

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
))
Allen Jackson, #178827)
))
Applicant)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2020-CP-40-1485

FINAL ORDER OF DISMISSAL

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RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Allen Jackson on March 12, 2020. Respondent made its Return and Motion to Dismiss on October 5, 2021, requesting the application be summarily dismissed because it was untimely, successive, barred by the doctrine of *res judicata*, and failed to state a cognizable claim for relief.

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 October 8, 2021, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 26, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted correspondence to Applicant titled “Reply to Conditional Order of Dismissal” wherein Applicant argues he is entitled to an “Austin, supra, review on current allegation that trial counsel was ‘ineffective for failure to move to quash indictment the failed to state element of time, place and cause of death’” alleging this issue was not presented at Applicant’s previous PCR hearing. Applicant additionally claims the Conditional Order does not

address findings of facts and conclusion of law on the claim of ineffective assistance of counsel for failure to move to quash the indictment. Applicant argues that the Conditional Order admits the claim is identical to one raised in Applicant's prior PCR hearing but alleges the Final Order from his second PCR action failed to make specific findings of fact and conclusions relating to this issue. Applicant thereafter discusses the procedural history of his case in his various PCR actions, as well as his habeas corpus action to support his argument that he is entitled to an evidentiary hearing on "issue whether he knowingly and intelligently waived his right to appellate counsel after his first application was summarily dismissed and (2) one year statute of limitations did not apply to petitioners appeal from summary denial of application for application for PCR based on denial or right to appeal."

Applicant's procedural history demonstrates he had appellate counsel in the form of his first PCR attorney, Theresa N. Johns, represent Applicant after the denial of his first PCR action in 1998. PCR Counsel filed a notice of appeal, and the South Carolina Supreme Court ultimately dismissed Applicant's petition as improvidently granted. Therefore, it is clear Applicant did in fact have appellate counsel pursue his interests after the denial of his first PCR action. Applicant's allegation that the previous PCR Courts have not provided sufficient findings of facts and conclusions of law with regard to his allegations is without merit. The records of Applicant's prior PCR actions demonstrate that the general issue of ineffective assistance of counsel was litigated at Applicant's first PCR hearing. The doctrine of *res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth*

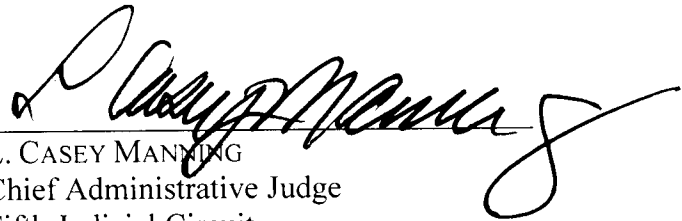
v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). As such, Applicant is barred from continuing to raise the same issue of ineffective assistance of counsel. Regardless of the iteration in which he attempts to now raise, the issue was litigated and received a judgment on the merits after Applicant's first PCR hearing. Applicant had a full opportunity to raise and litigate each conceivable manner he believed counsel to be ineffective in his first PCR action, his failure to do so procedurally bars future claims. Moreover, Applicant's latest action represent a long line of successive applications which previous PCR Courts were entitled to move for summary dismissal upon the Court's finding there was no genuine issue of material fact. Pursuant to *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2005), summary disposition is appropriate when there is no need to develop facts and the Applicant is not entitled to relief.

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

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the application for post-conviction relief 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 8 day of December, 2021.



L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina