

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court Of Common Pleas
Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-43-0776

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MAR 13 2023

S.C. SUPREME COURT

JEREL MARQUIS HERIOT, #356193,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION FOR LEAVE TO MAKE
LOWER CIRCUIT COURT
MOTION FOR RELIEF OF
JUDGMENT
UNDER SCRPC 60(b)

Other Counsel of Record:

Danielle E. Dixon, Esquire
Assistant Attorney General
S.C. Attorney General
P.O. Box 11549

Columbia, SC 29211

- Counsel for Respondent

Jerel Marquis Heriot, #356193
E.C.I. F.1-170-A
610 Highway 9 West
Bennettsville, SC 29512
- Appellant Pro.Se.

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MEMORANDUM WITH CITATION OF
AUTHORITIES

1. Appellant Jerel Heriot (Appellant Heriot) serves and files this Memorandum without assistance of Counsel, due to Appellate Counsel not having been appointed as of below-noted date, and shows:

(a) - This Motion for Leave is submitted pursuant to This Court's holding in Hudson v. South Carolina Dept. of Highways and Public Transp., 324 S.C. 245, 246, 478 S.E. 2d 839, 840 (S.C. 1996), where Heriot seeks to file a Motion For Relief of Judgment under SCRPC 60(b) upon the December 9, 2022 Order at issue *sub judice*.

(b) - Leave should be Granted in the interest of justice as outlined below.

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· GROUNDS FOR GRANTING LEAVE

1. - This Court obtained Jurisdiction to entertain an Appeal of a lower Circuit Court Order dated December 9, 2022, because Appellant Heriot's PCR Attorney acted recalcitrantly to the obligation(s) within Heriot's PCR process, and if Leave is not granted to allow Heriot to file a Motion for Relief of Judgment under SCRPC 60(b), Heriot will not be able to clearly exhaust state remedies as required by 28 U.S.C.A. § 2254, on all available claims revealing Heriot is incarcerated in violation of law.

(a) - Appellant Heriot initiated his PCR action on May 16, 2022 by filing in the lower Circuit Court of Common Pleas for Sumter County.

(i) - Attorney Timothy L. Griffith, Esquire, was permitted to represent Heriot on the filed PCR action. As South Carolina law only requires a PCR Attorney to "... confer with the applicant..." (see SCRPC 71.1(d)) in order to "...insure that all available grounds for relief are included in the application and shall amend the application if necessary." (SCRPC 71.1(d)), Heriot submits that, for some base reason, Attorney Griffith

did not so amend meritorious claims into Heriot's PCR application.

(ii) - Heriot anticipates being allowed to receive Leave in this Court so that Heriot could return to the lower Circuit Court of Common Pleas for Sumter County to file a Motion for Relief of Judgment under SCRCP 60(b) upon the noted December 9, 2022 Order rendered upon Heriot's PCR action, due to there being very important claims that were not brought to the PCR court which will have to be addressed in that specific action in the event Heriot seeks remedies from his unlawful criminal convictions under 28 U.S.C.A. § 2254 in a Federal Habeas Corpus action. (see, e.g., Rose v. Lundy, 455 U.S. 509, 509, 102 S.Ct. 1198, 1199, 71 L.Ed. 2d 379 (1982) ("Title 28 U.S.C. §§ 2254 (b) and (c) provide that a state prisoner's application for a writ of habeas corpus in a federal district court based on an alleged federal constitutional violation will not be granted unless the applicant has exhausted the remedies available in the state courts."); Shinn v. Ramirez, 142 S.Ct. 1718, 1732, 212 L.Ed. 2d 713 (2022) ("When a claim is

unexhausted, the prisoner might have an opportunity to return to state court to adjudicate the claim.")).

(b) - Attorney Griffith's recalcitrant actions constitute 'excusable neglect' and even 'fraud' in context.

(i) - Attorney Griffith was not required to be "constitutionally effective" in representing Heriot in the lower PCR court (see Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987)), therefore, Attorney Griffith's failure to 'confer with Heriot then amend Heriot's PCR application' (as required by SCRCP 71.1(d)) will be alleged as a matter of 'excusable neglect' under SCRCP 60(b)(1).

(ii) - Attorney Griffith seemingly rushed to file the instant Appeal of the noted December 9, 2022 Order upon Heriot's PCR action, without attempting to secure the PCR record with all of Heriot's constitutional claims, denied Heriot an opportunity to be heard on his other important constitutional claims - namely, 'fraud that is extrinsic' in nature (see Chewning

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v. Ford Motor Company, 354 S.C. 72, C. SUPREME COURT
579 S.E. 2d 605 (S.C. 2003)) —,
and Attorney Griffith's action thereon
will be alleged as a matter of 'fraud'
under SCRCP 60(b)(3).

CONCLUSION

• This Court should thus allow leave from
the instant Appeal to allow Heriot to proceed
on a Motion For Relief of Judgment under
SCRCP 60(b) as outlined above, in the interest
of justice.

151 Jerel Marquis Heriot

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DATE