions. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) ("[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.").

Petitioner has attempted to file his fourth post-conviction relief action after the allegations raised in his initial 2006 post-conviction relief application were dismissed following an evidentiary

hearing; after receiving a special review of Petitioner's direct appeal and initial post-conviction relief action by this Court; after multiple state and federal habeas actions were dismissed; and after two additional applications for post-conviction relief were dismissed as successive. Petitioner has received a full review of his case. Therefore, Judge McCoy correctly rejected Petitioner's application as it was successive to Petitioner's previous post-conviction relief applications and did not conform to the filing requirements in Judge Young's unappealed Order Restricting Future Filings. This Court should deny certiorari.

Furthermore, even without giving consideration to the procedural bars, this Court should also deny certiorari based on the merits.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). The South Carolina Supreme Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

> If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process...This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may

> well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

In the case at bar, Petitioner has filed copious attacks on his 1999 convictions. It is clear Petitioner has received "a definitive answer" as to the claims he has raised throughout his numerous filings, and to allow him to continue to litigate these claims would be to allow him to consume more than his fair share of the "limited resources... allocated to the criminal process." Id.

Petitioner's repeated filings have allowed Petitioner to receive more than his 'full bite at the apple.' Under the Uniform Post-Conviction Relief Act, an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple; this "bite" includes an applicant's right to appeal the denial of a post-conviction relief application, and the right to assistance of counsel in that appeal. Matthew v. Evatt, 105 F.3d 907, 916 (1997); Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989); Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

Since being convicted in 1999, Petitioner has received a full post-conviction relief evidentiary hearing, which resulted in his application being denied and dismissed. Petitioner further received an opportunity for a full review by the South Carolina Supreme Court of the denial of post-conviction relief. Furthermore, the Supreme Court provided review of Petitioner's direct appeal issues. Petitioner's conviction and sentence were reviewed by the South Carolina Supreme Court, which found no merit to the direct appeal issues he elected to raise. Petitioner did not raise any post-conviction relief appeal issues.

Despite those results, Petitioner has steadily continued to raise allegations via numerous filings in state and federal court, which have all resulted in Petitioner being denied relief. Petitioner continues to burden the already tasked judicial system with his successive, frivolous claims.

Petitioner has received his definitive answer to his repetitive filings and based on Petitioner's extensive history of filing frivolous claims, Judge Young's decision to require Petitioner to pay the filing fee for his future claims and file an affidavit was justified and proper and does not violate Petitioner's due process rights. Therefore, Judge McCoy correctly rejected Petitioner's latest successive application. This Court should deny certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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