

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
Daniel D. Hall, Circuit Court Judge

Circuit Court Case No. 2018-CP-46-01650

Appellate Case No.: 2023-_____

Christopher Woody, 309141, Petitioner,
v.
State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

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May 2, 2023.

PETITION

Questions Presented

1. Is the PCR court's decision contrary to this Court's holding in Mose v. State, 420 S.C. 500 (2017)?
2. Did the PCR court erroneously apply S.C. Code Ann. § 17-27-45(A) and the doctrine of equitable tolling to the facts of this case?
3. Did the Petitioner make a sufficient showing to entitle him to an evidentiary hearing?

Procedural History

The Petitioner, Christopher Woody, was convicted by jury of murder, possession of a weapon during a violent crime, criminal conspiracy, and carrying a pistol unlawfully. The Petitioner was represented by John Delgado. Woody was sentenced to life imprisonment without parole for murder, five years imprisonment for possession of a firearm during the commission of a violent crime, five years imprisonment for criminal conspiracy, and one year imprisonment for unlawful carrying of a weapon, with all sentences to be served concurrently. Petitioner's convictions were affirmed on direct appeal. State. v. Woody, 2008-UP-534 (S.C. Ct. App. Filed Sept. 11, 2008). Certiorari was denied by order dated November 4, 2009. The Remittitur was issued on November 9, 2009. Petitioner filed a timely post conviction relief action on August 2, 2010 (2010-CP-46-03279). The circuit court issued an Order of Dismissal from which the Appellant petitioned for review which was denied on March 18, 2015 and Remittitur issued April 3, 2015. Petitioner filed for a Writ of Habeas Corpus in the U.S. District Court which was finally denied by unpublished order filed October 31, 2017, by the Fourth Circuit Court of Appeals.

The present action is the Petitioner's second post conviction relief case. Petitioner alleges

that the jurors were illegally influenced by someone entering the jury room and giving instructions to the jury outside of being on the record in open court. Petitioner further alleges that he was unaware of the improper jury contact until it was discovered by chance on May 31, 2017 during the investigation and preparation of his federal habeas corpus action. The Application for Post Conviction Relief in the present action was properly completed and delivered to the prison mail room on May 29, 2018. Petitioner contends that deliver to the prison mail room constituted filing of the application in this case for the purposes of determining the timeliness of the action pursuant to S.C. Code Section 17-27-45(C).

The PCR court dismissed Petitioner's action based on a finding that the Application for Post Conviction Relief was not timely filed.

Standard of Review

“Summary 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 applicant is not entitled to relief. S.C.Code Ann. § 17-27-70(b) and (c) (2003). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion. See S.C.Code Ann. § 17-27-80 (2003) (PCR actions are governed by usual rules of civil procedure); Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002); Al-Shabazz v. State, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000).” Leamon v. State, 611 S.E.2d 494, 363 S.C. 432 (S.C. 2005).

Discussion

I. THE ORDER OF DISMISSAL IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN MOSE V. STATE AND THE REASONING IN UNITED HOUSTON V. LACK.

During the Petitioner's federal habeas corpus action the Petitioner by chance discovered evidence that someone had entered the jury room and made impermissible comments to the jury off the record and unbeknownst to anyone in the courtroom, including the defense. The date of discovery was May 31, 2017, as evidenced by the affidavit of a private investigator which Petitioner attached to his application in this case. On May 29, 2018, the Petitioner filed the present action by placing the completed application with the prison mail room for mailing.

The PCR court's dismissal in this case is based on an error in calculating the one year time for filing a PCR based on after discovered evidence. The PCR court held as a matter of law that "an application for PCR is not deemed "filed" until it is delivered to and received by the Clerk of Court. The PCR court's ruling is in direct conflict with Mose v. State, 420 S.C. 500 (2017) . In Mose this Court held that the PCR court erred in dismissing Mose's PCR application as time-barred; even though the clerk date-stamped the application as "filed" three days after the one-year limitations period ended¹, since petitioner proved he delivered his application to prison authorities for mailing within one year of the date of his conviction. Under the same facts as in the present case this Court held in Mose that the limitations period was equitably tolled because he was prevented from timely filing due to circumstances beyond his control. Mose v. State, 420 S.C. 500, 504, 803 S.E.2d 718, 719 (2017).

The Court in Mose said: "Now, we must determine whether the statute of limitations

¹S.C. Code Ann. § 17-27-45(A)

should be tolled where the filing of a PCR application is delayed due to the processing of documents by prison authorities. As will be discussed, we are persuaded by the rationale behind the "Prison Mailbox Rule" and, therefore, hold that equitable tolling may be applied in this context if the defense is properly raised and the circumstances warrant." Mose v. State, 420 S.C. 500, 508, 803 S.E.2d 718, 722 (2017). In the present case Petitioner provided his properly completed application for post conviction relief to the prison mail room on May 29, 2018. Based on the date of discovery of the improper jury contact the statutory deadline for the Petitioner to file his application was May 31, 2018. Although placed with the prison mail room for mailing prior to the deadline the application was clocked in by the Clerk of Court on July 25, 2018. It is unknown why the application was not clocked in by the Clerk until July 25, 2018. Whether it was due to a delay in the prison mail room, the U.S. Postal Service, the Clerk's office, or a combination thereof may be undiscoverable at this point, but it is indisputable that the application was timely delivered to the prison mail room for mailing. The resulting delay in the entry of the application by the Clerk was entirely out of the Petitioner's control. This is exactly the situation presented in Mose. The application in Mose was provided to the prison mail room prior to the deadline for filing which Mose claimed satisfied the filing requirement. Likewise, the Petitioner here provided the application to the prison mail room prior to the deadline for filing claiming that this satisfied the timely filing requirement. Mose is clear that under these circumstances the Petitioner's application should be considered timely. The Conditional Order of Dismissal and Final Order of Dismissal are therefore in direct conflict with the facts and holding of Mose, as well as being contrary to the reasoning in Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988), which was cited by the Court in Mose.

In Mose the Court stated:

Instead, if a PCR applicant relies on the defense of equitable tolling in response to a motion to dismiss, the applicant must substantiate that the correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations and that any delay in the Clerk of Court's receipt of the application was due to processing. If the PCR judge determines that the applicant has presented a valid defense, then the statute of limitations shall be tolled until the application is delivered to and received by the Clerk of Court.

Mose v. State, 420 S.C. 500, 510, 803 S.E.2d 718, 723 (2017).

Here the Petitioner has substantiated the timely delivery of the application to the prison mail room. The Petitioner discovered the jury tampering issue on May 31, 2017 when private investigators spoke with a juror from the Petitioner's trial. S.C. Code Section 17-27-70(C) allows the filing of an otherwise out of time application for post conviction relief to be filed within one year of the discovery of new evidence. The application is signed and notarized on May 29th, 2018. The application bears the stamp of the prison mail room indicating that it was received on May 29, 2018. The record therefore conclusively shows that the Application in the present case was placed with the prison mail room prior to the statute of limitations. Even if the State disputed the actual date the Application was placed with the mail room, which it does not appear to do, the Petitioner would still be entitled to an evidentiary hearing on that issue:

"The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c). 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 applicant are true and view those facts in the light most favorable to the applicant. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80). 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. *Cf. Delaney v. State*, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977).

McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013).

Here, as in Mose, the record substantiates that the correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations. Any delay in the delivery or processing of the application until after the expiration of the statute of limitations was completely outside of the Petitioner's control. Equitable tolling therefore clearly applies.

In its analysis, the PCR court further found that the Petitioner was aware during the trial that "that jurors were being confused and intimidated *at the time of trial*" such that the issue should have been raised in the Petitioner's first PCR. (*Emphasis in original*). The court's finding confuses two completely unrelated issues and therefore its finding is unsupported by any evidence in the record. The Petitioner's comment in his affidavit indicated only that from his observations of the jury's demeanor during the trial that it appeared as though they felt intimidated by the actions of family members of the deceased. The jury's intimidation by the family members was known to everyone at trial as evidenced by the jury's note to the judge which was entered as Court's Exhibit 8 at the trial. But any intimidation the jury may have felt from the actions of the family members has absolutely nothing to do with the Petitioner's allegation in this case that unbeknownst to anyone in the courtroom someone involved in the proceedings entered the jury room and had a improper discussion with the jury off the record.

The Petitioner's reference in his affidavit in this case to jury intimidation related to the family members of the deceased was only an aside, and clearly not the basis of the present action. Here the Petitioner's case is based on the chance discovery that someone involved in the trial entered the jury room and had a discussion with the jurors about the case off the record and unbeknownst to the defense. The family member's behavior at trial is completely unrelated to the issue raised herein and therefore irrelevant to the analysis of the timeliness of the Petitioner's present action. The critical event for an analysis of the timeliness of Petitioner's action is the

May 29, 2017 discovery that there had been some improper contact with the jury in the jury room. The PCR court therefore erred in its application of S.C. Code Section 17-27-45(C) and the doctrine of equitable tolling.

II. THE PETITIONER PRESENTED SUFFICIENT EVIDENCE OF A CONSTITUTIONAL VIOLATION TO ENTITLE PETITIONER TO AN EVIDENTIARY HEARING.

The Petitioner has alleged improper contact between an unknown person and the jury. Specifically, in his *pro se* application the Appellant alleges several legal grounds for the action: “(a) violation of 6th Amendment right to a fair trial; (b) violation of the sanctity of the jury system; (c) violation of 5th and 14th Amendment rights.” As to the facts supporting the causes the Petitioner alleged: “(a) Illegally influencing the jurors; (b) Invading the jury room and giving instructions outside of open court.” These allegations are sufficient to establish a *prima facie* case and thus require an evidentiary hearing. If true, the Petitioner is entitled to relief. "In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences." Kelly, 331 S.C. at 141, 502 S.E.2d at 104; "A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury; and, in order to fully safeguard this basic protection, it is required that the jury render its verdict free from outside influences." State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979).

The Application is made upon information and belief. The burden of proving the facts alleged upon information and belief is through the process of the evidentiary hearing. The information and belief is based on statements made by a juror to a private investigator. An affidavit by the juror or the private investigators was not required under the rules or necessary for the pleadings to be sufficient to entitle the Petitioner to an evidentiary hearing. The private

investigators' affidavit was understandably included by the Petitioner with his application in an attempt to add some credibility and understanding to his allegations. Whether or not the affidavits do that is immaterial as to the sufficiency of the allegations in the Application. The allegations in the Application standing alone are sufficient to require an evidentiary hearing.

The Conditional Order of Dismissal also finds that the Petitioner has failed to establish the five-pronged test for newly discovered evidence based on an analysis of the weaknesses in the affidavits presented. The Court's ruling in this regard is contrary to the Supreme Court's holding in McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013) under an almost identical factual scenario:

The State filed a motion to dismiss Petitioner's PCR application, arguing it was successive and barred by the statute of limitations. Regarding successiveness, the State claimed Petitioner failed to present sufficient reason why he could not have raised the current allegations in his previous PCR application. Further, the State contended the application was untimely because it was not filed within the one-year limitation period applicable to PCR actions. The State also contended Petitioner's claim "that he has discovered evidence that he was not tried by a fair and impartial jury lack[ed] merit" because Petitioner failed to provide any corroborating information or demonstrate how his allegations satisfied the five-pronged test for newly discovered evidence.

McCoy v. State, 401 S.C. 363, 367-68, 737 S.E.2d 623, 625 (2013).

In McCoy the PCR judge was reversed based on a finding that the allegations of jury tampering alone were sufficient, despite the lack of any corroborating evidence, to require an evidentiary hearing: "The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c)." McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). The allegations in the present case, as in McCoy were sufficient to require an evidentiary hearing. The investigator's affidavit were not

essential to the Application nor the granting of an evidentiary hearing. The Court's Conditional Order of Dismissal and Final Order of Dismissal are therefore in error.

Conclusion

Based on the foregoing the decision of the circuit court should be reversed and the matter remanded for an evidentiary hearing.

Respectfully submitted,

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