

State of South Carolina
South Carolina Supreme Court

C/A 2018-CP-42-4193

Issac G. Lyles^{#209983}

Petitioner.

vs

State of South Carolina

Respondent

} 243(c) Explanation

This matter comes before this Court pursuant to a PCR application filed by the Petitioner on December 5, 2018 in the Spartanburg County Clerk of Court's office. Respondents moved to summarily dismiss the PCR application for untimeliness and successiveness which is in error for the following reasons:

The Due Process Clause provides that "no person shall be deprived of life, liberty, or property without due process of law" U.S. Const. Amend V. Similarly, the Fourteenth Amendment provides "nor shall any state deprive any person of life, liberty, or property without due process of law" id. Amend XIV § 1

Lyles was convicted for possession w/intent to distribute (PWID) Marijuana, trafficking in cocaine, trafficking in cocaine base, possession of a firearm or knife during the commission of or attempt to commit a violent crime, PWID Marijuana w/in proximity of a school, PWID cocaine within proximity of a school, and PWID crack cocaine within proximity of a school. Petitioner was tried before a jury on or about December 8, 2013 in the Spartanburg County General Sessions Court. The Honorable Roger L. Couch sentenced petitioner to LWOP on the above charges.

The petitioner's conviction and sentence was in violation of the United States Constitution, South Carolina Constitution and the laws of this state.

Petitioner is presently incarcerated pursuant to the orders of commitment of the Spartanburg County Clerk of Courts on the above charges.

It is important to note that the Petitioner is ~~not~~ challenging his prior convictions that the state used to enhance the above charges to LWOP. Untimeliness and successiveness does not apply to this case under the holdings of Jackson v. State, 331 S.C. 486, 489 S.E. 2d 915 (1997), to which the PCR court's order omits any reference to the holdings in Jackson, *supra*. [Current PCR Application]

In the post conviction relief (PCR) context as in the case at bar, petitioner may seek PCR, notwithstanding the expiration of a criminal sentence, so long as the petitioner suffers, or may suffer, collateral consequences resulting from the conviction. In Jackson, our Supreme Court reversed, finding the case was not moot, despite completion of the sentence, where the conviction may be used for impeachment and sentencing purposes in future criminal proceedings. Jackson, *supra*.

Petitioner has standing under Jackson and McDuffie v. State, 276 S.C. 229, 277 S.E. 2d 595. See also United States v. Morgan, 346 U.S. 502, 512-513, 74 S.Ct. 247, also United States v. Bernie, 228 F.Supp. 329, 332

The petitioner alleged in his PCR application that the results of his prior conviction still persist, even though the sentence has been fully served, he is entitled to an evidentiary hearing with the appointment of counsel to determine whether or not he has been prejudiced.

On March 21, 1994 petitioner pled guilty to first degree burglary (94-65-42-0319) voluntary manslaughter (94-65-42-0320) and PWID 94-65-42-1190 and was sentenced to 25 years on each charge. See Exhibit #4 Petitioner was sentenced on the same day for the above charges.

Petitioner have submitted above the true and accurate facts of his prior convictions that he pled guilty to, which would be considered as one (1) strike for enhancement purposes. Petitioner request this Honorable Court to take judicial notice of adjudicated facts of his prior guilty pleas on March 21, 1994. The record will show that there was no intervening arrest on the prior charges or seperation of charges at the plea hearing on 3-21-94.

The respondent would have you, the Court to believe that the petitioner pled guilty to one charge of manslaughter. However, the respondents have intentionally misrepresented the true facts of the case on 3-21-94.

The respondent will try to have this Court to believe that petitioner only request a reconsideration of the judgment of his denial of PCR.

Petitioner have stated with certainty that he filed the instant PCR application pursuant to Jackson v. State, 331 S.C. 486, 489 S.E.2d 915, challenging his prior convictions that were used to enhance the LWOP sentence he is now serving. Jackson, supra and McDuffie v. State, 276 S.C. 229, 277 S.E.2d 595 is controlling in this case.

Petitioner would point out to this Court that in McDuffie, it was held that even though the sentence is fully served, the petitioner in this case is entitled to an evidentiary hearing to determine if he suffers any prejudice from the use of the prior convictions.

[Untimeliness and Successiveness]

Petitioner came up on his due process violation/information after thoroughly researching his prior convictions on or about June 5, 2018.

Shortly after making this discovery, Petitioner filed his second PCR action (2018-CP-42-4193) pursuant to the Discovery Rule in accordance to S.C. Code Ann. §17-27-45(c) McClay v. State, 401 S.C. 363, 737 S.E.2d 623; Coates v. State, 575 S.E.2d 557. Therefore, the issues raised in his present PCR application is timely filed.

Genuine issue of material facts exist to warrant appointment of counsel and a PCR hearing.

Petitioner avers that he has demonstrated sufficient reasons why his claims was not included in his prior PCR application and not discovered earlier. Jackson, *supra* and McDuffie is controlling.

There exist evidence of genuine issue of material facts not previously presented and heard that require vacation of applicant's sentence. Petitioner's sentence exceed the maximum allowed by law for the crimes convicted of.

The petitioner filed this PCR application within one year after date of actual discovery of fact on December 5, 2018 and after the date when the facts could have been ascertained by reasonable diligence S.C. Code Ann. § 17-27-20(A) and S.C. Code § 17-27-45(C) after research.

Petitioner motion this Honorable Court to appoint counsel pursuant to 71.1(D). Petitioner Lyles contended that Rule 71.1(D) SCRPC require the judge to appoint counsel for him or obtain his intelligent and knowing waiver of the right to counsel. Whitehead v. State, 310 S.C. 532, 426 S.E. 2d 315. The PCR court failed to appoint counsel to assist in this case

under Gary v. State, 557 S.E.2d 662 (In the interest of fairness, counsel should be appointed under Rule 71.1(d) when the state moves for dismissal under 17-27-45(A) and the applicant raises an issue of material fact regarding the applicability of the one year limitation.).

In United States v. Morgan, 346 U.S. 502, 512-513, 74 S.Ct. 247, the United States Supreme Court held:

Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected. As the power to remedy an invalid sentence exists, applicant in this case is entitled to an opportunity to attempt to show that this conviction was invalid. See United States v. Gernie, 228 F.Supp. 329, 332 quoting from Morgan, *supra*.

The applicant specifically objected to the proposed Conditional order of dismissal and the present proposed order because it is that of the attorney general whom choose to misrepresent the true and accurate facts of the case. The attorney general wants is trying to confuse the record and this Honorable Court with her findings of fact and conclusions of law. See Exhibit II.

The conditional order of dismissal and the proposed order for reconsideration is a verbatim copy of the asst. Atty general. The wholesale adoption of the state's advocacy position underscores the lack of judicial independence in this process. The need to grant a PCR hearing with the appointment of counsel is apparent.

Statute of limitation, successiveness and laches do not apply to this case under the holdings of Jackson v. State, supra and McDuffie v. State, supra. It would be a denial of due process to not appoint counsel and have a PCR hearing.

The decision to not appoint counsel in this case and have a evidentiary hearing would be an unreasonable determination of the facts in light of the evidence submitted and presented.

To allow the state to separate the above prior convictions that were negotiated and pled guilty to on the same day, and use them for enhancement purposes under the 3 strike rule have amounted to a violation of the Due Process Clause.

The attorney general have conceded to the exhibits that the applicant have submitted and presented, to include a verbatim copy of chelsey F. Marts proposed COD; applicant's NCIC report, Notice of Intent and Indictment #94-GS-42-0115, Exhibit "1-4"

The attorney general have not disputed any of the true and accurate facts and documents. Nor did the attorney general object to the applicant's motion for the appointment of counsel or the motion for a PCR hearing.

This Honorable Court should not allow the asst. att. General Marts to cherry pick the facts and contentions of this case. This Honorable Court should deny the respondents proposed order denying applicant's motion for reconsideration and proceed to a

PCR hearing because the respondent's Return and proposed order did not acknowledge any of the petitioner's 59(e) motion. See motion attached

The PCR court's decision was an unreasonable determination of the facts in light of the evidence submitted and his decision violated clearly established Federal law. See Jackson, supra; MacDuffie v. State, supra; U.S. v. Knergon, supra and United States v. Bernier, supra.

In support of petitioner's 243(c) explanation, petitioner submit the following documents to supplement his appeal/explanation.

- 1) motion to Alter/Amend for reconsider
- 2) Exhibit "7-4"
- 3) motion to supplement the prior 59(e) motion
- 4) motion for Appointment of Counsel
- 5) Affidavit in support
- 6) motion for PCR hearing (and/or 59(e) hearing)
- 7) Order Denying Applicant's motion for Reconsideration

conclusion

Although the term has been served, the results of the prior conviction may persist, subsequent convictions may carry heavier penalties, civil rights may be affected. As the power to remedy an invalid sentence exist, petitioner in this case is entitled to an opportunity to attempt to show that this sentence was invalid.

Petitioner request this Honorable Court to Remove this case back to the lower court (Spartanburg County) for a PCR hearing with the appointment of counsel.

Isaac Lyles 12/5/22

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S.C. SUPREME COURT