

2021-06-03-01

# The Supreme Court of South Carolina

Michael T. Barnes, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2020-001360

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S.C. SUPREME COURT

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 ORDER
 

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This matter is before the Court on Petitioner Michael Barnes's common law petition for a writ of certiorari requesting an order permitting him to file a successive post-conviction relief (PCR) application. Barnes was convicted of murder and attempted armed robbery stemming from a drug deal and sentenced to thirty years' imprisonment. Following his direct appeal, which was dismissed by the court of appeals after an *Anders* review, Barnes attempted to pursue PCR within the requisite one-year limitations period. S.C. Code Ann. § 17-27-45(A) (2014). Despite Barnes mailing an application before the statutory deadline, the Charleston County Clerk of Court rejected it because Barnes purportedly used the wrong form. After Barnes refiled on the proper form, the PCR court dismissed the matter based on the statute of limitations, and we denied certiorari. We now grant Barnes's petition.

On December 1, 2009, the court of appeals issued the remittitur from his direct appeal. Barnes mailed his *pro se* PCR application on November 18, 2010, before the one-year limitations period expired. On November 29, 2010, Barnes received a letter from the Charleston County clerk's office indicating his application was being returned because he used the wrong form. Barnes subsequently filled out the correct form and mailed it, which the clerk's office received on January 7, 2011—thirty-seven days after the expiration of the limitations period. The State filed a return and a motion to dismiss seeking summary dismissal based on the expiration of the statute of limitations. The PCR court issued a conditional order of dismissal on the basis that the application was untimely and provided Barnes twenty days to respond. Barnes responded within the twenty-day window, explaining he initially attempted to file an application during the beginning of November but his efforts were impeded by a prison lockdown. Once correction officials lifted the lockdown, he tried again, but his application was not sent due to insufficient postage. Finally, he mailed the November 18th application that the clerk's office rejected. While Barnes did not attach the letter from the clerk's office in his response to the conditional order, he asserted he had this supporting documentation "if it's needed to bring truthfulness to these claims." Over four years later, the PCR court issued a final order, granting the State's motion to dismiss based on the statute of limitations and finding Barnes presented "no credible proof" of his allegations. Barnes filed a petition for certiorari, which the Court denied. In August of 2020, Barnes filed a common law petition for a writ of certiorari and requested an order granting him the permission to file a successive PCR application.

We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. *Miller v. State*, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. See 21 C.J.S. *Courts* § 335 (2021). Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. *Id.* ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions."). This includes the prohibition of performing any action contingent on deciding a question of law. *Id.* ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation . . ." *Id.* § 337. Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." *Hooker v.*

*Sivley*, 187 F.3d 680, 682 (5th Cir. 1999); see also *Gorod v. Tabachnick*, 696 N.E.2d 547, 548 (Mass. 1998) ("In the absence of an order from a judge, [clerks] may not refuse to accept a notice of appeal, even if they believe that no appeal is available or that the notice is untimely or otherwise defective."). Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it.

In this case, the clerk of court received Petitioner's PCR application sometime before November 29, 2010, within the one-year limitations period. Under South Carolina law, the filing of the application was complete upon the clerk of court's receipt of the application. See *Mose v. State*, 420 S.C. 500, 507, 803 S.E.2d 718, 721 (2017) (holding "the [PCR] application is deemed 'filed' when it is delivered to and received by the Clerk of Court" (citing *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001))). The clerk of court's ministerial duties required the clerk to accept the application for filing, give it the appropriate docket number, and distribute it as required by law. See S.C. Code Ann. § 17-27-40 (2014) ("The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.").

The clerk of court's error in returning the November 2010 application is compounded by the fact that Section 17-27-70(a) of the South Carolina Code (2014) requires, "[i]n considering the application, the court shall take account of substance, regardless of defects of form." While the General Assembly has deferred to the Court in prescribing the contents of the form, see S.C. Code Ann. § 17-27-50 (2014), nothing in our statutory provisions confers authority upon the clerk of court to unilaterally reject a PCR application even if the applicant used the wrong form. Instead, that determination is quintessentially a question of law reserved for a judge, who must consider such a question in light of the flexible pleading and amendment provisions of the South Carolina Rules of Civil Procedure. See *Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017) (discussing the flexible pleading provisions of the Rules of Civil Procedure, and in particular the liberal amendment provisions of Rule 15(a), SCRCP); *Love v. State*, 428 S.C. 231, 238-43, 834 S.E.2d 196, 199-202 (2019) (discussing the applicability of Rule 15, SCRCP, to PCR cases).

If the clerk of court had executed its ministerial function properly, the PCR court would have had the opportunity to consider the substance of the allegations and could have exercised flexibility in order to mitigate against a procedural default, especially one involving a *pro se* incarcerated litigant. See *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) ("[T]here are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims."); see also Rule 71.1(d), SCRCP (providing counsel "shall amend the application if necessary"); Rule 15(a), SCRCP (providing "leave [to amend a pleading] shall be freely given when justice so requires"). Barnes did not have that opportunity, and thus, he has never had his "one bite at the apple." *Odum v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'" (quoting *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991))).

Accordingly, we grant the petition, dispense with further briefing, hold Petitioner's application was timely filed in November 2010, direct Petitioner to file his successive application within thirty days of this decision, and instruct the parties and the PCR court to follow the procedures set forth in sections 17-27-70 and -80 of the South Carolina Code (2014).

IT IS SO ORDERED.

*Anders v. California*, 386 U.S. 738 (1967).

For example, in the context of real or personal property, section 30-9-30 authorizes a clerk of court to remove a sham document from the public records upon proper notice if the clerk reasonably believes the document to be fraudulent. S.C. Code Ann. § 30-9-30(B)(2) (2007).

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

s/George C. James, Jr. J.

Columbia, South Carolina  
June 3, 2021