

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

RECEIVED

Nov 21 2022

APPEAL FROM DILLON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Paul M. Burch

Case No.: 2018-CP-17-00465

Isaiah Brown,

Appellant,

Vs.

State of South Carolina ,

Respondent.

RULE 243(C) EXPLANATION

I. Pertinent Facts

On or about August 8, 2011, Appellant plead guilty to murder, criminal conspiracy, armed robbery, and possession of a weapon during the commission of a violent crime. An appeal was timely filed with the South Carolina Court of Appeals which confirmed the guilty plea on March 5, 2014. Thereafter, Appellant timely filed his original application for post-conviction relief (“PCR”) on September 10, 2014, which he alleged trial counsel was ineffective for failure to investigate the case against him; failure to prepare for trial; failure to discuss trial strategy, defenses and evidence with him; failure to advise him of the sentencing range; and failure to insure his presence at a meeting between trial counsel and the prosecutor. Appellant’s original application was denied, and the judgement was affirmed on appeal.

On or about May 15, 2018, Appellant filed a federal writ of habeas. He alleged the same issues argued in his original PCR application and one new ground for relief: the government violated his right to discovery under *Brady* for failing to disclose that statements of two jailhouse informants that the prosecutor referred as evidence supporting Appellant's guilty plea during Appellant's plea were false. The writ was ultimately denied on procedural grounds.

On October 15, 2018, Appellant filed a second PCR application alleging newly discovered evidence pursuant to Section 17-27-45(c) of the PCR Act. Specifically, Appellant alleged:

- (1) Brady violation due to the prosecutor's failure to disclose to Appellant prior to his guilty plea that statements given by two jailhouse informants, who alleged Appellant confessed to killing the victim in his case, were false because the informants were never housed at the same facility with Appellant.
- (2) Prosecutorial misconduct due to the prosecutor presenting the jailhouse informants' statements to the court in support of Appellant's guilty pleas and as a sentencing factor during sentencing when the prosecutor knew the statements were false.

The State filed a motion for summary judgment on the grounds that the second application was barred because it was successive, untimely, and failed to provide a *prima facie* showing that the alleged newly discovered evidence was discovered within one year of filing the application.

On January 3, 2019, the PCR court filed a conditional order declaring its intent to dismiss the second application unless Appellant provide sufficient factual and legal reasons within twenty days to the contrary. In response, Appellant filed a pleading titled, "Applicant's Objections to Conditional Order," in which he alleged that he discovered the evidence which the second application was based within one year of filing. Furthermore,

Appellant attached his affidavit, sworn to before a notary, that he discovered the evidence within one year of filing his second application. Additionally, Appellant filed a motion requesting an evidentiary hearing. Attached to the motion was an affidavit from James Alford, one of two jailhouse informants the State allegedly had witnessed Appellant confessing to committing the murder. Alford's affidavit stated that, "I James C. Alford has no knowledge of Isaiah Brown committing (sic) no murder on no one."

On or about July 29, 2019, the trial court issued a final order of dismissal dismissing Applicant's PCR application, and denying his motion for an evidentiary hearing. The trial court reasoned that:

"Applicant's unspecific assertion that he discovered the evidence 'within the past year' is simply inadequate to show he discovered the allegations at issue. In order to make a *prima facie* case of newly-discovered evidence, an applicant needs to assert with *some* specificity when it is that he discovered the information which provides the basis of the allegation. If not a particular date, then at least a week, month, or perhaps even the season of discovery, or information to provide a contextual inference of when discovery occurred."

On or about August 6, 2019, Applicant timely filed a rule 59(e) motion to alter or amend the final order of dismissal, reversing summary dismissal of his second application and denying his request for an evidentiary hearing.

ARGUMENT

Sections 17-27-45(c) and 17-29-90 of the PCR Act appears to provide two avenues by which an applicant may pursue a second application for relief. Section 17-27-45(c) states:

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.

SC Code Ann. §17-27-45(c) (2018). “[W]hen a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after 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.” *Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123 (2015).

Section 17-27-90 states in pertinent part:

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.***

SC Code Ann. §17-27-90 (2018). The phrase “sufficient reason” has been narrowly construed by the South Carolina Supreme Court in *Aice v. State* to mean situations where the new ground raised could not have been raised in the prior PCR proceeding. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392 (S.C., 1990).

“Summarily dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts, and (2) the application is not entitled to relief.” *Robertson v. State*, 418 S.C. 505, 519, 795 S.E.2d 29 (2016), *see also*, SC Code Ann. §17-27-70(c) (2018). “When considering the State’s motion for summary dismissal, where no evidentiary

hearing has been held, the PCR judge must assume facts presented by the application are true and view those facts in the light most favorable to the applicant.” *Id.*, quoting, *McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623 (2013). “Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.” *Id.*, quoting, *McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623 (2013). It is not relevant whether the PCR application may ultimately prove to be untimely, successive, or unsuccessful on the merits; an evidentiary hearing must be held if genuine issues of material facts exist as to whether the PCR application is successive, untimely, or not supported by sufficient evidence. *McCoy v. State*, 401 S.C.

Here, Applicant alleged that within a year of filing his second application for PCR relief, he learned that the trial solicitor violated *Brady* and its progeny, where if failed to disclose evidence that the two jailhouse informants, who alleged they overheard Appellant confessing to the murder he was charged, was never housed with Applicant and therefore couldn’t have heard what they alleged; and that the trial solicitor engaged in prosecutorial misconduct where he presented the informant’s statement to the trial court during the guilty plea and sentencing phase of Appellant’s case when he knew that the statements were false. If these allegation are true, which the court must presume they are, and view all reasonable inferences drawn therefrom in the light most favorable to Applicant for purposes of analyzing the State’s motion to summarily dismiss Applicant’s current PCR application, the first prong of the *Jamison* test is satisfied. *Jamison v. State*, 410 S.C. at 470 (2015). Applicant plead guilty to the currently charges that are the subject

of his application for PCR relief on August 8, 2011; however, he alleges that he learned of the facts and issues that are the basis of his current application within one year of filing for relief on October 15, 2018. Whether the facts as alleged by Applicant are true, which the State disputes, would require an evidentiary hearing.

Finally, the last prong of *Jamison* requires Applicant to show that the alleged newly discovered evidence is of such weight and quality that the interest of justice would require the guilty plea or sentence to be vacated if proven. Assuming the allegation that the trial solicitor violated Applicant's right to exculpatory evidence, offensive to *Brady* and its progeny, are true and the trial solicitor knowingly presented false information to Defendant and the trial court during the guilty plea and sentence proceedings, which the court must also presume are true, and view all reasonable inferences drawn therefrom in the light most favorable to the Applicant for the purpose of analyzing the State's motion to summarily dismiss Applicant's current PCR application, the second prong of the *Jamison* test is satisfied.

Appellant presented an affidavit from on the jailhouse informants confirming that he never witnessed Appellant confessing to the murder he was charged. Appellant alleged in this motions in opposition to the trial court's order dismissing his second application that he was induced to plead guilty by the allegation that two jailhouse informants heard him confessed to the murder he was accused and would testify to the same at trial if necessary; had he known that these alleged informant statements were false, given the fact that they never served in the same facility as Appellant, he never would have plead guilty and would have proceeded to trial.

CONCLUSION

The trial court erred in summarily dismissing Appellant's second application absent an evidentiary hearing because there are genuine issues of material fact in dispute and Appellant would be intitled to relieve if the allegations are proven.

Respectfully submitted,

/s/ Thurmond Brooker

Thurmond Brooker, Esq.
Brooker Law Firm
238 Warley Street
Florence, SC 29501
(843) 679-0056
Attorney for the Applicant

Florence, SC

November 21, 2022