FORM 4

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS	JUDGMENT IN A CIVIL CASE CASE NUMBER 2019CP1800874

Delronezy Lee Washington		South Carolina State Of	
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ____________

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.

FILED-RECORDED 2021 SEP 28 PM 3 37

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	2153	9/28/2021
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **9/28/2021**, and a copy mailed first class or placed in the appropriate attorney's box on **9/28/2021**, to attorneys of record or to parties (when appearing pro se) as follows:

Delronezy Lee Washington, #337975, Lieber C. I. CB-35
SCDC PO Box 205 Ridgeville, SC 29472

Megan Harrigan Jameson/Lindsey Ann McCallister/Samantha Jo Weidauer
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

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.

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.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Delronezy L. Washington, SCDC #337975, Applicant, v. State of South Carolina, Respondent.	Case No. 2019-CP-18-0874 **CONDITIONAL ORDER OF DISMISSAL**

2021 SEP 28 PM 3:3_
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
FILED-RECORDED

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Delronezy L. Washington (Applicant) on May 14, 2019. The State made its return on August 11, 2021, requesting the 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 Dorchester County Clerk of Court. Applicant was arrested on June 7, 2007, following an investigation into the murder of Wilson James during an armed robbery. During its September 2007 term, the Dorchester County Grand Jury indicted Applicant for armed

[1] The State's return was originally due on July 19, 2019. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). 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 to 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).

robbery (2007-GS-18-1224) and murder (2007-GS-18-1225).

On November 14, 2009, Applicant appeared before the Honorable R. Knox McMahon and pleaded guilty as indicted. Walter Bailey, Mark Leiendecker, John Loy, and Peggy Hinds, Esquires, (collectively, Counsel) represented Applicant. First Circuit Solicitor David Pascoe and Assistant Solicitors Blair Jennings and Russell Hilton prosecuted the case.

Pursuant to negotiations entered into between Applicant and the State, Judge McMahon sentenced Applicant to concurrent terms of forty years' imprisonment for murder and thirty years' imprisonment for armed robbery.

A. Initial Post-Conviction Relief Action: 2010-CP-18-1718

On June 24, 2010, Applicant filed his first PCR action, raising the following grounds for relief (verbatim):

1. Ineffective assistance of counsel.
    a. "Failure to challenge testimony of co-defendant."
    b. "Failure to file appeal."
    c. "Failure to object to prosecutor's comments."

The State requested an evidentiary hearing through its return on February 4, 2011. On May 22, 2012, the PCR court convened an evidentiary hearing before the Honorable DeAndrea Benjamin. Applicant was present at the hearing and represented by Christopher Lizzi, Esquire. Assistant Attorney General David Spencer appeared on behalf of the State. At the start of the hearing, Applicant advised the Court that he wished to withdraw his application for post-conviction relief. Following a colloquy with Applicant about his withdrawal request, Judge Benjamin determined Applicant's request to withdraw was made freely, knowingly, and voluntarily. On July 24, 2012, Judge Benjamin issued an order dismissing the action with prejudice. Applicant did not appeal.

B. Second Post-Conviction Relief Action: 2013-CP-18-0490

On March 19, 2013, Applicant filed a second PCR action, alleging he was being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of counsel
   a. Failure to challenge testimony of co-defendant
   b. Failure to file *Brady* motion
   c. Failure to object to prosecutor's comments
2. Ineffective utilization of discovery

The State made its return and motion to dismiss on August 21, 2013, requesting the application be summarily dismissed as untimely and successive. Pursuant to this request, this Court issued a conditional order of dismissal on September 24, 2013, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Applicant did not file a response. The Honorable Diane Schafer Goodstein, acting in her capacity as Chief Administrative Judge, subsequently issued a final order signed April 21, 2014 and filed May 2, 2014, denying and dismissing the application with prejudice. Applicant did not appeal.

C. Third Post-Conviction Relief Action: 2017-CP-18-128

On January 2, 2017, Applicant filed a third PCR action, alleging he was being held in custody unlawfully based on the following (excerpted verbatim):

1. "Ineffective assistance of PCR consoles[*sic*]"
   a. "17-29-100 failure to protect my right to seek appellant[*sic*] review of denial of my 1st PCR application."

The State made its return and motion to dismiss on December 8, 2017, requesting the application be summarily dismissed as untimely, successive, and for failing to state a cognizable claim under the Uniform Post-Conviction Procedure Act[2] (the Act).

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[2] S.C. Code Ann. § 17-27-10 to -160.

Pursuant to this request, the Honorable Maité Murphy, acting in her capacity as Chief Administrative Judge, issued a conditional order of dismissal on January 8, 2018, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Applicant did not file a response. Judge Murphy subsequently issued a final order signed March 1, 2018, and filed March 13, 2018, denying and dismissing the application with prejudice. Applicant did not appeal.

II. Current Application

In his **fourth** and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim): [3]

1. Newly-discovered evidence of prosecutorial misconduct and witness intimidation within the last year.
   a. "Ballastics[*sic*] did NOT match the weapon alleged by State to be murder weapon"
   b. "Victim did NOT have gunshot residue on his body as alleged by the State."
   c. "DeShawn Brown while testifying that Applicant DID NOT PARTICPATE IN CRIME wasn't with him. He was taken off the witness stand and threatened that if did not implicate Applicant he would be given LWOP. HE THEN RETURNED AND IMPLICATED APPLICANT. He was 16 years old. His trial testimony contradicting his initial first statement to police . . ."
   d. "Alleged video withheld by State of DaShaun[*sic*] Brown inconsistent with statements."
2. Involuntary guilty plea/prosecutorial misconduct/*Brady* violation
   a. "The State knowingly presented false testimony the victim had G.S.R. on his body and induced Applicant to enter a[*sic*] involuntary guilty plea based upon Solicitor failure to disclose evidence favorable to the accused rendered the guilty plea involuntary."
      i. "Ballistics did not match the weapon knowingly falsely representing as murder weapon."

[3] Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

ii. "Victim did not as falsely asserted by solicitor to induce involuntary plea not disclosed."

b. "This is in addition to DeShawn Watson while TESTIFYING DID NOT PARTICIPATE in shooting and was not with him at the time of shooting."
c. The State knowingly presented false testimony and failed to correct testimony stating "that victim, as claimed by State, did not have any gunshot residue upon him."
d. Misrepresentation of SLED ballistics report.

On July 18, 2019, Applicant filed a document titled, "Supplemental P.C.R. Issues," raising the following additional grounds for relief (excerpted verbatim):

1. "The State withheld evidence favorable to the accused, material to his guilt or innocence that rendered guilty plea involuntary."
   a. "DeShawn Brown co defendant[*sic*] first testified @ trial of Applicant that it was him and Mario Washington at scene of the robbery. Then after being taken off the witness stand uring his testimony by the solicitor, (which is unethical and illegal) he changed his testimony to implicate Applicant."
   b. "As evidenced from the exhibit of his PCR court exhibits transcripts of DeShawn Brown interview/videotape was blank out – and the actual transcript was provided to Applicant."
   c. "6/28/19 – this transcript which DeShawn Brown states he was not present at the time of the murder – that he and Applicant between 10:00 and 11:00 were at home – provides an alibi for Applicant."
   d. "This transcript of videotape totally contradicts DeShawn Brown[*sic*] 'contradictory' trial testimony that provided a[*sic*] 'alibi' at the time of the offense, that had Applicant known about he would not have pled guilty."
   e. "Rendering his guilty plea involuntary as he was unaware of the contents of the video/transcript, that had been withheld from him, and actually blank out on court exhibits."
2. "Or trial counsel was ineffective"
   a. "In the alternative trial counsel was ineffective for failing to discover and use this transcript to provide a[*sic*] alibi for Applicant and/or discredit co-defendant."

On October 29, 2019,[4] Applicant filed an amended application, raising the following additional grounds for relief (excerpted verbatim):

1. Prosecutorial misconduct
   a. "Solicitor failure to suppress self-incrimination statement of co-defendant DeShawn A. Brown which was under the age(17) without his parent or a legal guardian present which lead[*sic*] to a false statement but if Applicant had know[*sic*] that his co-defendant had sent a letter to his lawyers he would have not plea[*sic*] guilty."
2. Ineffective assistance of counsel
   a. "[T]rial counsel was ineffective . . . do[*sic*] to not bring up the letter to the court which made the Applicant[*sic*] plea unconstitutional and involuntary."

Applicant requests relief as follows:

"a new trial or a less[*sic*] charge."

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; Applicant's prior post-conviction relief records challenging these convictions; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Because there is no genuine issue of material fact which would necessitate an evidentiary hearing, this Court hereby informs the parties of its intent to dismiss the application as procedurally barred. *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

[4] On August 26, 2019, Applicant filed a motion for leave to amend his application for post-conviction relief.

a PCR applicant to make a prima facie showing he is entitled to relief before the court will hold an evidentiary hearing). Pursuant to section 17-27-70 and -80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law:

A. Newly-Discovered Evidence

As an initial matter, this Court finds Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he is entitled to an evidentiary hearing, is 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) (emphasis added).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty

plea"). "A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." *Brady v. United States*, 397 U.S. 742, 757 (1970).

Thus, when an applicant seeks relief on the basis of newly-discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing:

> (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison, 410 S.C. at 470, 765 S.E.2d at 130; *cf. State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (noting that the granting of a new trial based on after-discovered evidence is disfavored).

SLED Reports

Applicant alleges his conviction is unconstitutionally invalid based on newly-discovered evidence that the State misrepresented evidence. Specifically, Applicant contends the State misrepresented two reports from SLED—a ballistics report and the results of a G.S.R. kit taken from the victim. Applicant has failed to establish these reports meet either *Jamison* requirement for newly-discovered evidence.

First, in the exercise of reasonable diligence, the SLED reports could have easily been discovered prior to the entry of the plea. *Jamison*, 410 S.C. at 470, 765 S.E.2d at 130. Moreover,

neither of these reports are of such a weight and quality that the "interest of justice" requires Applicant's guilty plea to be vacated. Contrary to Applicant's assertion, the ballistic report indicates the recovered cartridge casing matched the murder weapon—a Hi-Point 9 mm Luger caliber pistol—and that the recovered bullet's physical characteristics were most consistent with bullets loaded into the Luger. The microscopic comparison of the bullet with test bullets was inconclusive. The G.S.R. report indicates the victims hands tested negative for gunshot residue. Nothing in the record or plea transcript mentions G.S.R. results and Applicant does not allege how the lack of G.S.R. on the victim's hands induced him to plead guilty.

Witness Intimidation

Applicant next alleges his conviction is unconstitutionally invalid because the State intimidated a key witness. However, Applicant's current allegations involve unspecified "facts" regarding alleged witness intimidation that do not satisfy either requirement under *Jamison*. He contends a purported letter from DeShawn Brown and alleged transcript of the videotaped statement of Brown to law enforcement support this claim. Applicant failed to provide a copy of said transcript. The only document in the materials provided by Applicant mentioning Brown's videotaped statement is the first page motion filed by defense counsel to obtain written transcripts of "all videotaped interviews of the Defendant and other persons . . ." The outcome of this motion is unclear.

However, Brown's written statement to the Dorchester County Sheriff's Office certainly implicates Applicant as the shooter of the victim. Nothing in the record or materials provided by Applicant indicate the solicitor pulled Brown from the stand and threatened him with LWOP, which apparently caused Brown to implicate Applicant. The letter Applicant allegedly received from Brown is not dated and is extremely vague. Thus, like the SLED reports, none of the

documents provided by Applicant in support of his witness intimidation claim are of such a weight and quality that the "interest of justice" requires Applicant's guilty plea to be vacated. *Jamison*, 410 S.C. at 470, 765 S.E.2d at 130.

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 discovery of the SLED reports does not constitute newly-discovered evidence. With due diligence, Applicant could have discovered the report and raised this issue in his prior PCR actions—Applicant cannot raise this allegation now under the guise of "newly-discovered evidence." Nor has Applicant provided any evidence of witness intimidation beyond his own self-serving statements. Applicant has ultimately failed to meet his burden under *Jamison*, and this application must be summarily dismissed.

B. Statute of Limitations

This Court finds this action must be summarily dismissed for failure to comply with the filing procedures of the Act, which states the following:

> (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(A)–(C).

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. 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." *See Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 ("Ignorance of the statute of limitations is not an excuse for late filing . . ."); *Sutton v. State*, 361 S.C. 644, 648, 606 S.E.2d 779, 781 (2004) (declining "to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005).

As discussed in Section A, *supra*, Applicant has failed to make a *prima facie* case of newly-discovered evidence. Therefore section 17-27-45(C) does not apply. Section 17-27-45(A) provides that an applicant must file his application within one year after the entry of a judgment of conviction. Here, Applicant was convicted on November 14, 2009. This application was filed on May 14, 2019—almost *ten years* after the requisite filing period expired.

Accordingly, this action must be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See*

Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

C. Successive and *Res Judicata*

This Court finds this action must further be summarily dismissed because it is successive to Applicant's three 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 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, Applicant's current allegations of ineffective assistance of counsel and *Brady* violations were raised and ruled upon in his previous post-conviction relief applications. Because the remaining allegations *could have* been raised in Applicant's previous proceedings, this action 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 Cas. 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.*; *Foxworth*, 275 S.C. 615, 274 S.E.2d 415.

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 had a full opportunity to litigate all of his claims in his previous PCR actions. He has failed to show that a successive application is appropriate or why he could not have raised these claims in his prior collateral actions; thus, these allegations are successive and barred under section 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)). Further, the finality of the previous

court's rulings should be respected, and this Court must summarily dismiss these allegations as barred by the principles of *res judicata*.

D. *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*, 366 S.C. at 140, 620 S.E.2d at 745 (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 *ten years* after he was convicted. *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.

Records of the testimony taken at trial before Applicant elected to plead guilty—including the testimony of DeShawn Brown—are almost certainly no longer available. *See, e.g.*, Rule 607(i), SCACR (court reporter only required to retain records for five years). 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*.

E. 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. . . . [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 (citations omitted).

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*, 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.

401 U.S. 667, 691 (1971) (Harlan, J., concurring 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 repeated attempts to litigate his convictions and sentences through successive and time-barred applications is contrary to the recognized need for finality of litigation.

IV. CONCLUSION

Pursuant to section 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
Lillian L. Meadows
Post-Conviction Relief Division – 1st 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 24th day of September, 2021.

EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina