STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Stanley Rembert Butler, SCDC #073461 aka Stanley Renbert Butler aka Phillip Allen Grant, aka Paul Mathew Jackson aka Mansa Banchee aka Musa Banchee aka Musa Banshee aka Mansa Musa Yusef Banshee aka Mansa Banshee Applicant, v. State of South Carolina, Respondent.	)	Case No. 2018-04-2353 **CONDITIONAL ORDDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Mansa Musa Yusef Banshee (Applicant) on November 18, 2018. The State made its return on March 11, 2021, requesting this action be summarily dismissed.[1]

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. On November 26, 1974,

[1] The State's return was originally due on March 28, 2019. However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State,* 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Applicant was convicted of murder and sentenced to life imprisonment. (1974-GS-04-602).[2]

Parole, Florence County Convictions, and Collateral Actions[3]

Applicant was first granted parole on July 26, 1984, which was revoked on March 5, 1985. He was granted parole a second time on May 20, 1986. In April 1987, the Florence County Grand Jury indicted Applicant on four counts of kidnapping, armed robbery, possession of a saw-off shotgun, receiving stolen goods, and conspiracy. He was tried by a jury on April 27–29, 1987, and convicted of kidnapping, armed robbery, possession of a saw-off shotgun, and conspiracy. The receiving stolen goods charge was dismissed upon trial counsel's motion. Applicant was sentenced to concurrent terms of life imprisonment for kidnapping, twenty-five years for armed robbery, ten years for possession of a sawed-off-shotgun, and five years for conspiracy. On May 20, 1987, his parole was again revoked based on these convictions.

On March 5, 1990, Applicant filed an application for post-conviction relief challenging the April 1987 convictions. After a hearing, the application was denied and dismissed with prejudice. On April 11, 1991, Applicant filed a petition for writ of certiorari with the South Carolina Supreme Court. On June 8, 1992, the Court reversed Applicant's convictions and remanded the case for a new trial. *Banshee v. State*, 418 S.E.2d 313 (1992). The Court found counsel was ineffective in moving to dismiss the receiving stolen goods charge and thus removing a lesser offense from the jury's consideration. The court noted: "There being in the record abundant evidence upon which

[2] Since these convictions occurred over forty-five years ago, the State indicated in its return that Applicant's procedural history could not be fully summarized because the files have been destroyed. However, Applicant indicates in his application, and the State's records confirm, that he filed at least one PCR action challenging his Anderson convictions in 1976.

[3] The information was obtained from the report and recommendation issued by the Honorable William M. Catoe, United States Magistrate Judge, in Applicant's 2001 federal habeas corpus action.

to base a conviction for receiving stolen goods, the jury should have been permitted to consider this third alternative." *Id* at 314.

On January 1, 1993, Applicant was arrested for speeding, driving under suspension (DUS), and possession of a weapon by a convicted felon. On January 11, 1993, the South Carolina Department of Probation, Parole and Pardon Services (DPPPS) issued a warrant charging Applicant with violating the conditions of his parole, which had been granted May 20, 1986, by: (1) failing to follow the advice and instructions of his supervising agent; (2) committing the following offenses on January 1, 1993—possession of a weapon by a felon, DUS, and speeding; and (3) committing the offense of possession of a sawed-off shotgun. Applicant's parole was revoked on March 24, 1993.

On January 7, 1998, Applicant filed a writ of habeas corpus in the Richland County Court of Common Pleas. The State filed a motion to dismiss on February 20, 1998. The Honorable Ernest Kinard held a hearing on the matter on August 13, 1998. Applicant was present and represented by counsel. On August 31, 1998, Judge Kinard filed an order in which he treated Applicant's arguments as an application for PCR, rather than one for habeas relief. Judge Kinard dismissed the application with prejudice. Applicant filed a notice of appeal and a petition for writ of certiorari with the South Carolina Supreme Court. The Court denied the petition in an unpublished order filed December 18, 2000.

Federal Habeas Corpus Action: No. 6:01-2349-MJP-WMC.

On May 24, 2001, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina challenging the

revocation of his parole. *See Banshee, #73461 v. Gunn*, No. 6:01-2349-MJP-WMC.[4] Respondent filed a return and motion for summary judgment on August 13, 2001, to which Applicant filed a response on September 1, 2001. On October 3, 2001, the Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation that the State's motion for summary judgment be granted and the petition dismissed with prejudice. The Honorable Matthew J. Perry, Jr., United States District Judge, subsequently issued an order accepting the report and recommendation, granting the motion for summary judgment, and dismissing the petition with prejudice. Applicant appealed to the Fourth Circuit Court of Appeals.[5] On May 28, 2002, the Fourth Circuit issued an order affirming the district court's decision. *Banshee v. Gunn*, 35 F. App'x 370, 371 (4th Cir. 2002). The United States Supreme Court denied Applicant's petition for a writ of certiorari on December 9, 2002. *Banshee v. Gunn*, 537 U.S. 1074 (2002).

2013 Post-Conviction Relief Action: 2013-CP-04-0216

On January 13, 2013, Applicant filed a second post-conviction relief application, raising the following grounds for relief (verbatim):

> 1. Applicant was denied the right to effective assistance of counsel – guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Articles 1. §§ 3 and the 14 of the South Carolina Constitution – during the plea bargaining process.
>   a. Trial counsel's performance during the plea negotiations was unreasonable and prejudicial. 474 U.S., at 57, 106 S.Ct. 366. quoting Strickland, 466 U.S., at 688, 104 S.Ct. 2052. Counsel's acts or omissions included, but were not limited to, the following:
>   i. Counsel failed to provide competent and effective assistance during the plea negotiations proceedings.

[4] In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C., all pre-trial proceedings were referred to a United States Magistrate Judge.
[5] Judge Perry issued a certificate of appealability pursuant to 28 U.S.C. §2253(c).

ii. Counsel performance was deficient when he advised Applicant to reject the plea offer of 15 years on the grounds he could not be convicted at trial.

iii. Trial counsel ill-advise[*sic*] was prejudicial because the loss of the plea opportunity led to the Applicant conviction and the imposition of a more severe sentence of Life imprisonment.

The State made its return and motion to dismiss on July 23, 2014, requesting the application be summarily dismissed as successive and time-barred. Pursuant to this request, the Honorable R. Lawton McIntosh, acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on July 17, 2014, provisionally denying and dismissing the application, while giving the Applicant twenty days in which to show why the dismissal should not become final. Applicant filed a response to the conditional order on August 18, 2014. Judge McIntosh subsequently issued a final order on November 18, 2014, denying and dismissing the application with prejudice.

II. CURRENT APPLICATION

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

(10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Great Seal of South Carolina not affixed upon the law of murder/homicide that Applicant was convicted of;

(b) Newly-discovered evidence/fraud upon the Court; and

(c) Prosecutorial misconduct and ineffective assistance of counsel

(11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) The applicant alleges that the prosecutor committed fraud upon the court - -by concealment of this information that the charge for which this applicant stood accused of (murder) in 1974 was not in accordance with

Article 1 Section 18 of the South Carolina Constitution. Failure to disclose such information was in violation of prosecutorial duties and to pursue a conviction was a fraudulent act upon the Constitution.

(b) The applicant alleges that prosecutorial misconduct was committed when the applicant was arrested, arraigned, indicted, and convicted per the discretion of the prosecutor while withholding information that the charge of murder was not enforceable pursuant to Article 1 Section 18 of the South Carolina State Constitution.

(c) The applicant alleges that the counsel performance fell below the standard objective to ensure the applicant survive the crucible of meaningful adversarial testing envisioned by the sixth amendment in that trial counsels failure to investigate particularly as to whether the offense the applicant stood accused of was in accordance with Article 1 Section 8 of the South Carolina State Constitution.

Applicant filed an amended application on May 29, 2020, raising the following allegations in addition to those plead in the original application (excerpted verbatim):

(10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(d) Change in parole eligibility, violated Ex Post Facto

(e) Expired sentence

(11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(d) *See attachments*

(e) *See attachments*

Applicant filed a second amended application on February 4, 2021, raising the following allegations in addition to those plead in the original and amended applications (excerpted verbatim):

(10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(f) The Applicant's conditional release . . . is being unlawfully restrain[*sic*]

(g) The Applicant's right to procedural due process was denied

(11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(f) In November 1992, the Parole Board/ South Carolina Department of Probation, Parole and Pardon Services rescinded the Applicant's parole revocation of 1987 in recognition that the S.C. Supreme Court's reversal of the 1987 conviction was no-longer an evidentiary bases to support the Applicant's parolee status. The Applicant argues that outside influence cultivate by the ever existing devious apparatus of JIM CROWISM in March 1993/had the Parole Board to adopt a new position that contradicted their previous position thus putting a restr[ai]nt on the Applicant's conditional release indefinitely.

(g) The Applicant argues that the Parole Board denied the Applicant's request for a Re-Hearing pursuant to the provision outlined in their Operations Manual that's located in the Broad River Correctional Institution's Law Library and a Letter sent to The Honorable Chip Huggins/SC House of Representatives/ Dist. No. 85/ that supports Applicant's claim that he filed the Request in a timely manner.

Applicant requests relief as follows:

> "Vacate Applicant's conviction and sentence and immediately release Applicant from this unconstitutional imprisonment."

Before this Court are the Anderson County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's 2013 post-conviction relief action; the report and recommendation from Applicant's 2001 federal habeas corpus action; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. This Court finds 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); *See also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a prima facie showing he is entitled to relief before the court will hold an evidentiary hearing). Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

A. Statute of Limitations

This Court finds Applicant's allegations, except for the claims of newly-discovered evidence, must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). 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.

Our 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). Additionally, section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Applicant's third and current PCR application was filed well after the expiration of the statutory filing period. Applicant was convicted on November 28, 1974. This application was filed on November 28, 2018—almost *forty-five years* after the requisite filing period expired. To the extent Applicant bases this action on the alleged unlawful revocation of his parole, it is still untimely. Applicant's parole was revoked on March 24, 1993, almost *thirty years* after the requisite filing period expired. Accordingly, this action must be summarily dismissed for failure to file within the time mandated by the Act.

B. Successive

This Court further finds Applicant's allegations of ineffective assistance of counsel must

be summarily dismissed as successive to Applicant's two 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.

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."). 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, other than the claims of newly-discovered evidence, Applicant has failed to show that a successive application is appropriate or why he could not have raised these allegations in his

prior post-conviction relief actions; thus, these allegations are successive and barred under S.C. Code Ann. § 17-27-90. *See Aice*, 305 S.C. at 452, 409 S.E.2d at 395 (explaining that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were" (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Applicant has failed to meet the burden imposed upon him, and this Court must summarily dismiss the application as successive to Applicant's previous PCR applications.

C. Newly-Discovered Evidence

This Court finds Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, to be without merit. The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed 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(C). An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

(1) Is such as would probably change the result if a new trial was had;
(2) Has been discovered since the trial;
(3) Could not by the exercise of due diligence have been discovered before the trial;
(4) Is material to the issue of guilt or innocence; and,
(5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

The Great Seal

Applicant alleges his conviction is unconstitutionally invalid because there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184, 1995 Act No. 7. This allegation is without merit, as our Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903); *See e.g.* S.C. Op. Att'y Gen., 2017 WL 6189878 (S.C.A.G. December 1, 2017). Further, under the Enrolled Bill Rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. *Medical Soc. of South Carolina v. Medical Univ. of South Carolina*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) ("when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. *See Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state's constitution); *Commr's of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) ("[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.").

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer

and cured the defects, then the title has related back to the time of the election. *Id.* Moreover, section 2-7-45 of the South Carolina Code states:

> The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm'n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The acts Applicant currently challenges have substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

In this case, Applicant's discovery of the missing Great Seal under Article III, Section 18 does not constitute newly-discovered evidence nor is it grounds to nullify the law Applicant was convicted under. The actual date Applicant discovered the basis of his allegation is irrelevant where the information was freely available to him at an earlier date. Applicant could have sought to confirm the impression of the Great Seal providing for the enacted legislation prior to trial. Applicant could have raised this issue at trial or in his prior PCR actions—Applicant cannot raise this allegation now under the guise of "newly-discovered evidence."

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. Applicant's current allegations involve "facts" that were or could have been raised in the prior PCR actions; thus, the current application is successive and barred by section 17-27-90. Therefore, Applicant has failed

to meet his burden, and this application must be summarily dismissed as successive to Applicant's previous PCR actions.

Fraud upon the Court

Similarly, alleging his due process rights were violated, Applicant urges this Court to allow him to proceed with this untimely and successive PCR action pursuant to Rule 60(d)(3), SCRCP, based on alleged fraud upon the court. In Rule 60(b)(3) motions, the movant "has the burden of presenting evidence proving the facts essential to entitle him to relief . . .[and] [a] claim of fraud upon the court requires proof by clear and convincing evidence. *Sanders v. Smith*, 431 S.C. 605, 613, 848 S.E.2d 604, 608 (Ct. App. 2020) (citations omitted). Applicant has wholly failed to present of evidence or supporting facts regarding the alleged fraud he refers to. *See Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (explaining that fraud upon the court "is a narrow and invidious species of fraud that 'subvert[s] the integrity of the [c]ourt itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'" (quoting *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003)). Thus, Applicant's allegations of fraud are baseless and offer him no grounds for relief.

D. *Res Judicata*

Because the allegations in the current application were or could have been raised in Applicant's previous state and federal proceedings, this Court finds this action is further 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*, 275 S.C. 615, 274 S.E.2d 415.

In *Foxworth v. State*, the appellants—Myron Foxworth and Gary Wilson—were convicted of armed robbery and sentenced to twenty-two years imprisonment. Both men appealed their convictions, which were affirmed and their appeals dismissed. *Id.* at 616, 274 S.E.2d at 415. They then filed *pro se* petitions for writs of habeas corpus relief in the South Carolina Federal District Court, without exhausting their state PCR remedies. The District Court considered "the trial record and the numerous allegations raised in the petitions . . . and [it] dismissed [the petitions] on the merits." *Id.* Both men then filed *pro se* PCR applications, but the PCR judge found their applications were without merit. He further found that *res judicata* barred claims raised in the applications, as well as those that *could have* been raised. *Id.* at 616-17, 274 S.E.2d at 415-16 (emphasis added). Our Supreme Court agreed. Relying upon section 17-27-90 and its prior decisions construing that statute, the Court held:

> The language of Section 17-27-90 is not restricted to State proceedings but rather refers to "any other proceeding" where relief might be sought prior to the submission of a subsequent application. We, therefore, extend the reasoning espoused in *Land v. State*, *supra*, to the situation where, as here, an application in the State court follows a federal habeas corpus adjudication. The burden is on the applicant to prove that the alleged grounds for relief could not have been raised in federal court.

Id. at 618, 274 S.E.2d at 416.

Applicant has pursued a petition for habeas corpus relief in federal court. He was denied habeas relief. He appealed that decision to the Fourth Circuit and to the United States Supreme Court but was denied certiorari. *Banshee, #73461 v. Gunn*, No. 6:01-2349-MJP-WMC (D.S.C. dismissed Feb. 21, 2002), *aff'd Banshee v. Gunn*, 35 F. App'x 370, 371 (4th Cir. May 28, 2002), *cert. denied* (U.S. S.Ct. Dec. 9, 2002). Further, Applicant has litigated two previous PCR

applications in the circuit court. Applicant had a full opportunity to litigate all of his allegations of ineffective assistance of trial counsel and prosecutorial misconduct in his prior actions. Applicant's claim his parole was unlawfully revoked was raised in his Richland County habeas corpus action in 2000. The finality of the previous court rulings should be respected, and this Court must summarily dismiss these allegations as barred by the principles of *res judicata*.

E. *Laches*

This Court further finds this action must be summarily dismissed based on 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, 284, 277 S.E.2d 890, 891 (1981). This requirement "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.*

Where a PCR applicant 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)); *see also RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("*Laches* connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner."). "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." *Whitehead*, 352 S.C. at 219, 574 S.E.2d at 202. Recognizing the importance of finality in litigation,

Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one year statute of limitations. *See* S.C. Code Ann. § 17-27-45(A).

Applicant filed this PCR action over *forty-five years* after he was convicted and almost *thirty years* after his parole was revoked. *See, e.g., Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held). Applicant's delay has greatly prejudiced the State (as well as Applicant). Absent some explanation or justification for the delay in seeking PCR, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. *McElrath,* 276 S.C. at 283, 277 S.E.2d at 890. Witness memories and physical evidence will have naturally faded and degraded. *State v. Serrette,* 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application must be summarily dismissed as barred by the equitable doctrine of *laches*.

F. Failure to State a Claim

This Court further finds this application must be summarily dismissed for raising a non-collateral or administrative matter, which is not reviewable through post-conviction relief. *Al-*

Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Post-conviction relief "is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence*." *Id.* at 367, 527 S.E.2d at 749 (emphasis in original). The only non-collateral matters that are reviewable through post-conviction relief are those that are specifically enumerated in the Uniform Post-Conviction Procedure Act: (1) a claim that the applicant's sentence has expired and (2) a claim that the applicant's probation, parole, or conditional release has been unlawfully revoked. *Id.* Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. *Cooper v. State*, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000).

Specifically, Applicant's claim of an *ex post facto* violation is based on section 24-21-645 is not cognizable under the Act. *Jernigan v. State*, 340 S.C. 256, 531 S.E.2d 507 (2000) (finding the *ex post facto* claim arising out of change from annual to biannual review for parole was not cognizable under the post-conviction relief (PCR) statute, as *ex post facto* claim was not a collateral attack on the validity of petitioner's conviction or sentence). *Ex post facto* claims must be brought through Administrative Procedures Act rather than PCR. *Jernigan*, 340 S.C. 256, 531 S.E.2d 507.

For this reason and pursuant to Rule 12(b)(6), SCRCP, the Court must dismiss Applicant's *ex post facto* claim for failing to state a cognizable claim for which relief can be granted under the PCR Act.

G. Frustration of Finality of Convictions

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in *Aice* explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. *See Butler v. State*, 397 S.E.2d 87 (S.C. 1990). . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice 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.

305 S.C. at 451--52, 409 S.E.2d at 394–95.

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" *United States v. Fugit*, 703 F.3d 248, 252 (4th Cir. 2012) (quoting *Schneckloth v. Bustamonte,* 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in *Mackey v. United States,* 401 U.S. 667, 691 (1971), Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at 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 to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

Mackey, 401 U.S. at 691 (Harlan, J., concurring in judgments in part and dissenting in part). Seven years after *Mackey*, the South Carolina Supreme Court quoted Justice Harlan's Opinion with approval in *Anderson v. Leeke*, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to litigate his successive and time-barred application is contrary to the recognized need for finality of litigation.

IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), this 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 Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lillian L. Meadows
Post-Conviction Relief Division – 10th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Anderson County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 23 **day of** March **, 2021.**

'21 MAR 23 PM2:33:08
Anderson, SC COC, CP/GS

J. CORDELL MADDOX, JR.
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

'21 MAR 23 PM2:32:55
Anderson, SC COC. CP/GS

ALAN WILSON
ATTORNEY GENERAL

March 11, 2021

The Honorable J. Cordell Maddox Jr.
Chief Administrative Judge, 10th Circuit
P.O. Box 8002
Anderson, SC 29622

Re: **Stanley Rembert Butler, #073461 et al v. State of South Carolina**
2018-CP-04-2353

Dear Judge Maddox:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Anderson County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

s/LillianMeadows
LILLIAN L. MEADOWS
Assistant Attorney General

LLM/hb
Enclosure(s)

cc: Stanley Rembert Butler, #073461