

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Edmond S. Adams, #265717)

2020-CP-40-3837)

Applicant)

v.)

CONDITIONAL ORDER OF DISMISSAL)

State of South Carolina,)

Respondent)
_____)

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RICHLAND COUNTY
FILED

This matter comes before the Court by way of Applicant, Edmond S. Adams's action for post-conviction relief (PCR) filed August 12, 2020. Respondent made its Return and motion to dismiss on October 15, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely, successive to Applicant's prior PCR actions, is 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 November 1998 term, the Richland County Grand Jury indicted Applicant for first degree criminal sexual conduct (1998-GS-40-34469), armed robbery (1998-GS-40-34470), and kidnapping (1998-GS-40-34471). Applicant elected to proceed *pro se* on these charges with the assistance of advisory counsel and a law clerk, after going through approximately five attorneys.

Applicant proceeded to trial on April 10-14, 2000, before the Honorable James C. Williams, and a jury. The Jury found Applicant guilty as charged and Judge Williams sentenced Applicant to twenty-five years' imprisonment for first degree criminal sexual conduct, fifteen

years for armed robbery, and a consecutive twenty-five years for kidnapping. Applicant then moved for a new trial, which was denied.

Applicant filed a timely Notice of Appeal on April 17, 2000. Applicant elected to proceed on his appeal *pro se*, citing to his Sixth Amendment right under *Faretta v. California*, 422 U.S. 806 (1975) and Article I, Section 14 of the South Carolina Constitution. Due to Applicant's inability to perfect the record on appeal, the South Carolina Court of Appeals granted Applicant's request for assistance and appointed Tara D. Shurling, Esquire, to assist Applicant. On March 3, 2005, Applicant filed the final brief of appellant raising the following grounds:

1. "Because a written order is a requisite to continue a criminal case beyond 180 days from the date of arrest, pursuant to the provisions of S.C. Const. Art V § 4, and there is no order in this case, the circuit court lacked original jurisdiction to entertain the appellants criminal case and sentence him, thus violating his rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the U.S. Const."
2. "Because the Appellants indictments are not filed with the clerk of court which violates Rule 3(c) SCRCrimp, the Circuit Court lacked original jurisdiction to entertain the Appellants criminal case, and sentence him thus violating his rights under the S.C. Const Art. I § 3, and under the 14th Amendment to the U.S. Const."
3. "Because the Appellants indictment for kidnapping did not sufficiently apprise him of what he had to meet at trial to prepare his defense the circuit court lacked subject matter jurisdiction to entertain this charge, and sentence him, thus violating his rights under the S.C. Const Art. I § 3, and under the 14th Amendment to the U.S. Const."
4. "Because the circuit court did not adjudicate the Appellant's post trial motions by written notice, the S.C. Court of Appeals do not have subject matter jurisdiction to entertain the Appellant's appeal, thus violating his rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the U.S. Const."
5. "Because the Appellant was not served a search warrant, it was an error for the trial court not to suppress the evidence from his home for a 4th Amendment violation."
6. "Because the trial court judge took 5 jurors off the jury panel that the Appellant picked, and replaced them with 5 jurors that the Appellant struck, and set aside 5 of the Appellants strikes after a Batson hearing the Appellants Rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the United States Constitution was violated."
7. "Because the trial court judge did not remove juror # 126 from the jury panel after he gave misleading information to the court in the jury selection process

to get on the jury, Appellants rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the United States Constitution was violated.”

8. “Because the trial court judge did not fully address the Appellants issues of a partial jury, the Appellants rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the U.S. Const. was violated.”
9. “Because the prosecutor Asst. Solicitor Kathryn Luck Campbell made improper references outside the evidence in the final closing argument, the Appellants rights under the S.C. Const. Art. I § 3, and under the 14th Amendment to the United States Constitution was violated.”
10. “Because the prosecutor Asst. Solicitor Kathryn Luck Campbell used improper references in the final closing argument, even after a valid judicial warning by the trial court, it was an error for the court not to grant the Appellant's motion for a mistrial.”

The South Carolina Court of Appeals affirmed Applicant’s convictions and sentence on September 15, 2005. *State v. Adams*, Op. No. 2005-UP-520 (S.C. Ct. App. filed September 15, 2005). Following the denial of a Petition for Rehearing *en banc* on November 17, 2005, the Court issued its remittitur on December 22, 2005.

i. First PCR Action and Subsequent Appeal (2006-CP-40-7169)

Applicant subsequently filed an application for PCR on December 4, 2006, in which he alleged the following grounds for relief:

1. “I would contend that my waiver of trial counsel was not freely, knowingly, voluntarily and intelligently given to the court;”
2. “I would contend that my waiver of appellate court counsel was not freely, knowingly, voluntarily, and intelligently given to the appellate court;”
3. “I would contend that I was denied assistance of counsel on appeal to prepare my briefs;”
4. “I would contend that I was denied assistance of trial counsel to aid me in preparing my defense for trial;”
5. “I would contend that I was denied access to the court to perfect my appeal;”
6. “I would contend that my federal and state constitutional rights were violated by an inordinate delay on appeal”
7. “I would contend that my federal and state constitutional rights were violated when I was pro se on appeal was not allowed to review the tapes of my criminal trial to correct my transcript;”
8. “I would aver that the S.C. Court of Appeals lacked subject matter jurisdiction to adjudicate my appeal;”
9. “I would contend that the court reporter violated my 6th and 14th Amendment rights to the United States Constitution;”

10. "I would contend that my 6th and 14th Amendment rights to the United States Constitution and my rights under Article I §§ 3 and 14 to the S.C. Constitution was violated by the law library being inadequate to prepare my briefs and arguments on appeal;"
11. "I would contend that I was denied assistance of counsel to consult with prior to my competency hearing;"
12. "I would contend that I was denied effective assistance of trial counsel at my pre-trial hearing;"
13. "I would contend that I was denied effective assistance during voir dire;"
14. "I would aver that I was denied effective assistance of counsel during the sentencing phase of my trial;"
15. "I would contend that I was denied effective assistance of counsel on my direct appeal during the rehearing stage;"
16. "I would contend that I was denied effective assistance of counsel on appeal, when my paid counsel abandoned me on appeal;" and
17. "I would contend that I was denied due process of the law by not being advised by counsel or the court or by any other means that I would take my case to the U.S. Supreme Court if I was denied relief on appeal."

An evidentiary hearing into the matter was convened on March 19, 2008, at the Richland County Courthouse before the Honorable James R. Barber, III. Applicant was present at the hearing and waived his right to appointed PCR Counsel. On May 19, 2008, Judge Barber, issued the Order of Dismissal denying Applicant's application for post-conviction relief with prejudice. Applicant then filed a Rule 59(e), SCRPC motion which was denied via Form 4 Order on July 14, 2008. Applicant subsequently filed a Notice of Appeal of his PCR action June 18, 2009. The Supreme Court of South Carolina issued an order warning Applicant about the dangers of proceeding *pro se* on his appeal and requested Applicant inform the Court whether he wished to continue *pro se* or proceed with counsel. Applicant elected to proceed *pro se*¹ and filed his petition for writ of certiorari March 12, 2011. On November 14, 2012, by written order the South Carolina Supreme Court denied the petition. The Remittitur was issued on December 3, 2012.

¹ Bernice Jenkins, Esquire, was retained for the limited purpose of compiling the appendix for Applicant's appeal.

ii. Habeas Corpus Action (6:12-3424-DCN-KFM)

Applicant thereafter filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254, raising thirteen grounds for relief. Respondent filed its return and motion for summary judgment on May 13, 2013. The Honorable Kevin F. McDonald, United States Magistrate Judge, issued the Report and Recommendation on February 28, 2014, recommending Respondent's motion for summary judgment be granted. *Adams v. Eagleton*, No. 6:12-CV-3424-DCN (D.S.C. Feb. 28, 2014). On August 22, 2014, the Honorable David C. Norton, United States District Judge affirmed the Report and Recommendation, granting Respondent's motion for summary judgment and denying Applicant a certificate of appealability. *Adams v. Eagleton*, No. 6:12-CV-3424-DCN (D.S.C. Aug. 22, 2014). Applicant appealed the District Court's decision. The United States Court of Appeals for the Fourth Circuit dismissed the appeal and denied a certificate of appealability on January 27, 2015. *Adams v. Eagleton*, 590 F. App'x 286 (4th Cir. 2015).

iii. State Habeas Action (2017-002541)

Applicant additionally filed a petition for state habeas corpus on December 13, 2017. Respondent submitted a letter to the Court dated January 5, 2018, in lieu of a formal response, and requested the petition be dismissed pursuant to the doctrine of *res judicata*. On July 6, 2018, the Supreme Court of South Carolina issued an Order denying Applicant's petition.

CURRENT APPLICATION

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

1. "The Court Lacked Jurisdiction (personal) to entertain my case."
 - a. "I was denied Counsel at my competency hearing before trial on 4-10-2000."
 - b. "I was denied Counsel on Remand, and on Appeal + for reconstruction of Trans [*sic*]."

- c. “Structural error in empaneling the jury, Tainted Jury Pool, + Conflict of interest with Luck Campbell, two illegal Jurors on the panel.
2. “The Court Lacked Competent personal Jurisdiction to hear my case.”
 - a. “PCR Judge Never signed my order of dismissal.”

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant’s SCDC records, the trial transcript, Applicant’s appellate records, the records from Applicant’s prior PCR action and subsequent appeal, the records from Applicant’s prior habeas corpus actions, 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 was convicted April 14, 2000, and pursued a direct appeal. The Remittitur was issued December 22, 2005. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before December 23, 2006. Applicant did not file his application until August 12, 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).

Here, Applicant’s current allegations could have been – and in fact *were* – raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant’s current allegations are duplicates of the various claims raised in his previous 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 and jurisdiction in previous applications. 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 application.

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. 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 shall be summarily dismissed as barred by the doctrine of *res judicata*.

Failure to State a Claim

This Court finds the application shall be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Pursuant to 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.

Applicant's action contains allegations that fail to raise a cognizable claim for relief, specifically; Applicant alleges lack of personal jurisdiction, structural error, tainted jury pool, and conflict of interest, among others. These allegations present direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-

conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised these issues on appeal. The failure to do so has waived this allegation as grounds for relief. For these reasons and pursuant to Rule 12(b)(6), SCRCP, this Court shall dismiss the application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

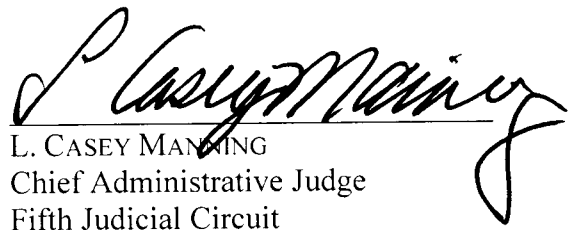
CONCLUSION

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 19 day of October, 2021.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina