

State of South Carolina
The South Carolina Supreme Court

Appellate Case No. _____

Appeal from Sumter County
The Court of Common Pleas

PCR CASE 2017-CP-43-2263

RECORDED
2021 DEC - 3 PM 2:18
JANICE E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ARTHUR MEQUILLA # 152425

Applicant/Appellant

vs.

The State of South Carolina

4 of 8

RESPONDENT

Affidavit of Facts Giving Judicial
Notice; Notice of seeking Appeal,
motion to Act PRO SE and
Notice of seeking 28 USC § 1407
TRANSFER and motion to motion
therefor

IN RE CASE 2017-CP-43-2263

To: The SC SUPREME COURT,
The SUMNER County
Court of Common Pleas et al.,
Attached the COURTES AND

5088

parties will find:

(1) Exhibit, "28 USC § 1407 Transfer". This is a copy of the Affidavit of Facts Giving Judicial Notice, dated August 29, 2021.

(2) Exhibit, "CASE No. 2020-001615".

(3) Exhibit, "Default and voiding of jurisdiction".

For the Record SC SUPREME COURT. This is not CASE 2021-001245, since the SUMMER

Common Pleas Court engaged in
Fraud and Unconstitutional Action.

This is a separate appeal in case
the SC Supreme Court do not
accept ruling under case 2021-
001245 under Independent Action Rule.

Therefore, the Applicant
gives the courts and parties
notice of his intent to appeal
the final order issued in case
2017-CP-43-2263. The Applicant
gives the court notice of the
Appellant's intent to act pro
se for this appeal. The Applicant
7088

gives notice that this case is
sought transfer pursuant to
28 USC § 1407 to the state of
New Jersey as is the other
inmates involved in this case.

Respectfully,
Arthur McQuilla
Art McQuilla

November 26, 2021

808

State of South Carolina
The South Carolina Supreme Court

Appellate Case No. _____

Appeal from Sumter County
The Court of Common Pleas

RECORDED
2021 DEC -3 PM 2:18
JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PCR CASE 2017-CP-43-2263

ARTHUR MCQUILLA # 152425
Applicant / Appellant

vs.

The State of South Carolina

Respondent

Affidavit of Service

RECORDED
2021 DEC - 3 PM 2:18
JAMES E. CAMPBELL
CLERK OF COURT
SUTHER COUNTY, S.C.

I, ARTHUR McQUILKA, do hereby
CERTIFY, that I HAVE MAILED AND
OR SERVED A COPY OF AN AFFIDAVIT
of Facts Giving Judicial Notice;
NOTICE SEEKING LEAVE TO APPEAL;
***, ON THE SC SUPREME COURT,
THE SC ATTORNEY GENERAL AND
ALL INVOLVED PARTIES BY US MAIL
POSTAGE PREPAID BY DEPOSITING IT

2 of 8

in the institution mailbox of
November 29, 2021.

Respectfully,
Arthur McQuilla
Ath McQuilla

November 29, 2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2021 NOV 22

PH 2:28

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Arthur McQuilla, #152425,
Applicant,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY

Case No.: 2017-CP-43-2263

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,
Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed by Arthur McQuilla (Applicant) on December 7, 2017. Respondent made its Return and Motion to Dismiss on December 30, 2019, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and the equitable doctrines of laches and *res judicata*. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed January 29, 2020, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Applicant was served with the Conditional Order of Dismissal on February 28, 2020.

Applicant has since filed a response entitled "Applicant's Specific Reasons and Factual Legal Reason Why PCR Can't Be Dismissed" and dated February 11, 2020. Applicant also filed two amendments to his PCR application, dated April 2, 2020, and October 7, 2021. In his response to the COD, Applicant argues the following:

1. Applicant is entitled to a direct appeal and his plea counsel did not file a notice of appeal;
2. Applicant is serving an illegal sentence because he has never received notice that his life sentence was not imposed under section 17-25-45;

3. All counsel prior to the PCR action were constitutionally ineffective, specifically in failing to file a direct appeal.

Applicant alleges he is entitled to a direct appeal and did not knowingly and intelligently waive his right to appellate review of his guilty pleas and sentences. To the extent Applicant claims he is entitled to belated appellate review of his guilty plea pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974),¹ this allegation should be summarily dismissed. A party asserting that he is entitled to White review must raise the issue in his initial post-conviction relief filing or the issue is waived. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008). Applicant could have raised the direct appeal issue in his first application, and in fact, he did.

Additionally, any issues regarding plea counsel's performance must have been raised in his first application. To the extent Applicant is attempt to raise claims of ineffective assistance of PCR counsel, there is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Moreover, the South Carolina Supreme Court in Aice v. State held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v.

¹ In White, the PCR judge found the applicant did not knowingly and intelligently waive his right to direct appeal due to ineffective assistance of counsel. Id. at 117, 208 S.E.2d at 39. As a result, the PCR court directed PCR counsel to attempt to secure a belated appeal to the Supreme Court from his original conviction and sentence. Id. On appeal, our Supreme Court explained that it did not have jurisdiction to entertain a belated direct appeal absent the timely filing of notice of appeal. Id. at 119, 208 S.E.2d at 39. However, because the *post-conviction relief appeal* was properly before it, the Court reviewed the trial record and all issues properly raised as if the direct appeal had been perfected. Id. at 119, 208 S.E.2d at 39-40. The Court ultimately held that "that there was no reversible error in the trial and that there was not an arguably meritorious ground of appeal, even if notice of intention to appeal had been timely served." Id. at 119, 208 S.E.2d at 40.

State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court in Aice further held “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394.

Thus, these allegations are successive and barred under section 17-27-90. See id. at 452, 409 S.E.2d at 395 (clarifying that any new ground raised in a subsequent application is limited to those grounds that “*could not have been raised . . . in the previous application[;]*” thus, “as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application”) (emphasis added); see also id. at 452, 409 S.E.2d at 395 (“[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.”).

As to Applicant’s allegation he is serving an illegal sentence because he was not noticed or sentenced to life without parole (LWOP) under section 17-25-45 of the South Carolina Code, this allegation is without merit for several reasons. Applicant was clearly sentenced to life without parole, as Judge Anderson wrote it on the sentencing sheet multiple times. Applicant’s LWOP sentence is attached to his first-degree burglary conviction under section 16-11-311. This conviction carries a maximum sentence of life on its own, without the invocation of the recidivist statute under section 17-25-45. S.C. Code § 16-31-311(B) (“Burglary in the first degree is a felony punishable by life imprisonment. . . .”) (1993).

Moreover, Applicant does not allege that he is currently eligible for release. Therefore, this allegation is not proper in a PCR action because it alleges solely a non-collateral administrative matter, and such claims cannot be raised in a post-conviction relief proceeding. Post-conviction relief is a proper avenue of relief only when an applicant mounts a collateral

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attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Here, Applicant appears to complain that the Department of Corrections (SCDC) has improperly classified his offense, thus affecting his parole eligibility. Issues regarding the calculation of an inmate's sentence, sentence-related credits, and custody status are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id., 338 S.C. at 370, 527 S.E.2d at 750.

When an inmate raises a claim implicating a protected liberty interest under the Fourteenth Amendment, the inmate is entitled to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539 (1974). Because SCDC's disciplinary and grievance procedures are consistent with the standards delineated in Wolff, inmates may seek review of such claims under the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. 354, 527 S.E.2d 742. Applicant's allegation concerns matters which can only be raised through SCDC's or DPPPS's grievance procedure. See Furtick v. S.C. Dep't of Prob., Parole, and Pardon Servs., 352 S.C. 594, 599, 576 S.E.2d 146, 149 (2003) ("In Al-Shabazz, the Court outlined the nature of the review available to inmates raising non-collateral issues that implicate liberty interests; those procedures apply equally to inmates affected by final decisions of the DPPPS that affect liberty interests, . . ."). If Applicant is dissatisfied with the decision rendered by SCDC or DPPPS, then he may seek review of the decision under the APA.

Applicant's April 2, 2020, amendment to his application states the purpose of the amendment is to compel the SCDC agency to be included in the collateral attacks to the Applicant's current conviction and to prosper (sic) the remedied relief to be granted by the Court. . . ." As discussed above, SCDC is not a proper party to this action, and if Applicant seeks an administrative remedy to what he believes to be a mistake in his inmate classification or

the denial of parole eligibility, he must seek relief through SCDC's grievance procedure, not in PCR.

In his October 7, 2021, amendment to his PCR application, Applicant challenges his classification as a sex offender, arguing "fraud upon the court" because no finding was made on the record as to whether the kidnapping was sexual in nature, and that the lifetime registration requirement is unconstitutional pursuant to Powell v. Keel. However, post-conviction relief is not the proper avenue to challenge a statutory requirement to register as a sex offender. See Williams v. State, 378 S.C. 511, 514-15, 662 S.E.2d 615, 617 (Ct. App. 2008) (providing that post-conviction relief (PCR) is a proper avenue of relief only when the applicant mounts a collateral attack challenging validity of his conviction or sentence; the only exceptions are claims, specifically listed in PCR Act, that an applicant's sentence has expired, or that an applicant's probation, parole, or conditional release has been unlawfully revoked). Therefore, having to register as a sex offender is a civil collateral consequence of a criminal conviction, and as such, it cannot be appropriately challenged under the Uniform Post-Conviction Relief Act. Moreover, Applicant is not currently subject to sex-offender registry requirements as he is presently serving a life sentence due to his conviction for first-degree burglary, along with sentences for other crimes. The requirements of section 23-3-430 have not been triggered at this time and will not be triggered unless and until Applicant is released from incarceration. Thompson v. State, 415 S.C. 560, 785 S.E.2d 189 (2016); Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008).

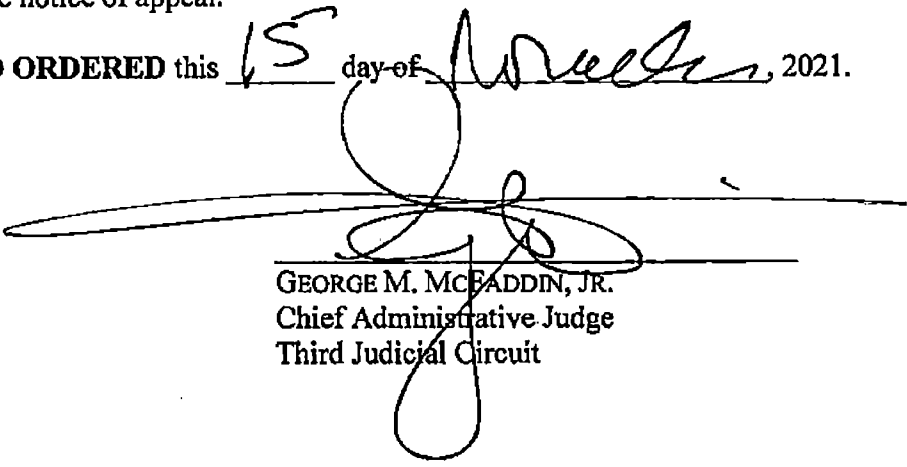
This Court has reviewed Applicant's response to Respondent's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant has

A handwritten signature in black ink, appearing to be the initials 'S.J.' with a stylized flourish.

shown no reason for his previous claims of ineffective assistance of counsel, including a failure to file a direct appeal, could not have been raised in previous actions. Further, South Carolina Code section 17-27-45(A) states, “[a]n 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.” As to Applicant’s constitutional claims, for the reasons discussed above, these claims are not cognizable in a PCR action. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal and above, the application for PCR is hereby denied and dismissed with prejudice. This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant’s attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15 day of March, 2021.



GEORGE M. MCEADDIN, JR.
Chief Administrative Judge
Third Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2017CP4302263

RECORDED

2020 JAN 29 PM 3:49

Arthur McQuilla South Carolina State of

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

PLAINTIFF(S) DEFENDANT(S)
 Submitted by: Clerk of Court Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
 Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

 Circuit Court Judge 2762 Judge Code 1/29/2020 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Arthur #152425 McQuilla Lee Corectional Inst/F-4B Wing
#1240 990 Wisacky Hwy Bishopville, SC 29010

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



RECORDED

★ 2020 JAN 29 PM 3:19

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

January 27, 2020

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, South Carolina 29150

Re: Arthur McQuilla, #152425 v. State of South Carolina
2017-CP-43-2263

Dear Mr. Campbell:

Enclosed please find the original **Conditional Order of Dismissal**, signed by the Honorable Kristi F. Curtis, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Brianna L. Schill
Assistant Attorney General

BLS/ks
Enclosure(s)

cc: Arthur McQuilla, #152425

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 Arthur McQuilla, #152425,)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2017-CP-43-2263

CONDITIONAL ORDER OF DISMISSAL

2020 JAN 29 14 3:19
 RECORDED
 JAMES S. CARPBBLE
 CLERK OF COURT
 SUMTER COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Arthur McQuilla (Applicant) on December 7, 2017. Respondent, State of South Carolina, is requesting the application be summarily dismissed.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the November 1994 term of the Sumter County Grand Jury for second-degree burglary, petit larceny and grand larceny of a vehicle (94-GS-43-1166), first-degree burglary, kidnapping, armed robbery, grand larceny of a vehicle and possession of weapon during violent crime (94-GS-43-1130). Applicant was also indicted at the April 1995 term of the Sumter County Grand Jury for larceny (95-GS-43-274), three counts of second-degree burglary and three counts of larceny (95-GS-43-275), grand larceny, and receiving stolen goods (95-GS-43-277). Applicant was represented by Arthur H. Wilder, Esquire. On March 23, 1995, Applicant pleaded guilty to first-degree burglary, grand larceny of a vehicle, kidnapping, armed robbery, and several other charges. The Honorable Ralph King Anderson Jr. sentenced Applicant to life imprisonment for first degree burglary, five years for grand larceny of a vehicle,

thirty years for kidnapping, and thirty years for armed robbery, all to be served concurrently¹.

The Applicant did not appeal his plea or sentences.

1995-CP-43-0663

Applicant subsequently filed an application for post-conviction relief on July 5, 1995, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel
 - a. "Counsel failed to investigate the facts and circumstances surrounding Applicant's case."
 - b. "Defense attorney A. Wilder told Applicant that the only way to receive less of sentence, he said it's best for Applicant not to say a word and he will see to it that Applicant get less than 'life' imprisonment."
 - c. "Attorney A. Wilder said to Applicant, 'If Judge Anderson ask you any questions you must remember to say yes Sir.'"
2. "Suppressed evidence."
3. "Conflict of interest."
4. "On 3-11-95, Applicant request for a preliminary hearing and it was not given."

The State made its return on May 16, 1996. Following a mental evaluation, an evidentiary hearing was convened on June 2, 1997, at the Sumter County Courthouse, at which Applicant was present and represented by counsel. The PCR court also considered the following additional allegations:

1. Applicant was not told of right to appeal.
2. Applicant thought the plea bargain was for 30 years.

In a written order dated September 30, 1997, the Honorable Alexander S. Macaulay denied and dismissed the application with prejudice. A Johnson petition for writ of certiorari was submitted, and the South Carolina Supreme Court denied the petition. The remittitur was issued on November 23, 1999.

¹ Applicant was sentenced to numerous other sentences, all to be served concurrently.

2008-CP-43-2816

Applicant filed his second application for post-conviction relief on December 10, 2008, in which he alleged the following grounds for relief:

1. "The attorney who handled my case was affiliated with the victim."
 - a. "Ken Young was affiliated with my attorney, and Mr. Young's property was one of the properties that was burglarized."
2. "The attorney was ineffective in the way in which he handled the proceedings regarding my case."
 - a. "At the commencement of these proceedings, I was scheduled to take a jury trial, Mr. Wilder said that if I entered a guilty plea and plea guilty to all charges and throw myself on the mercy of the court that I would receive 30 years I ended up with life without parole, if I had known I never would have plead guilty to the charges."

Respondent made its return and motion to dismiss on April 7, 2009. The Honorable R. Ferrell Cothran, Jr. issued a conditional order of dismissal provisionally denying and dismissing the application with prejudice on April 16, 2009. Applicant made no objections to the conditional order of dismissal. Judge Cothran, Jr. issued the final order of dismissal denying and dismissing the application with prejudice on July 27, 2009.

CURRENT APPLICATION

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

1. "Ineffective assistance of all counsels of cases."
2. Unconstitutional sentence, cruel and unusual punishment.
 - a. Applicant contends that the trial judge never sentenced him to life imprisonment and that his sentence was arbitrarily changed.
3. White v. State².
 - a. Applicant claims to have never had a chance to appeal due to ineffective assistance of counsel in all cases and appeals.

Before this Court are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records for the South Carolina Department of Corrections, prior

² White v. State, 263 S.C. 108 S.E.2d 35 (1974).

PCR records, and the current application.

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 S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

This Court finds the application 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:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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) 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 pleaded guilty to his charges and was sentenced on March 23, 1995. This application was filed on December 7, 2017, well beyond the statutory filing period. Therefore,

this Court summarily dismisses the application for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

This Court finds this application shall be summarily dismissed because it is successive to Applicant's previous PCR applications. 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.

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. 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).

This Court finds 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 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 this Court summarily dismisses the application as successive to Applicant's previous PCR application.

Res Judicata

This Court further finds the application shall be dismissed as 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 (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.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

This Court finds Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's present allegations have been previously litigated and denied. The records will reflect Applicant has repeatedly raised the same issues in prior PCR applications. The prior PCR Court issued a final judgement on the merits on several of the same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and this Court summarily dismisses the application as barred by the doctrine of *res judicata*.

Laches

This Court also finds the application shall be summarily dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief more than twenty years after his conviction. Applicant has offered no justification for delay. Additionally, any witnesses may no longer be available. As a result, Applicant’s delay in bringing this action has affected the availability of evidence for this Court to review his claims. The State would be severely prejudiced if forced to proceed at this time. Therefore, this Court summarily dismisses the application as barred by the equitable doctrine of laches.

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

Office of the Attorney General
Attn: Brianna L. Schill
PCR Division - 3rd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 20th day of January, ²⁰²⁰~~2019~~.

Kish & Antis
GEORGE M. MCFADDIN JR.
Chief Administrative Judge
Third Judicial Circuit

Sumter, South Carolina