

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
	)	
Matthew Jamison, #267844	)	2020-CP-40-4834
	)	
Applicant	)	
	)	
v.	)	<b>CONDITIONAL ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

RICHLAND COUNTY  
 FILED  
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 CLERK OF COURT

This matter comes before the Court by way of Applicant, Matthew Jamison's action for post-conviction relief (PCR) filed October 13, 2020. Respondent made its amended return and motion to dismiss on November 1, 2021. The Court hereby grants Respondent's motion to dismiss because the action is untimely, successive to Applicant's prior PCR actions, and is barred by the doctrine of *res judicata*.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the October 2000 term, the Richland County Grand Jury indicted Applicant for Murder (2000-GS-40-<sup>53234</sup>~~52234~~) John D. Delgado, Esquire represented Applicant. Applicant pled guilty to the lesser-included offense of voluntary manslaughter on August 28, 2001, before the Honorable L. Casey Manning. Judge Manning sentenced Applicant to twenty year's imprisonment. Applicant did not appeal his conviction or sentence.

i. First PCR Action and Appeal (2002-CP-40-3078)

Applicant subsequently filed an application for PCR on June 24, 2002, in which he alleged the following grounds for relief:

1. “Ineffective Assistance of Counsel.”

Respondent made its return on April 3, 2003. An evidentiary hearing into the matter was convened on April 27, 2005, at the Richland County Courthouse before the Honorable G. Thomas Cooper, Jr. Applicant was present at the hearing and was represented by Melissa J. Kimbrough, Esquire. On July 13, 2005, Judge Cooper, issued the Order of Dismissal denying Applicant’s application for post-conviction relief with prejudice.

On November 3, 2005, Appellate Defender Robert M. Pachak filed a *Johnson*<sup>1</sup> petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Applicant then filed a *pro se* petition to the Court. On March 6, 2007, by written order the South Carolina Court of Appeals denied the petition. In response, Applicant filed a “Petition for Rehearing and Rehearing En Banc Pursuant to Rule 221, SCACR”, which was denied by Order on April 24, 2007. The Remittitur was issued on June 4, 2007.

ii. Second PCR Action and Appeal (2006-CP-40-7054)

Applicant filed a second application for PCR on November 28, 2006, in which he alleged the following grounds for relief:

1. “Pursuant to SCRCP 60(B)(1), (2), (5).”

2. “Ineffective Assistance of Counsel.”

- a. “Applicant has discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(e) to include other findings by the court.”

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

Respondent made its return on March 26, 2007. An evidentiary hearing into the matter was convened on June 27, 2008, at the Richland County Courthouse before the Honorable William P. Keesley. Applicant was present at the hearing and was represented by Tommy A. Thomas, and Tricia A. Blanchette, Esquires. Following the hearing, the Court issued a Memorandum Order instructing Applicant's counsel to submit a proposed order. On August 18, 2008, the Court issued an additional Order that the previous memorandum order of the Court be withdrawn and directed the parties to schedule a rehearing on the limited issue on the procedural posture of the case, and whether the after discovered evidence had been raised in previous proceedings. The rehearing was held September 24, 2008, before Judge Keesley. On October 14, 2008, Judge Keesley, issued the Order granting Applicant's action for post-conviction relief.

Respondent thereafter filed a Petition for Writ of Certiorari on August 22, 2009. Applicant's Return to the Petition for Writ of Certiorari was filed by PCR counsel Tricia Blanchette on August 20, 2009. On February 10, 2011, the South Carolina Court of Appeals granted Respondent's petition for certiorari. Following the submission of briefs, the Court of Appeals affirmed in an unpublished opinion *Jamison v. State*, No. 2012-UP-437 (S.C. Ct. App. July 18, 2012). Respondent then filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. On October 22, 2014, the South Carolina Supreme Court reversed the Court of Appeals, reinstating Applicant's conviction and sentence. *Jamison v. State*, 410 S.C. 456, 459, 765 S.E.2d 123, 124 (2014). Applicant filed a Petition for Rehearing November 4, 2014, which the Court denied by Order dated December 4, 2014. The remittitur was issued December 4, 2014.

Applicant subsequently filed a Petition for Writ of Certiorari to the Supreme Court of the United States, which was denied June 1, 2015. *Jamison v. South Carolina*, 575 U.S. 1042 (2015).

iii. Habeas Corpus Action (9:15-2859-MBS-BM)

Applicant thereafter filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on July 14, 2015. In his petition, Applicant set forth the following grounds for relief:

**Ground One:** Denied the Actual Effective Assistance of Criminal Defense Counsel.

**Supporting Grounds:** Petitioner engaged an involuntary guilty plea where trial counsel pressured guilty plea by promise of 11-13 year(s); counsel stated petitioner faced death penalty at trial.

**Ground Two:** Due Process Violation.

**Supporting Grounds:** Jamison's 2<sup>nd</sup> APCR raised the issue of after-discovered evidence which related to the aspect of asserting self-defense against a homicide offense; the South Carolina Supreme Court changed the criteria as his conviction was acquired by guilty plea to voluntary manslaughter. *Jamison v. State*, 765 S.E.2d 123 (2014). The Court adopted the "interest of justice" test over the "traditional" test and applied it retroactively contrary to *Tulley v. State*, 640 S.E.2d 878, 881 (2007) decision.

**Ground Three:** Denied Due Process and Equal Protection of the law (under Full and Fair Hearing Doctrine of Rule) in State Court. Petitioner has set forth the 2<sup>nd</sup> APCR was granted in the trial court on the "traditional" test of after-discovered evidence and South Carolina Supreme Court changed the relevant discovery rule (criteria) to "the interest of justice" test while applying the new rule retroactively and not allowing his issue or appeal to be remanded to the trial court for application of the new rule to weight [sic], determine the evidence contrary to TEAGUE rule. So he was denied the full and fair opportunity along with hearing in the state court(s).

Respondent filed its return and motion for summary judgment on December 14, 2015. The Honorable Bristow Marchant, United States Magistrate Judge, issued the Report and Recommendation on April 18, 2016, recommending Respondent's motion for summary judgment be granted and Applicant's petition dismissed with prejudice. *Jamison v. Cohen*, No. 9:15-2859-MBS-BM (D.S.C. Apr. 18, 2016). On September 30, 2016, the Honorable Margaret B. Seymour, United States District Judge, granted in part and denied in part Respondent's motion for summary judgment, and denied, dismissed in part, and granted in part Applicant's petition. *Jamison v. Cohen*, 211 F. Supp. 3d 754, 770 (D.S.C. 2016).

The State appealed the district court's decision. The United States Court of Appeals for the Fourth Circuit vacated the lower court's decision and remanded with instructions to dismiss

Applicant's petition as not cognizable under federal habeas review. *Jamison v. Cohen*, 756 F. App'x 265, 266 (4th Cir. 2018). Applicant thereafter petitioned to the United States Supreme Court. The petition was denied October 7, 2019. *Jamison v. Cohen*, 140 S. Ct. 251, 205 L. Ed. 2d 141 (2019).

iv. Appellate Action (2018-002034)

Applicant then submitted a petition and motion of credit towards his sentence on March 2, 2018. A hearing was held before the Honorable L. Casey Manning on September 4, 2018. Applicant was represented by Tommy A. Thomas, Esquire. At the hearing, Applicant requested the Court credit the five years he spent on probation for an unrelated possession with intent to distribute cocaine conviction towards Applicant's twenty year sentence for voluntary manslaughter. By written Order dated September 17, 2018, Judge Manning denied Applicant's motion, finding he was not entitled to credit for the time served while on probation. Applicant then filed a timely notice of appeal.

Applicant's appeal was denied on January 28, 2021, for failing to file an initial brief with correct proof of service and designation of matter as required by Rule 208, SCACR. Applicant thereafter filed a motion to reinstate the appeal, which the South Carolina Court of Appeals granted March 29, 2021. Applicant submitted his reply to Respondent's initial brief June 7, 2021. Respondent submitted its final brief September 23, 2021. This matter is still pending.

**CURRENT APPLICATION**

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

1. "Ineffective Assistance of 1st and 2nd PCR Counsels"
2. "Ineffective Assistance of Appeal Counsel"
3. "Violation of S.C. Constitution and Rules"

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the plea transcript, Applicant's appellate records, the records from Applicant's prior PCR actions and subsequent appeal, the records from Applicant's prior federal habeas corpus action, and the records of this PCR action.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

#### **Statute of Limitations**

The Court finds that this PCR shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or

right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his counsel was ineffective and his other constitutional rights were violated. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pled guilty on August 28, 2001, and did not pursue a direct appeal. Pursuant to section 17-27-<sup>45(A) and</sup>~~45~~, Applicant needed to file his application for post-conviction relief on or before August 29, 2002. Applicant did not file his application until October 13, 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 of ineffective assistance of counsel could have been – and in fact *were* – raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant's current allegations are duplicates of the various claims raised in his multiple collateral actions. Applicant has failed to establish any sufficient reason why Applicant could not raise his current allegations in his previous state and federal collateral actions or why this Court should overlook the fact he has raised these exact claims of ineffective assistance in previous applications. Therefore, 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 actions.

#### ***Res Judicata***

Additionally, the application is 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*.


**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 26<sup>th</sup> day of January, ~~2021~~<sup>2022</sup>.

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

Columbia, South Carolina