

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 )  
 Darryl Fuller, #325001 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE FIFTH JUDICIAL CIRCUIT

2020-CP-40-1877

**CONDITIONAL ORDER OF  
 DISMISSAL**

2021 OCT 27 AM 9:28  
 RICHLAND COUNTY  
 FILED  
 CLERK OF COURT  
 COURT HOUSE  
 COLUMBIA, S.C.

This matter comes before the Court by way of Applicant Darryl Fuller’s application for post-conviction relief (PCR) filed on April 6, 2020. Respondent made its return and motion to dismiss on September 14, 2021. The Court hereby grants Respondent’s motion to dismiss because the action is untimely, successive, barred by the doctrine of *res judicata*, and fails to state a cognizable claim for relief.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the July 2006 term, the Richland County Grand Jury indicted Applicant for Murder (2006-GS-40-1585) and Assault With Intent to Kill (AWIK) (2006-GS-40-1584). Gregory Collins and Lauren Mobley, Esquires, represented Applicant. Assistant Solicitors Luck Campbell and Dolly Justice-Garfield of the Fifth Circuit Solicitor’s Office prosecuted the case.

Applicant pled guilty as indicted on November 6, 2007, before the Honorable L. Casey Manning. Judge Manning sentenced Applicant to ten years imprisonment for AWIK, and thirty years imprisonment for murder, to run concurrently. Applicant did not appeal.

i. First PCR Action and Subsequent Appeal (2008-CP-40-3627)

Applicant subsequently filed an application for PCR on May 22, 2008, in which he alleged the following grounds for relief:

1. "Ineffective Assistance of Counsel."
  - a. "failed to do pretrial investigation."
2. "Denial of Due Process 6<sup>th</sup> and 14<sup>th</sup> Amend."
  - a. "Ineffective representation"
3. "Invalid plea."
  - a. "erroneous advice, trickery."

Respondent filed its return on October 10, 2008. An evidentiary hearing into the matter was convened on May 12, 2009, at the Richland County Courthouse before the Honorable Alison Renee Lee. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. On July 16, 2009, Judge Lee, issued the order of dismissal denying Applicant's application for post-conviction relief.

A notice of appeal was filed, and on February 3, 2010, Appellate Defender Wanda Carter of the Office of Appellate Defense filed a *Johnson*<sup>1</sup> petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. On January 19, 2011, by written Order the South Carolina Court Supreme Court denied the petition. The Remittitur was issued on February 4, 2011.

ii. Habeas Corpus Action (0:11-1139-RBH-PJG)

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on February 28, 2011. The Honorable Paige J. Gossett, United States Magistrate Judge, issued on December 9, 2011, a Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition should be denied. *Fuller v. McCabe*, No. CA 0:11-1139-RBH-PJG, 2011 WL 7416976 (D.S.C. Dec. 9, 2011). On February 24, 2012, the Honorable

---

<sup>1</sup> Pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

R. Bryan Harwell, United States District Judge, accepted the Report and Recommendation, dismissing Applicant's petition with prejudice and denying a certificate of appealability, as Petitioner failed to make a substantial showing of the denial of a constitutional right. *Fuller v. McCabe*, No. 0:11-CV-01139-RBH, 2012 WL 602653 (D.S.C. Feb. 24, 2012).

iii. Second PCR Action (2012-CP-40-8015)

Applicant subsequently filed an application for PCR on December 4, 2012, in which he alleged the following grounds for relief:

1. "Ineffective assistance of appellate counsel."
  - a. "inadequate preparation."
  - b. "failing to perform reasonable investigation of facts and circumstances of case. *Ard v. Catoe*, 372 S.C. @ 597; (i.e.) Petitioners competency report and the evaluation order protocol; Appellate defence counsel had ample notice that this was a mental health case."
2. "Denial of Due Process 6<sup>th</sup>, 8<sup>th</sup> & 14<sup>th</sup> Amendment."
  - a. "Ineffective representation"
  - b. "Appellate counsel misrepresented petitioner by conspirely attacking frivolous issues and producing newly discovery @ May 12, 2009 PCR; to disable petitioners future arguments; without investigating DMH report that Appellate feels [L]ess favorable."
3. "Appellate counsel conspiring to keep petitioner in prison."

Respondent moved to dismiss the application on March 7, 2013. On March 11, 2013, the Honorable L. Casey Manning, acting in his capacity as Chief Administrative Judge, issued a Conditional Order of Dismissal, granting Applicant twenty days to provide specific legal or factual reasons why the matter should not be dismissed in its entirety. Applicant filed an opposition to the Conditional Order on May 17, 2014. On June 5, 2015, Judge Manning issued a Final Order dismissing the matter with prejudice.

### **CURRENT APPLICATION**

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

1. "Ineffective assistance of counsel (PCR)"
  - a. "Failing to object to Collins perjury."
  - b. "Failing to properly argue competency"
  - c. "Failing to object to Collins perjury."
  - d. "Failing to motion Blair hearing"
  - e. "Failing to Appeal."

Applicant thereafter submitted two motions to amend his application on March 11, 2021, and April 5, 2021, adding the following allegations:

1. Ineffective assistance of counsel"
  - a. "(failed to do pretrial Investigation);"
2. "Denial of Due process 6<sup>th</sup> and 14<sup>th</sup> Amend,"
  - a. "(ineffective representation);"
3. "Invalid Plea, (erroneous advice, Trickery.);"

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, Applicant's appellate records, the records from Applicant's prior PCR actions and subsequent appeal, the records from Applicant's habeas 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 is alleging he is entitled to post-conviction relief based on allegations that his counsel was ineffective and his other constitutional rights were violated. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on November 6, 2007, 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 November 7, 2008. Applicant did not file his application until April 6, 2020, 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).

This Court finds Applicant’s current allegations could have been – and in fact *were* – raised in previous 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’s allegations are indeed identical to those he has pled in his various collateral actions. Applicant has failed to establish any sufficient reason why Applicant could not raise his current allegations in his previous state and federal collateral actions or why this Court should overlook the fact he has raised these exact claims of ineffective assistance in previous actions. 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.

### ***Res Judicata***

This Court finds 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. Applicant's present allegations are indistinguishable from those offered in his prior applications for post-conviction relief. The prior PCR Court issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

### **Failure to State a Claim**

The application shall additionally be summarily dismissed for failure to state a claim cognizable for relief pursuant to the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160, and Rule 12(b)(6), SCRPC. Under the Act, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

This Court finds Applicant's action contains allegations that fail to raise a cognizable claim for relief, specifically; Applicant alleges ineffective assistance of PCR counsel. Whether or not Applicant's post-conviction relief counsel performed adequately is not within the scope of the PCR Act. 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). Once a PCR applicant obtains a complete adjudication on the merits of the original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. *Aice*, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court has held the PCR rules "contemplate an adjudication on the merits of the original petition." *Aice*, 305 S.C. 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. *Aice* further held that "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. Applicant's contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. For these reasons and pursuant to Rule 12(b)(6), SCRCPP, the Court shall dismiss the application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

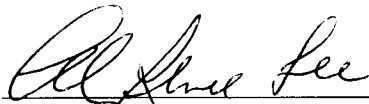
**CONCLUSION**

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 25<sup>th</sup> day of October, 2021.



ALISON RENEE LEE  
Chief Administrative Judge of General Sessions  
Fifth Judicial Circuit

Columbia, South Carolina