

IN THE STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Presiding Judge, Third Judicial Circuit

Case No. 2018-CP-43-1070

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SEP 23 2022

Ronald Donald Dingle, Petitioner, S.C. SUPREME COURT

v.

State of South Carolina, Respondent.

Rule 243(c), SCACR (Explanation Required)

PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule 243(c), SCACR Petitioner at this time provides this Court with explanations as to why the determination of the lower court barring petitioner's post conviction relief as being successive as well as untimely under

the statute of limitations was improper;

The lower court has erroneously found that petitioner's application for post conviction relief, Case number: 2018-CP-43-1070 must be summarily dismissed because it is successive to petitioner's previous PCR applications. This is indubitably improper for the following reasons;

The lower court has mistakenly interpreted petitioner's Post Conviction Relief (PCR) action- 2009-CP-43-00031 as a "SECOND" PCR action. Petitioner filed (PCR) action- 2009-CP-43-00031 on January 8, 2009, Respondent's subsequent Return and Motion to Dismiss was filed and dated June 17, 2009, the conditional order of dismissal was signed July 14, 2009, the final order was filed and dated June 17, 2011. Finally, this court denied petitioner's petition for Writ of Certiorari on July 9, 2013. The remittitur

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was issued on July 25, 2013.

Petitioner in the present case meets the "sufficient reason" standard 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)

To reiterate, Petitioner in the present present case was granted Post Conviction Relief (PCR) in his initial PCR action - 96-CP-43-113. Judge Macaulay vacated all of the original sentences imposed against petitioner on April 17, 1995 for the murder and related offenses and remanded for sentencing consistent with the intent of the plea agreement or for a new trial. For no explainable reason to date, Judge Macaulay's orders granting petitioner's relief laid dormant in state court for well over six (6) years before the orders were given effect in state court.

The lower court record is replete with petitioner's legal endeavors from "Remand" up until this court's decision in State v. Dingle, 376 S.C. ___, 659 S.E.2d ___ 2008. Post Conviction Relief Action - 2009-CP-43-0031 was pursued to challenge violations of petitioner's constitutional rights that occurred at the "Remand" stage. Respondent at that time treated PCR action - 2009-CP-43-0031 as a "SECOND" instead of a "First" PCR action and petitioner was denied an evidentiary hearing, in which, would have technically been his "First Bite At The Apple" following State v. Dingle 376 S.C. ___, 659 S.E.2d ___ (2008) and the remittitur having been sent on April 16, 2008.

By denying petitioner an evidentiary hearing to prove the allegations raised in PCR action - 2009-CP-43-0031 and its attached "AMENDED" allegations hindered petitioner from properly

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raising and developing his allegations that also included violations of petitioner's Sixth (6th) and Fourteenth (14th) Amendment rights pursuant to The Constitution of the United States and Further Article I, section 14 of The South Carolina State Constitution.

Clearly, petitioner in the present case meets 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), constituting that petitioner's current application is not successive and barred under S.C. Code Ann. 17-27-90 and further that the lower court's decision is improper.

The Lower Court has apparently misapprehended or overlooked one extremely significant fact, that petitioner in the present

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case filed his initial Post Conviction Relief (PCR) action - case number: 96-CP-43-113 with the Sumter County Clerk of Court's Office on February 15, 1996 and was subsequently "GRANTED" Post Conviction Relief on December 5, 1997 pursuant to orders of the Honorable, Judge Alexander S. MacCaulay, in which are a part of this record. Judge MacCaulay's orders "GRANTING" petitioner's relief laid dormant in state court for over six (6) years before the orders were given effect in state court, severely prejudicing petitioner's legal endeavors moving forward.

As is reflected pursuant to the Conditional Order of Dismissal at page-3 - The South Carolina Supreme Court affirmed the circuit court's ordering ~~res~~ resentencing

petitioner in "2008" - State v. Dingle, 376 S.C. 643, 659 S.E.2d 101 (2008), petitioner's petition for Rehearing was denied, and the remittitur was sent on April 16, 2008, constituting that petitioner had until April 16, 2009 to file what was technically his first Post Conviction Relief (PCR) action, given the fact that he had previously been granted Post Conviction Relief (PCR), in reference to, his initial (PCR) action - 96-CP-43-113.

Petitioner filed what the Lower Court continued to refer to as a "SECOND" Post Conviction Relief (PCR) action - 2009-CP-43-0031 on January 8, 2009 well within compliance of the Uniform Post-Conviction Procedure Act, S.C. Code Ann 17-27-10 to -160, and again,

as is, reflected in the Conditional Order
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of Dismissal at page-3, the Lower Court concedes that petitioner clearly raised numerous grounds to include:

"The petitioner's sentence is void and the sentence is illegal and should no longer have equitable application based upon the change of law"

however, the Lower Court denied petitioner an evidentiary hearing to prove the allegations raised in PCR action-2009-CP-43-0031 and its attached amended allegations.

Finally, as is, replete pursuant to the record in this case, the myriad of procedural irregularities that have occurred in this case from the inception at the hands of the Respondent; petitioner has not been afforded Constitutional Due Process.

In CONCLUSION,

As is, reflected within petitioner's Amendment To Post-conviction Relief (PCR) Application dated September 25, 2018 and ^{filed} with the Sumter County Clerk of Court's Office on October 1, 2018 the current sentence that petitioner is serving ordered by Howard P. King, Judge, Third Judicial Circuit on December 30, 2005 without ordering petitioner back before the Court of General Sessions to RE-IMPOSE a new sentence and instead conducting an opinion style re-sentencing of petitioner without objection from defense counsel at that time is manifestly ILLEGAL and exceeds the maximum authorized by law. S.C. Code 16-3-20 (A) (1995) (A person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for

parole until the service of twenty years, provided, however, that when the state seeks the death penalty and an aggravating circumstance is specifically found beyond a reasonable doubt pursuant to subsection (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life imprisonment without eligibility for parole until the service of thirty years.

Considering the literal meaning of the above indicated statute, petitioner has served approximately ten (10) years beyond the General Assembly's intent that he serve prior to parole.

There is no question that Roper v. Simmons 543 U.S. ___⁽²⁰⁰⁵⁾ announced a new substantive rule of law and that it applies retroactively to petitioner's case see. Montgomery v. Louisiana,

136 S.Ct. 718, 734 (2016) ("Miller is no less substantive than are Roper and Graham"); *id.* (noting that new substantive rules are retroactively applicable). Roper, of course, ruled the death penalty categorically out of bounds for defendants who committed the relevant crime while a juvenile reasoning that death would be a grossly excessive punishment for any crime that was committed by a minor, Roper v. Simmons, 543 U.S. at 570-71, 573-74

By the time that petitioner was ILLEGALLY resentenced on December 30, 2005, Roper had already invalidated the state's ability to seek the death penalty against him, meaning that the resentencing judge could not have found that an aggravating circumstance applied, this of course, was independently unconstitutional

under the rule that it is illegal for a judge, rather than a jury, to find an aggravating factor necessary to the imposition of the death penalty. See Ring v. Arizona, 536 U.S. 584, 609 (2002), and therefore, that the mandatory-life structures of the statute could no longer be triggered. Yet petitioner was sentenced under them anyway, with the judge applying statutory provisions - after Roper had already been decided - that could not possibly apply to petitioner, now that it was obvious that the state could not seek the death penalty against him.

This is simply one of the host of constitutional mishaps that occurred at petitioner's resentencing on December 30, 2005, where the rationale from his original sentencing on April 17, 1995 was glibly repeated without making any adjustment for the significant

interim changes in the law.

In simply adopting wholesale the analysis of petitioner's first sentencing on April 17, 1995, petitioner's resentencing on December 30, 2005 incorporated the state's continued persistence in seeking the death penalty against him, as well as, the judge's finding of an aggravating circumstance - both of which were patently illegal, given the intervening decision in Roper. To invalidate petitioner's sentence, in other words, Roper does not need to be retroactively applied at all - his sentence was NOT YET FINAL. Petitioner is entitled to a vacatur of at least his sentence on this basis alone. The Standard For Extraordinary Circumstances is clearly reached in this case.

Petitioner respectfully requests that the South Carolina Supreme Court find that the determination of the lower court barring petitioner's postconviction relief (PCR) action as being successive as well as untimely under the statute of limitations improper.

Further petitioner requests that this Court order the immediate vacating of petitioner's current sentence, in which, is clearly ILLEGAL and unconstitutional and orders petitioner's immediate release from confinement and or in the alternative, vacate and correct petitioner's illegal conviction and sentence.

This 20th day of September, 2022

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Respectfully submitted,

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