STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Willie M. Green, #334538	)	2019-CP-40-3973
Applicant	)	
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent	)	

This matter comes before the Court by way of Applicant, Willie M. Green's action for post-conviction relief (PCR) filed July 19, 2019. Respondent made its Return and motion to dismiss on September 24, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely, successive to Applicant's prior PCR actions, and barred by the doctrine of *res judicata*.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the December 2007 term, the Richland County Grand Jury indicted Applicant for incest (2007-GS-40-4012), third degree criminal sexual conduct (2007-GS-40-4013), and two counts of second degree criminal sexual conduct with a minor (2007-GS-40-4014; -4015). George McElveen III, Esquire, represented Applicant.

Applicant pled guilty as indicted on July 31, 2008, before the Honorable J. Michelle Childs. Judge Childs accepted Applicant's plea but deferred sentencing until the completion of an evaluation by the South Carolina Department of Mental Health, and a pre-sentencing report by the South Carolina Department of Probation, Parole and Pardon Services. On April 30, 2009, Judge

Childs sentenced Applicant to concurrent sentences of ten years imprisonment each for incest and third degree criminal sexual conduct. Applicant was sentenced to twenty years' imprisonment for each charge of second degree criminal sexual conduct with a minor. Applicant received an aggregate fifty year sentence.. Applicant did not appeal his convictions or sentence.

i. First PCR Action and Subsequent Appeal (2010-CP-40-2871)

Applicant subsequently filed an application for PCR on April 30, 2010, in which he alleged the following grounds for relief:

1. "LIST OF LIES TOLD BY Mr. GEORGE McELVEEN."
   a. "Told [G]reen and his family that Judge Childs would give him a light sentence if he pled guilty."
   b. "Would not serve more than 5 years if he pled guilty."
   c. "That it would be an open plea from 1-5 years."
   d. "That he would file a Direct Appeal once the motion to reconsider was ruled on. Under the rues you only have 10 days McElveen said the motion would not stop the Direct Appeal."
   e. "That he woud need $2,500.00 more dollars to get Mr. Green an Independent Private Evaluation, which Mr. Green never got."
   f. "That Judge Childs stated she might give him probation and time served (Jail Time)."
   g. "Told Mr. Green and his family a tria would be in his best interest because Judge Childs would give him a light sentence and jail time."
   h. "Told him to admit he was a "Paraphilia", and [he] would get the necessary treatment to overcome his disease, stating that would make Judge Childs give him a lighter sentence."
   i. "TRIAL COUNSEL LIED TO INDUCE [APPLICANT'S] GUILTY PLEA"
   j. "McELVEEN LIED ABOUT INDEPENDENT EVALUATION"
2. "UNKOWING AND INVOLUNTARY PLEA."
   a. "The record shows that Green was nor sentenced immediately after the acceptance of his plea. Instead, the court ordered a forensic evaluation and sentence[] was pronounced on 9-30-09. At the time of the plea, it was Green's understanding, he would receive probation and time served, [relying] on Mr. McElveen's advise. The record reflects that Judge Childs was going to give Green probation. He [had already] been interviewed for probation by Rocky Reinfro of Richland County Probation office. see Plea transcripts. Green contends that his plea was involuntary, unknowingly, and unintelligently entered because he was [led] to believe by McElveen, Judge Childs, and Rocky Reinfro, that he was to receive probation and time served."

3. "INEFFECTIVE ASSISTANCE DUE TO FAILURE TO INVESTIGATE BEFORE ADVISING TO PLEA."
    a. "[Applicant] (hereinafter Green) contends his guilty plea was involuntary and unknowingly entered because his trial counsel (hereinafter McElveen) failed to investigate that the victims ... knowingly used false testimony to lead police and the Solicitor's Office into believing that Green knowingly used manipulation and forced to perform sexual acts with him."

Respondent made its return on July 21, 2010. An evidentiary hearing into the matter was convened on May 23, 2012, at the Richland County Courthouse before the Honorable L. Casey Manning. Applicant was present at the hearing and was represented by Brian Newman, Esquire. Applicant testified on his own behalf, and Respondent presented the testimony of plea counsel. On November 19, 2012, Judge Manning, issued the Order of Dismissal denying Applicant's application for post-conviction relief with prejudice.

Applicant timely appealed, and On August 16, 2013, Deputy Chief Appellate Defender Wanda H. Carter of the Office of Appellate Defense filed a *Johnson*[1] petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Applicant filed a *pro se* response raising four additional grounds for appeal. On September 11, 2014, by written order the South Carolina Supreme Court denied the petition. The Remittitur was issued on September 29, 2014.

ii. Habeas Corpus Action (4:11-434-DCN-TER)

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254. In his petition, Applicant set forth the following grounds for relief:

1. **Ground One**: "Plea Counsel violated my 6th and 14th Amendment to procedural due process by failing to build a professional relationship by deceiving me because I cannot read or write."
    a. **Supporting Facts**: "Counsel knew I could not read or write....and I was not aware of any DNA or their results. I never seen the results. Violated my 14th Amendment to legal procedural due process. PCR counsel failed to

[1] *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

request discovery or DNA to support the issue above, and failed to file Rule 59(e) SCRCP, to request information, to prevent procedural default."

2. **Ground Two**: "Involuntary Plea Agreement to offenses that I don't know if they had evidence to convict."
    a. **Supporting Facts**: "Plea counsel told me that I was going to get my 3 to 5 years probation for these offenses. PCR counsel failed to file a Rule 59(e) SCRCP to support issued violated my legal procedural due process violation of 14th Amendment U.S.C.A."

3. **Ground Three**: "Plea counsel violated my Procedural Due Process, by failing to challenge the D.N.A. results by a professional."
    a. **Supporting Facts**: "Plea counsel failed to hire a professional to challenge the DNA results to prevent me from pleading guilty. Violated by 6th and 14th Amendment to the U.S.C.A. PCR counsel failed to hire an expert to challenge the DNA violated my 14th Amendment to legal Procedural Due Process."

4. **Ground Four**: "PCR counsel violated my 14th Amendment to Procedural Due Process by failing to go by the strict PCR Application Rules and Procedures.
    a. **Supporting Facts**: "He failed to subpoena any witnesses, failed to file a Rule 59(e) SCRCP, and refused to let my wife testify. PCR counsel refused to Amend and allow me to support any evidence."

Respondent filed its Return and Motion for Summary Judgment. The Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendation on September 30, 2015, recommending Respondent's motion for summary judgment be granted. On January 26, 2016, the Honorable Bruce Howe Hendricks, United States District Judge, accepted the Report and Recommendation, granting Respondent's motion and dismissing Applicant's petition.

Applicant appealed the Court's decision, and The United States Court of Appeals for the Fourth Circuit dismissed the appeal and denied a certificate of appealability on August 16, 2016. *Green v. Stevenson*, 668 F. App'x 28, 29 (4th Cir. 2016). Applicant thereafter filed a petition for certiorari to the United States Supreme Court. The petition was denied April 24, 2017. *Green v. Stevenson*, 137 S. Ct. 1828, 197 L. Ed. 2d 771 (2017).

iii. Second and Third PCR Actions (2016-CP-40-3992; 2018-CP-40-1809)

Applicant subsequently filed his second application for PCR on June 28, 2016, in which he alleged the following grounds for relief:

1. "Unlawful competency evaluation."
   a. "The S.C. Dept. of Mental Health asked me question for only 15-20 minutes, but performed no meaningful evaluation and would not provide me with experts."
2. "Involuntary Guilty Plea"
   a. "Trial counsel erred in advising Applicant that he will receive probation if he pleads guilty; Applicant was incompetent to plead guilty."

Thereafter, on April 2, 2018, Applicant filed a third application for post-conviction relief (2018-CP-40-1809), alleging he was in custody unlawfully for:

1. "Unlawful competency evaluation"
2. "Involuntary guilty plea"
3. "Ineffective assistance of counsel"

Respondent made its Return, Motion to Dismiss, and Motion for Merger on April 20, 2018. On May 1, 2018, the Honorable Robert E. Hood, issued an Order for Merger requesting the Richland County Clerk of Court merge the two PCR cases with docket number 2016-CP-40-3392 being the surviving case. Judge Hood additionally issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, while giving Applicant twenty days to show why the dismissal should not become final. Applicant filed a response in opposition to the Conditional Order May 18, 2018. On July 24, 2018, Judge Hood, issued the Final Order of Dismissal denying and dismissing the PCR action with prejudice.

CURRENT APPLICATION

In his fourth and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "See attachments 1-29"
   a. "See attachment 1-29"

This Court notes the referenced attachments were not included as part of the application, and as such, it is unclear what Applicant is specifically alleging. For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the plea transcript, the records from Applicant's prior PCR actions and subsequent appeal, the records from Applicant's prior federal habeas corpus action, and the records of this 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 failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty and was sentenced on April 30, 2009, and did not pursue a direct appeal. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before May 1, 2010. Applicant did not file his application until July 19, 2019, 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 raised no allegations 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 Applications

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 applications 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 applications for post-conviction relief. Further, within the current application Applicant acknowledges he has previously raised grounds of ineffective assistance of counsel, involuntary plea and violation, DNA challenge violated, Blair hearing violation, Direct Appeal violation, and subject matter jurisdiction in his various prior PCR actions. Accordingly, Applicant has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR applications.

Res Judicata

Additionally, the application 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).

Applicant had a full opportunity to litigate all his allegations in his prior actions. The prior PCR Court issued a final judgement on the merits on multiple claims raised by Applicant.

Applicant's failure to raise all actionable issues in his previous actions for post-conviction relief bars his existing claims. The finality of the previous Court rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

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 28 day of September, 2021.

L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina