

STATE OF SOUTH CAROLINA )  
 COUNTY OF CLARENDON )  
 )  
 )  
 Jeremy Sweat, #326997 )  
                                   Applicant, )  
 )  
                                   v. )  
 )  
 State of South Carolina, )  
                                   Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

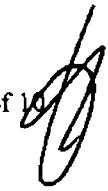
Case No.: 2018-CP-14-000463

**CONDITIONAL ORDER OF  
 DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Jeremy Sweat (Applicant) on November 7, 2018. Respondent made its Return, requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the October 2007 term of the Clarendon County Grand Jury for kidnapping, criminal sexual conduct, assault and battery with intent to kill (ABWIK) (2007-GS-14-0364), and a separate indictment of kidnapping and criminal sexual conduct, first-degree (2007-GS-14-0363). Applicant was represented by Harry Devoe, Jr., Esquire. On March 10, 2008, Applicant entered a guilty plea before the Honorable George C. James, Jr., then-Circuit Court Judge. Applicant was sentenced to concurrent terms of thirty (30) years each for Criminal Sexual Conduct (First Degree) and Kidnapping (2007-GS-14-0363). He was also sentenced to thirty (30) years for Kidnapping, to twenty (20) years for ABWIK, and to thirty (30) years for Criminal Sexual Conduct (2007-GS-14-0364). The sentences for 2007-GS-14-0364 were to be served concurrently with those for 2007-GS-14-0363 but consecutively to each other. Applicant filed a notice of appeal

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on April 7, 2009. The appeal was dismissed on June 19, 2009, for failure to establish any preserved issues for review. The remittitur was sent July 6, 2009.

*First Post-Conviction Relief Action: 2010-CP-14-0076*

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel – conflict of interest."
2. "Involuntary guilty plea – Involuntary confession."
3. "Disparity in sentencing of co-defendant 8<sup>th</sup> Amendment violation."

In an amended application, Applicant set forth the following grounds for relief:

The amended Application specifically alleges that:

1. Defense Counsel was ineffective for failing to move to compel discovery when it was not timely produced and for failing to sufficiently review the discovery with the Applicant prior to the entry of his guilty pleas;
2. Defense Counsel was ineffective for allowing the Court to go forward on the Applicant's guilty pleas and failing to present adequate arguments and authority in support of his motion to withdraw those pleas, where the Applicant expressed to the Court and Defense Counsel, his confusion over the charges being pled to;
3. Defense Counsel was ineffective for failing to obtain and review the audiotapes of the statements to law enforcement, attributed to the Applicant, that were damaging to the Applicant's case;
4. Defense Counsel was ineffective for failing to inform the Applicant of the procedures available to him at trial by which he could challenge the admissibility of his statements to law enforcement, that fact that even if the statements were admitted the jury would have to make a predicate finding that the statements were voluntarily made and that any unfavorable ruling of the lower court concerning those statements could be reviewed by a higher court on appeal; and
5. Defense Counsel was ineffective for offering information to the court, prior to the Applicant's sentencing, that the Applicant had been removed from the county jail for verbally abusive behavior.

Respondent subsequently filed its Return.

An evidentiary hearing into the matter was convened on March 22, 2012, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Christina Dixon

Parnall, Esquire. Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Harry Devoe, Esquire and former assistant solicitor Amy Land, Esquire. The Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and exhibits introduced at hearing. By Order dated July 5, 2012, the Honorable W. Jeffrey Young denied and dismissed the application with prejudice.

*Motion to Reconsider and Appeal of Denial of First Post-Conviction Relief Action*

PCR counsel filed a Rule 59(e) SCRCPP, Motion to Alter or Amend the order of dismissal on November 5, 2012. In an order filed November 6, 2014, Judge Young denied the motion. PCR appellate counsel filed the notice of appeal on December 4, 2014. On June 26, 2015, Laura R. Baer, Appellate Defender with the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, asking:

I. Whether the PCR judge err in finding plea counsel effective where he coerced the plea by advising Petitioner that he would receive a sentence of life imprisonment if he went to trial despite the fact that none of the offenses for which Petitioner was charged were punishable by more than thirty years?

II. Whether the PCR court erred in finding plea counsel effective where he offered uncorroborated information to the court that was inconsistent with his own theory of mitigation and Petitioner was prejudiced in that he received an aggregate sentence of eighty years, which was double the State's forty year recommendation?

On October 12, 2015, Assistant Attorney General Daniel Gourley filed the State's Return to Petition for Certiorari.



In an order dated June 16, 2016, the Supreme Court denied the petition. The court issued a remittitur on July 5, 2016. The Clarendon County Clerk of Court filed the remittitur on July 8, 2016.

*2014 Federal Habeas Action*

On or about September 1, 2016, Applicant filed a federal habeas corpus action. In the *pro se* Petition for Writ of Habeas Corpus, Applicant alleged the following:

Ground One: "My attorney coerced me to plea by telling me and my family three days before the plea"

Supporting Facts: "My attorney coerced me to plea by telling me and my family that if I pled I would get parole and if I went to trial I would get a life sentence. The detective for the sheriff's office of Clendon County coerced my confusion by telling me that if I confused that he would let me go his partner even."

(See Habeas Petition, (errors in original).)

Applicant filed various other attachments to his petition, alleging various other claims. On October 24, 2016, the State filed a Return and Motion for Summary Judgment. On July 10, 2017, the Honorable Mary Gordon Baker, United States Magistrate Judge, issued a Report and Recommendation recommending the State's Motion for Summary Judgment be granted and Applicant's habeas petition be dismissed with prejudice. Applicant subsequently filed an objection to the Report and Recommendation. United States District Judge J. Michelle Childs issued an order adopting the Report and Recommendation, and the petition was dismissed on August 10, 2017. *Sweat v. Warden*, 2:16-cv-02695-JMC (D.S.C. filed August 10, 2017). It appears an appeal was filed in the United States Court of Appeals for the Fourth Circuit, which was subsequently dismissed.



## CURRENT APPLICATION

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

- (1) Involuntary Guilty Plea – “My plea was coerced both by my attorney and Danny Hame.”
- (2) Insufficiency of the Evidence:
  - a. Victim was “almost 20 at 15 or 16 years old when Rahim was willing to have sex with me”
  - b. Victim “lied in court”

On January 25, 2021, Applicant filed an additional application, which was filed as an amendment to this action by the Clerk’s Office as this action was still pending. In this amendment, Applicant raised the following issues:

- (1) “My plea was cahurst (sic).”
- (2) “My attorney told me and my family that I would get perrole (sic) and if I take it to trial I would get life.”
- (3) Confession was Unlawful – “Mr. Hame violated my Miranda rights...”
  - a. “I had no attorney at the time Ms. Amy and Mr. Hame got the confession.”
- (4) “Under a Gerstein hearing, the judge should have seen that victims were lying.”

Before this Court are the records from the Clarendon County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, documents pertaining to the prior PCR, PCR appeal, and federal habeas petition, the direct appeal records, and the current application for relief.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### Statute of Limitations

This Court finds this application must be summarily dismissed with prejudice 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. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, 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.”

Applicant was convicted and sentenced on March 10, 2008. The Remittitur from Applicant's direct appeal was issued on July 6, 2009. Accordingly, any application filed pursuant to S.C. Code Ann. § 17-27-45(A) was therefore due on or before July 6, 2010. This application was filed on November 7, 2018, over eight years beyond the statutory filing period. Therefore, this Court finds the application must be summarily dismissed with prejudice for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.



### Successive Applications

This Court 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.

Under this statute, 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. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). 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. 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient

reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and this Court must summarily dismiss this application with prejudice as successive to Applicant's previous PCR application.

### ***Res Judicata***

This Court finds this 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.* Thus, a successive claim, pursuant to Rule 12(b)(6), SCRPC, can be dismissed as barred by *res judicata*.

In this case, Applicant did assert or could have asserted the current allegations in his previous application for post-conviction relief. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this Court finds this application must be summarily dismissed with prejudice.

### **Failure to State a Claim**

This Court finds Applicant's claims challenging the sufficiency of the evidence must be summarily dismissed for failure to state a cognizable claim for relief. See Rule 12(b)(6), SCRPC (stating a defending party may move for summary judgment based on the plaintiff's failure to "state facts sufficient to constitute a cause of action").

In his application, Applicant asserts evidentiary challenges which are not cognizable claims for relief pursuant to section 17-27-20 of the South Carolina Code. Specifically, section 17-27-20(B) expressly states PCR "is not a substitute for. . . direct review of the sentence or conviction." PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." *Id.* at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). "The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981). "The plea admits all elements of the offense charged, 'leaves open for review only the sufficiency of the indictment and waives all other defenses.'" *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (quoting *State v. Munsch*, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985)). Applicant cannot attack the validity of the evidence by way of a post-conviction relief application. Moreover, Applicant waived his right to challenge the State's evidence by pleading guilty; therefore, he waived these and the various other procedural allegations as grounds for relief.



For these reasons and pursuant to Rule 12(b)(6), SCRPC, the Court dismisses Applicant's allegations pertaining to the confession and the evidence for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

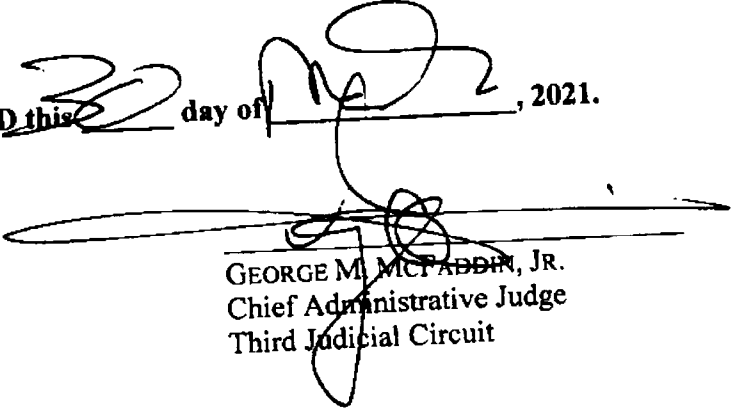
**CONCLUSION**

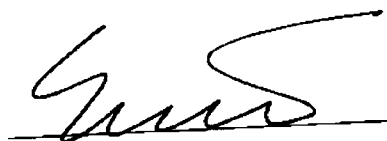
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Clarendon County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Brianna L. Schill, Esquire  
PCR Division – Second Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Clarendon 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 20 day of May, 2021.

  
GEORGE M. MCPADDEN, JR.  
Chief Administrative Judge  
Third Judicial Circuit

, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

March 16, 2021

The Honorable Beulah G. Roberts  
Clerk of Court, Clarendon County  
Post Office Box 136  
Manning, South Carolina 29102

**Re: Jeremy Shay Sweat, #326997 v. State of South Carolina**  
**2018-CP-14-00463**

Dear Ms. Roberts:

Enclosed please find the original **Return and Motion to Dismiss** of the Respondent, ~~with its accompanying attachments~~, in the above-captioned case, for filing in your office.

Sincerely,

*s/ Brianna L. Schill*

Brianna L. Schill  
Assistant Attorney General

BI.S/ks  
Enclosure

cc: Jeremy Shay Sweat, #326997  
The Honorable George M. McFaddin, Jr., Chief Administrative Judge

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Beulah Roberts, Clerk-Clarendon S.C.



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## Jeremy Shay Sweat VS State of South Carolina

<b>Case Number:</b>	2018CP1400463	<b>Court Agency:</b>	Common Pleas	<b>Filed Date:</b>	11/07/2018
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Post Convict Rel 500	<b>File Type:</b>	PCR
<b>Status:</b>	Dismissed	<b>Assigned Judge:</b>	Clerk Of Court C P, G S, And Family Court		
<b>Disposition:</b>	Dismissed per Rule 41(a)	<b>Disposition Date:</b>	04/06/2021	<b>Disposition Judge:</b>	McFaddin, George M. Jr.
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>		<b>Court Roster:</b>			

### Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Schill, Brianna L	Assistant Attorney General Post Office Box 11549 Columbia SC 29211				Defendant Attorney		03/18/2021
<input checked="" type="checkbox"/> State of South Carolina					Defendant		11/07/2018
<input checked="" type="checkbox"/> Sweat, Jeremy Shay					Plaintiff Pro Se		11/07/2018
<input checked="" type="checkbox"/> Sweat, Jeremy Shay					Plaintiff		04/06/2021

### Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Sweat, Jeremy Shay	Other	Filing		05/18/2021-09:22		
Sweat, Jeremy Shay	Order/Conditional Order of Dismissal	Order		04/06/2021-16:47		
Sweat, Jeremy Shay	Other/Reply to motion to dismiss	Filing		04/06/2021-13:06		
State of South Carolina	Return and Motion to Dismiss	Filing		03/18/2021-11:12	04/06/2021-11:12	
Sweat, Jeremy Shay	Amended/Amended PCR	Filing		01/25/2021-10:08	04/06/2021-09:58	
Sweat, Jeremy Shay	Post Conviction Relief	Filing		11/07/2018-14:47	04/06/2021-14:47	

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