

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
)
 Alonzo C. Jeter, III, #282902,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT
 Case No.: 2019-CP-11-0457
CONDITIONAL ORDER OF DISMISSAL

FILED IN THE OFFICE
 CLERK OF COURT
 2020 DEC 14 A 5b
 BRANDY W. MCHEE
 CLERK OF COURT
 CHEROKEE COUNTY SC

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Alonzo C. Jeter, III on June 19, 2019. Respondent made its Return, requesting the application be summarily dismissed.

I. Procedural History¹

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In September 2004, the Cherokee County Grand Jury indicted Applicant for two counts of possession of crack cocaine (2004-GS-11-925 and -926). Don Thompson, Esquire represented Applicant. On October 12, 2004, Applicant pleaded guilty as charged before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to three years' imprisonment for each charge, sentences running concurrently, suspended upon the service of time served and three years' probation. Applicant did not appeal his conviction or sentence.

¹ Applicant pursued several other actions pursuant to unrelated underlying convictions. Applicant pursued a PCR action out of Spartanburg County (2012-CP-42-0516) which was dismissed by written order clocked April 29, 2013. Thereafter, Applicant pursued another PCR action out of Cherokee County (2016-CP-11-293), which was dismissed by written order on July 27, 2017 and the motion for reconsideration denied on August 16, 2017. The 2016 PCR action was appealed on August 28, 2017, and remains pending.

First PCR Action: (2017-CP-11-0486)

Applicant subsequently filed his first PCR application on June 19, 2017, alleging:

1. "Breach of agreement between attorney, solicitor, and myself."
 - a. "My offenses [were] to merge as only a 1st offense."

Respondent made its return and motion to dismiss on December 1, 2017, requesting the case be summarily dismissed for untimeliness, failure to state a claim, and as barred by the doctrine of *laches*. On December 7, 2017, the Honorable J. Derham Cole, circuit court judge, issued the conditional order of dismissal. Applicant's objection to the conditional order of dismissal was filed on December 27, 2017. The Honorable R. Keith Kelly issued the final order of dismissal, summarily dismissing the case for untimeliness, failure to state a claim, and as barred by the doctrine of *laches*.

Applicant filed a *pro se* notice of appeal, date August 6, 2018. Applicant was requested to file a 243(c) explanation for the appeal by written letter from the Supreme Court of South Carolina dated August 10, 2018. Applicant filed his Rule 243(c) explanation on August 16, 2018. The Supreme Court of South Carolina dismissed the matter by written order dated January 11, 2019, for failure to show that there is an arguable basis for asserting that the determination by the lower court was improper. The remittitur was issued on January 29, 2019.

First Habeas Corpus Action: (2:19-cv-01945-MGL-MGB)

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code Section 2254 on July 16, 2019. Applicant set forth the following grounds for relief:

1. "Ineffective assistance of counsel – Sixth Amendment. Plea Counsel failed to ensure that the agreement and understanding of the terms of the plea were written on the sentencing sheet. Plea Counsel failed to make a motion for clarification of the sentence structure ensuring that the sentencing sheets reflected the agreement and understanding that my plea a[] conviction would merge and be considered one 1st offense conviction for enhancement purposes."
2. "Due Process Violation – The PCR Court and the South Carolina Supreme Court



violated my rights to Due Process as both courts failed to consider the [veracity] and genuine issues of material fact regarding my claims.”

3. “The lower courts violated my rights to the assistance of counsel pursuant to the Sixth Amendment of the United States Constitution and Rule 71.1(D) of the South Carolina Rules of Civil Procedure, thereby also violating my rights to due process as well.”

Respondent filed its return and motion for summary judgment on or around September 9, 2019. On January 14, 2020, Magistrate Judge Mary Gordon Baker issued the report and recommendation that Applicant’s petition be dismissed without prejudice for lack of subject matter jurisdiction or, in the alternative, stayed. *Jeter v. Tucker*, 2:19-cv-1945-MGL-MGB (D.S.C. filed Jan. 14, 2020). Respondent’s objection to the report and recommendation was made on January 24, 2020. Applicant’s reply to the objection was made March 6, 2020.

On March 5, 2020, the Court Judge adopted the Magistrate’s report and recommendation, dismissing the action without prejudice, denying Applicant’s motion for a certificate of appealability, and rendering any remaining motions as moot. *Jeter v. Tucker*, 2:19-cv-1945-MGL-MGB (D.S.C. filed Mar. 5, 2020).

A petition for permission to appeal was filed in the United States Court of Appeals for the Fourth Circuit on April 17, 2020. The Fourth Circuit Court dismissed the appeal by unpublished order on August 25, 2020. *Jeter v. Tucker*, 20-6456 (4th Cir. Aug. 25, 2020). Applicant filed a petition for rehearing and rehearing *en banc*, which was denied by written order, filed October 5, 2020. *Jeter v. Tucker*, 20-6456 (4th Cir. Oct. 5, 2020).

II. Current Action before this Court

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

1. “Ineffective Assistance of Counsel as guaranteed by the Sixth Amendment of the United States Constitution.”
 - a. “Plea counsel explained and assured me that my conviction would only be considered one 1st offense conviction of possession of crack for enhancement purposes. During



the plea colloquy this was discussed in depth between Applicant, Plea Counsel, Solicitor and Plea Judge and confirmed. This agreement and understanding was again stated at the time of sentencing Applicant to a concurrent sentence of three years imprisonment, suspended to three years' probation. Plea counsel failed to ensure that the terms of the plea were unambiguously written on the sentencing sheet to prevent any possible future discrepancy in regards of the terms, understanding and agreement of the plea. Plea counsel's failure to make a motion for clarification of sentence constitutes ineffective assistance."

2. "Applicant reserves the right to amend his PCR application; Rule 71.1(d)."

Applicant filed a motion on August 2, 2019, to include a number of documents as exhibits in the record, that relate to his prior trial court and prior PCR case records. Applicant filed another motion on October 28, 2019, requesting the court take judicial notice of twenty different case holdings. That same day, Applicant also submitted a request "for admission [of] genuineness of documents", where he requested another four documents as exhibits. Applicant requested a copy of his trial court case file from his prior attorney, which was filed with the clerk of court on January 16, 2020. On May 5, 2020, Applicant requested two additional exhibits, consisting documents from his prior habeas corpus actions, be admitted. Applicant filed a motion to appoint counsel on July 1, 2020. Applicant filed a memorandum in support of the motion for appointment of counsel on August 3, 2020. On October 19, 2020, Applicant filed an "affidavit of authenticity", asking the court admit his SCDC records into the record as an exhibit.

On November 20, 2020, Applicant filed a "supplemental memorandum in support of application for post-conviction relief." In this filing, he states he is not barred by the doctrine of *laches*, stating it is "repugnant to the discovery rule." Applicant states the discovery rule is determined by whether the facts could be exercised through "reasonable diligence" and that the PCR application has to be filed within one year of the discovery.² He also states that the case is

² This is interpreted as a newly discovered evidence claim.



not successive because he was denied his one bite of the apple in his original PCR and PCR appeals case. Applicant seemingly concedes that the original action was dismissed with prejudice and that he is now seeking to reassert the ineffective assistance of counsel claims he previously raised.

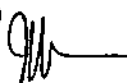
Before this Court are the Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, the PCR application, and prior PCR and federal habeas corpus records by reference.

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. 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:

Newly Discovered Evidence

In his amendment filed November 20, 2020, Applicant seemingly implies that he can bring this action under the newly discovered evidence section of the PCR Act without explicitly asserting he has new evidence or showing what the evidence consists of or why it entitles him to relief. This claim is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief 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 material fact not previously presented, the post-conviction relief 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).

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) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(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 v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant alleges he is entitled to relief under the newly discovered evidence section of the PCR Act. He does not, however, claim newly discovered evidence exists, what it consists of, why it could not have been discovered through reasonable diligence prior to entering the plea, or why it entitles him to a vacated plea. In fact, the only allegations he specifically raises in this action are the ineffective assistance of counsel claims that are largely identical to those previously raised. This is not newly discovered evidence.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that 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 that he is entitled to relief based on the information set forth and, therefore, he is not



entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Successiveness

The application shall 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 PCR 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, 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR application; thus, the current application is successive and barred



under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR application. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR application.

Statute of Limitations

The Court finds that this application must 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:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). Additionally, South Carolina Code Annotated Section 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 pled guilty to all charges on October 12, 2004. The application was therefore due on October 15, 2005. This application was filed on June 19, 2019, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.



Res Judicata

The application is similarly 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. Indeed, Applicant's allegations are seemingly identical to those raised to and ruled upon by the Court in his prior PCR action. That he now reframes the issue already raised as an ineffective assistance of counsel claim, is of no consequence. The underlying issue remains the same as before and, should be rejected by this Court. Accordingly, the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

IV. Conclusion

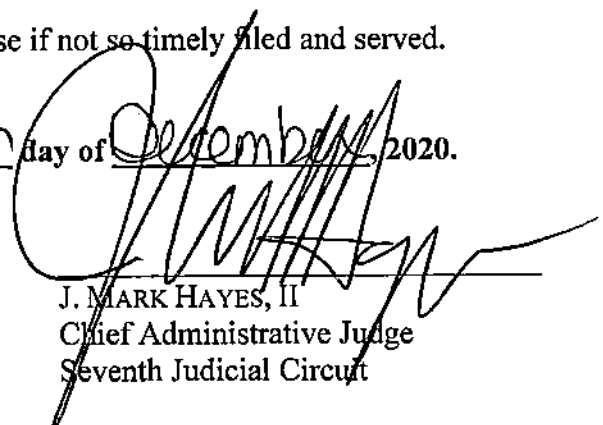
Pursuant to South Carolina Code Annotated Section 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service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

Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Seventh Circuit
P.O. Box 11549
Columbia, South Carolina 29211



Applicant is cautioned that his response to this order must be actually received by the Cherokee County Clerk of Court and opposing counsel within twenty days, 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 7th day of September, 2020.

A large, stylized handwritten signature in black ink, appearing to read 'J. Mark Hayes, II', is written over a horizontal line. The signature is highly cursive and extends above and below the line.

J. MARK HAYES, II
Chief Administrative Judge
Seventh Judicial Circuit

Cherokee, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 10, 2020

The Honorable Brandy W. McBee
Cherokee County Clerk of Court
Post Office Box 2289
Gaffney, South Carolina 29342

Re: Alonzo C. Jeter, #282902 v. State of South Carolina
2019-CP-11-0457

Dear Ms. McBee:

Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable J. Mark Hayes, II, in the above-captioned case, for filing in your office.

Should you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec

Enclosure

FILED IN THE OFFICE
CLERK OF COURT
2020 DEC 14 A 8:56
BRANDY W. MCBEE
CHEROKEE COUNTY, SC