

FILED-RECORDED  
FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2020CP1801677

Ronald Blanding  
2021 SEP -8 AM 11:16  
South Carolina State Of

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

PLAINTIFF(S) DEFENDANT(S)  
Submitted by: Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Edgar Dickson  
Circuit Court Judge

2153  
Judge Code

9/3/2021  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 9/8/2021, and a copy mailed first class or placed in the appropriate attorney's box on 9/2021, to attorneys of record or to parties (when appearing pro se) as follows:

**Ronald Blanding#283641**, Tyger Correctional Inst., 200  
Prison Road Enoree, SC 29335

**Megan Harrigan Jameson/Lindsey Ann McCallister/  
Samantha Jo Weidauer** PO Box 11549 Columbia, SC 29211

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

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**Court Reporter**

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**Cheryl Graham - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Diane S. Goodstein from April 22 to April 25, 2002 and was found guilty as indicted. Judge Goodstein sentenced Applicant to life imprisonment.

#### **A. Direct Appeal**

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Petitioner raised one (1) issue:

“Whether the Court of Appeals erred by affirming petitioner’s conviction pursuant to Rule 220(b)(2), SCACR, where the trial judge applied an erroneous legal standard when determining that there was “insufficient evidence” to justify charging voluntary manslaughter, since there was evidence of voluntary manslaughter under the correct “any evidence standard” because the decedent had threatened petitioner’s life, and a violent confrontation later occurred which resulted in petitioner killing the decedent?”

On December 22, 2004, the South Carolina Court of Appeals affirmed Applicant’s convictions. State v. Blanding, 2004-UP-653 (S.C. Ct. App. Filed December 22, 2004). Applicant filed a petition for rehearing on February 22, 2005. By order, dated March 18, 2005, the Court of Appeals denied Petition for Rehearing. Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated September 7, 2006. State v. Blanding, S.C. Sup Ct. Order dated September 7, 2006. The Remittitur was issued on September 11, 2006.

#### **B. Initial Post-Conviction Relief Action (2006-CP-18-1615) and Subsequent Appeal**

Applicant filed his first application for post-conviction relief on October 2, 2006, alleging ineffective assistance of counsel on twenty-two grounds:

1. Failed to put accuser on the stand. Person who did the warrant should have testified;
2. Attorney did not give Applicant all discovery materials;
3. Court lacked subject matter jurisdiction because indictment did not state how the victim was killed;
4. Indictment said I killed the decedent but someone else did it;
5. Double jeopardy because I was convicted of a murder that someone else did;
6. No probable cause for a murder warrant;

7. Abuse of discretion because (1) Applicant was portrayed as a drug dealer and (2) Counsel made a remark which Applicant interprets as racial;
8. Illegal search;
9. Attorney did not ask for a directed verdict;
10. I did not see the videotape of Larry Gilliam;
11. Attorney advised me not to testify;
12. Attorney did not give me background or records of witnesses;
13. Alibi witnesses could have placed me in New York. I was in a shelter volunteering;
14. Attorney did not defend me on malice. I could not have the requisite malice where a co-defendant actually killed the victim;
15. Attorney did not argue mere presence;
16. Failed to request jury instruction on co-defendant testimony;
17. Witnesses failed polygraph examination;
18. Counsel could have argued that L.A. Jones could not give consent for search of the house when I was out of state;
19. Counsel failed to request a jury during sentencing;
20. Counsel should have objected to hand of one – hand of all charge;
21. There was no twenty-four-hour waiting period before I was sentenced; and
22. Counsel did not challenge chain of custody on DNA evidence.

Respondent made its return on October 24, 2007. An evidentiary hearing into the matter was convened on February 16, 2010, before the Honorable Edgar W. Dickson. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Judge Dickson denied and dismissed that application for post-conviction relief in an order dated May 17, 2010.

Applicant appealed the denial of post-conviction relief and was represented on appeal by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-Office of Appellate Defense who filed a petition for writ of certiorari and petition to be relieved as counsel pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied Applicant's petition by unpublished opinion Blanding v. State, S.C. Sup. Ct. Order filed April 18, 2012. The Remittitur was sent May 31, 2012.

### C. Federal Habeas Corpus Action (8:12-01179-MGL-JDA)

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on May 1, 2012. In his Petition, and through subsequent amendments, Applicant set forth numerous grounds for relief, liberally construed by the Court as:<sup>1</sup>

1. Amendment of indictment;
2. Double jeopardy;
3. Malice charge;
4. Brady violation;
5. Alibi witness;
6. Prosecutor and judge acted/failed to act, thereby infecting the trial;
7. Trial counsel failed to preserve legal errors and make objections;
8. Petitioner's civil rights were violated where the State and counsel conspired to deprive him of constitutional right by securing his conviction under color of state law;
9. The PCR court erred in not ruling on all 30 issues raised and not ruling on Petitioner's motions;
10. Face accuser
  - a. Petitioner was denied the right to confront witnesses/trial counsel was ineffective for not calling witnesses to testify;
11. Amendment of indictment
  - a. Petitioner's due process was violated when his indictment was impermissibly amended because he was convicted of wanton murder but was indicted for intentional murder, the indictment lacked essential elements and did not state anyone else was involved;
  - b. Trial and appellate counsel were ineffective for not objecting when jury instruction broadened the scope of the indictment;
12. Double jeopardy
  - a. Trial counsel was ineffective for failing to argue defense of double jeopardy because sentence constituted cruel and unusual punishment and violated double jeopardy when Petitioner was convicted of a crime that was different from the crime charged in the indictment;
13. Subject matter jurisdiction
  - a. Trial and appellate counsel were ineffective for failing to challenge a deficiency in the indictment;
  - b. Trial and appellate counsel were ineffective for failing to argue a detective's testimony prejudiced Petitioner;
  - c. Trial and appellate counsel were ineffective for failing to argue Petitioner was not accorded a preliminary hearing;
  - d. Trial and appellate counsel were ineffective for failing to argue Detective Tom Marshall's conduct while testifying in front of the grand jury deprived Petitioner of

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<sup>1</sup> Certain allegations appear to repeat. These redundant allegations are preserved as interpreted by the Magistrate.

- rights and privileges guaranteed by the Constitution because Detective Marshall's testimony was untruthful;
- e. Trial and appellate counsel were ineffective for failing to argue the investigator testified before the grand jury to information about which the investigator did not have firsthand knowledge;
  - f. Trial and appellate counsel were ineffective for failing to argue the State failed to file the indictment within 180 days after Petitioner's arrest;
  - g. Trial and appellate counsel were ineffective for failing to argue the indictment was never stamped and filed with the Clerk or Court;
  - h. Trial and appellate counsel were ineffective for failing to argue the arrest warrant was never properly filed with the Clerk of Court within 15 days from the date of arrest;
  - i. Trial and appellate counsel were ineffective for failing to argue Petitioner had no way of knowing what Code § 16-3-20 was for because there was no description of the offense in the indictment and this code section was not on the arrest warrant;
14. No probable cause
- a. Trial counsel was ineffective for failing to inform Petitioner of the law in relation to the facts that the 4<sup>th</sup> Amendment requires probable cause supported by oath and/or affirmation and how the 4<sup>th</sup> Amendment was relevant to this case;
15. Request a jury during sentencing
- a. Trial counsel was ineffective for failing to request a jury trial during the sentencing phase of trial;
16. Alibi witness
- a. Trial counsel was ineffective for failing to request an alibi instruction, failing to contact or investigate alibi defense witnesses, and failing to advise Petitioner that the State had no substantial evidence of his guilt and therefore a potential alibi defense existed;
17. Malice charge
- a. Trial and appellate counsel were ineffective for failing to object to an improper malice instruction;
18. Brady violation
- a. Trial counsel failed to give Petitioner a copy of the sworn written affidavits of several people stating Petitioner chased, stabbed, and asphyxiated the decedent;
  - b. Trial counsel failed to give Petitioner a copy of the videotape confession of a witness and failed to request an inspection of the videotape or inform Petitioner of his right to attend a viewing of the videotape;
  - c. Trial counsel failed to inform Petitioner or present to Petitioner any of the plea bargain agreements of co-defendants;
  - d. Trial counsel failed to provide Petitioner with the bill of indictment or bill of particulars;
  - e. Petitioner learned about Charles Guyer's April 5, 2000 written statement for the first time at trial;
19. Reasonable doubt
- a. Trial and appellate counsel were ineffective for failing to challenge the reasonable doubt jury instruction;
20. Hands of one, hands of all

- a. Trial counsel was ineffective for failing to object to admission of co-conspirator hearsay;
  - b. Trial counsel was ineffective for failing to challenge hands of one, hands of all theory because the State did not establish a conspiracy;
21. Abuse of discretion
- a. Trial counsel was ineffective for failing to object to inadmissible evidence;
  - b. Trial counsel was ineffective for failing to object to leading questions;
  - c. Trial counsel was ineffective for failing to challenge sentence that was in violation of state and federal law;
  - d. Trial counsel was ineffective for failing to object when the trial judge allowed trial counsel to make a racist remark at trial;
  - e. Trial counsel was ineffective for failing to object when the trial judge sent the jury to the jury room and then allowed the solicitor and trial counsel to mislead the jury during Petitioner's testimony;
  - f. Trial counsel was ineffective for failing to object when the trial judge failed to rule on showing the jury a videotape of a witness showing an inconsistent statement;
  - g. Trial counsel was ineffective for failing to object to opening and closing remarks when the solicitor said Petitioner was a drug dealer;
22. Criminal history
- a. Trial counsel was ineffective when he withheld from Petitioner and jury witness Larry Gilliam's criminal background; and
23. Failure to impeach witness
- a. Trial counsel was ineffective for failing to impeach the State's eyewitness.

Respondent filed its Return and Motion for Summary Judgment on September 7, 2012. Petitioner filed his response in opposition on September 18, 2012. Respondent replied to Petitioner's response in opposition on April 1, 2013. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a Report and Recommendation on August 6, 2013, recommending that Respondent's motion be granted in part and denied in part, with further direction to Respondent to refile the motion addressing various issues. Respondent so complied on October 21, 2013, and Applicant replied in opposition on November 7, 2013. Judge Austin issued a second Report and Recommendation on May 30, 2014, recommending Respondent's motion be granted in full.

The Honorable Mary G. Lewis, United States District Judge, denied Applicant's Petition on July 31, 2014 and accepted the Report and Recommendation for summary judgment. Applicant

gave notice of his appeal to the Fourth Circuit Court of Appeals on August 11, 2014 and filed an informal opening brief on September 3, 2014. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on December 23, 2014. Blanding v. Warden of McCormick Correctional Inst., No. 14-7217 (4th Cir. Dec. 23, 2014). The mandate was issued on January 14, 2015.

**D. Second Post-Conviction Relief Action (2015-CP-18-1564)**

Applicant filed his second post-conviction relief application on August 6, 2015. Applicant alleged he was being held unlawfully for the following twelve reasons in a seventy-two page, largely handwritten attachment to his form application (excerpted verbatim):<sup>2</sup>

1. Face accuser
2. Amendment of Indictment
3. Double Jeopardy
4. Subject Matter Jurisdiction
5. No probable cause
6. Alibi witness
7. Hands of one, Hands of all
8. Malice charge
9. Reasonable doubt
10. Abuse of discretion
11. Brady violation
12. All motions
  - a. [F]iled on February 17, 2009 motion for an order compelling discovery pursuant to Rule 37(a)(2)
  - b. [F]iled on March 19, 2009 motion Applicant's brief on right to a speedy remedy in civil action
  - c. [F]iled on April 17, 2009 motion to move for sanction under Rule 37(B) failure to produce or cooperate in discovery
  - d. [F]iled on April 17, 2009 motion on after discovered evidence
  - e. [F]iled on May 14, 2009 motion for an order compelling discovery pursuant to 37(a)(2)
  - f. [F]iled on March 27, 2009 motion for state to produce fugitive warrant and governor warrant and information supported by an affidavit in the State having jurisdiction of the crime
  - g. [F]iled on August 21, 2009 motion for illegal search and seizure
  - h. [F]iled on August 21, 2009 motion to suppress
  - i. [F]iled on May 14, 2009 motion to quash indictment
  - j. Motion discovery SCRPC Rule 14-7-1700 production of ministerial records of grand jury

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<sup>2</sup> Due to the considerable length of Applicant's arguments, they are not restated in full.

- k. Motion to suppress
- l. [F]iled on November 13, 2009 motion for abuse of discretion
- m. [F]iled on November 30, 2009 motion to vacate warrant
- n. [F]iled on December 29, 2009 motion for prosecution misconduct

Respondent made its return and motion to dismiss on May 23, 2016, seeking summary dismissal of the application as barred by the statute of limitations, successive to Applicant's prior PCR action, barred by the doctrines of *res judicata* and laches, and because the application failed to state a claim upon which relief could be granted. The Court issued a Conditional Order of Dismissal, filed January 4, 2017, provisionally denying and dismissing the action. Applicant subsequently filed a document captioned "Opposition to Conditional Order of Dismissal" on January 20, 2017. Applicant also filed documents captioned "Petition to Exclude Inadmissible Evidence/Testimony from Grand Jury," "Petition to Stay Mandate," and "Petitioner for Declaratory Judgment under Rule 57" on January 31, 2017.

The court denied and dismissed the application for post-conviction relief in an order dated March 29, 2018, finding the application untimely, successive, and similarly barred by the doctrine of *res judicata*.

## **II. CURRENT POST-CONVICTION RELIEF APPLICATION BEFORE THE COURT**

In his third and present application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons in a forty-one page, largely handwritten attachment to his form application:<sup>3</sup>

1. Violations of the United States Constitution and South Carolina Constitution
  - a. 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment violations;
2. Improper extradition;
3. Unconstitutional separation of power;
4. Ineffective assistance of trial counsel;

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<sup>3</sup> Due to the considerable length of Applicant's argument, they are not restated in full.

5. Ineffective assistance of appellate counsel;
6. Ineffective assistance of post-conviction relief counsel;
7. Abuse of discretion;
8. No probable cause;
9. Warrant defects;
10. Amendment of indictment and indictment defects;
11. Subject matter jurisdiction;
12. Prosecutorial misconduct;
13. Hands of one, Hands of all;
14. Alibi witness;
15. Double jeopardy;
16. Face accuser;
17. All motions
  - a. "Applicant's motion to move for sanctions under Rule 37(b) failure to produce fugitive or governor warrants from either state or cooperate in discovery";
  - b. "Motion to quash indictment";
  - c. "Applicant's motion for an order compelling discovery pursuant to Rule 37(a)(2)";
  - d. "Return to motion for discovery";
  - e. "Applicant's motion for an order compelling pursuant to Rule 37(a)(2)";
  - f. "Applicant's brief on right to a speedy remedy in civil action";
  - g. "Motion for state to produce fugitive warrant by an affidavit in the state having jurisdiction of the crime";
  - h. "Motion on after discovered evidence under Rule 37(B) failure to produce or cooperate in discovery";
  - i. "Return to Applicant's motion to move for sanction under Rule 37(B) failure to produce or cooperate in discovery";
  - j. "Motion to suppress filed on August 27, 2009";
  - k. "Applicant's notice of motion and motion for funds for expert expenses";
  - l. "Motion for abuse of discretion";
  - m. "Motion for suppress";
  - n. "Motion for illegal search and seizure";
  - o. "Motion for hearing reading Grand Jury"; and
  - p. "Motion for hearing regarding prosecutor misconduct."

As the relief sought, Applicant simply stated, "vacated."

Before this Court are the Dorchester County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the final order of Applicant's previous PCR actions; the final order of Applicant's federal habeas corpus action; and the records of the current PCR action, including Respondent's return and motion to dismiss.

### III. 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. 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). 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:

#### *Statute of Limitations*

This Court finds this application should 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 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. Consol. Sch. Dist. 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.”

The Applicant was convicted on April 25, 2002, and the remittitur from the subsequent direct appeal was issued September 11, 2006. Pursuant to Section 17-27-45(A), Applicant had until September 12, 2007, to timely file his application for post-conviction relief challenging his convictions. Applicant did not file his present application until October 13, 2020, more than thirteen years beyond the statute of limitations. Applicant failed to comply with the filing requirements under Section 17-27-45(A).

Moreover, Applicant has not alleged any claims based on a change of law or statute or alleged any newly discovered evidence. Therefore, Applicant has failed to comply with the filing requirements under Section 17-27-45(B)–(C). Accordingly, this Court finds this application is untimely pursuant to Section 17-27-45 and intends to dismiss it for failure to file within the time

mandated by Uniform Post-Conviction Procedure Act.

**B. Successiveness and *Res Judicata***

This Court further finds this action must be summarily dismissed because it is successive to Applicant's two previous PCR applications and barred by the doctrine of *res judicata*. 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 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).

Because the allegations in the current application were or could have been raised in Applicant's previous state and federal proceedings, 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.

The current allegations were or could have been raised in the former proceedings based on Applicant's prior applications for post-conviction relief and his federal habeas corpus petition; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90 and by *res judicata*. Therefore, 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 actions and barred by the doctrine of *res judicata*.

### C. 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). 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 Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Samantha J. Weidauer  
Post-Conviction Relief Division – 1<sup>st</sup> Circuit  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dorchester 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 3rd day of September, 2021.



EDGAR W. DICKSON  
Chief Administrative Judge  
First Judicial Circuit



, South Carolina