

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 11 2023
S.C. SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

MICHAEL T. QUARLES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001534

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in summarily dismissing petitioner's second PCR application as successive without hearing any testimony or allowing any evidence?

STATEMENT

In May 2013, an Aiken County grand jury indicted petitioner for armed robbery and kidnapping. App. 388-91. On May 14, 2013, petitioner's case was called to trial before the Honorable Doyet A. Early, III, and a jury. App. 1-247. Michael Chesser represented petitioner. App. 1. Assistant solicitors Nicholas McCarley and Kevin Malony represented the state. App. 1. The jury found petitioner guilty as indicted. App. 239, ll. 5-17. Judge Early sentenced petitioner to concurrent terms of twenty-eight years' imprisonment for armed robbery and twenty-eight years' imprisonment for kidnapping. App. 245, ll. 20-25. On July 1, 2015, the South Carolina Court of Appeals affirmed petitioner's convictions and sentences in an unpublished opinion. *State v. Quarles*, Op. No. 15-UP-317 (S.C. Ct. App Filed July 1, 2015).

Thereafter, petitioner filed his first application for PCR. App. 248-53. PCR counsel, Lance Boozer, filed an amendment to the PCR application alleging trial counsel failed to object when the trial court improperly considered petitioner's decision to have a jury trial as a factor during sentencing.¹ App. 259. An evidentiary hearing was held before the Honorable Diane Goodstein on May 25, 2016. App. 260-306. Lance Boozer represented petitioner and Julie Coleman, assistant attorney general, represented the state. App. 260.

On August 26, 2016, Judge Goodstein signed an order granting PCR. App. 307-312. The court held trial counsel was ineffective where he failed to object when the trial court considered petitioner's decision to have a jury trial during sentencing. App. 309. The court found petitioner was entitled to a new trial on this basis. App. 311. The court found counsel was ineffective for failing to object to the trial court's sentencing and not preserving the issue for appellate review. App. 310. The court found "[b]ecause of counsel's failure to object and

¹ Mr. Boozer alleged ineffective assistance of trial counsel on three additional grounds. App. 259.

otherwise preserve the issue for appellate review, this [c]ourt lacks confidence in the outcome of the proceedings.” App. 310-11. The PCR court denied relief on all other allegations. App. 311-12.

Subsequently, the state filed a motion to reconsider arguing petitioner was not entitled to a new trial but was instead entitled only to resentencing. App. 313-15. On May 24, 2017, a hearing on this matter was held before Judge Goodstein. App. 313-23. On June 22, 2017, Judge Goodstein signed an amended order partially granting PCR and denying the remaining allegations. App. 325-31. Judge Goodstein found petitioner was entitled only to resentencing and not a new trial. App. 329.

On March 2, 2018, petitioner appeared before Judge Keesley for resentencing. App. 332-48. David Hayes represented petitioner and William Weeks, deputy solicitor, represented the state. App. 332. At the conclusion of the hearing Judge Keesley sentenced petitioner to concurrent terms of twenty-five years’ imprisonment. App. 347, ll. 5-11; 349-50. The South Carolina Court of Appeals affirmed in an unpublished opinion. *State v. Quarles*, Op. No. 20-UP-080 (S.C. Ct. App. March 25, 2020).

On June 10, 2020, petitioner filed a second application for PCR. App. 351-56. On May 26, 2022, a hearing was held on the state’s motion to dismiss before the Honorable Maite Murphy. App. 373-81. On August 30, 2022, Judge Murphy signed an order granting the state’s motion to dismiss. App. 382-87. Judge Murphy found petitioner already raised the allegations in a previous application and that the court decided in Petitioner’s favor, thus he could not raise them in a second application. Judge Murphy barred Petitioner’s application as successive. App. 386.

This petition follows.

ARGUMENT

The PCR court erred in summarily dismissing petitioner's second PCR application as successive without hearing testimony or allowing any evidence.

Relevant facts

In petitioner's application for PCR he asserted defense counsel at resentencing was ineffective for failure to request new trial during his resentencing before Judge Keesley. App. 353. At the May 26, 2022, hearing no allegations or evidence were heard by the PCR court, only arguments of counsel. App. 373-81. The assistant attorney general moved to dismiss petitioner's application for PCR arguing under res judicata, Judge Keesley would not have been able to overturn Judge Goodstein's prior ruling that the proper remedy was resentencing and not a new trial. App. 377; 379. PCR counsel contended that contrary to precedent set forth in *Aice v. State*,² under *Martinez v. Ryan*,³ petitioner's claim was not successive. App. 377-78. The assistant attorney general contended *Martinez* was inapplicable in petitioner's case. The court granted the state's motion and ruled the application was barred as successive. App. 378-79.

Discussion

"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 of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." *Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing *Al-Shabazz v.*

² *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991).

³ *Martinez v. Ryan*, 566 U.S. 1 (2012).

State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000)). Likewise, the appellate courts must view the facts in the same fashion when reviewing the appropriateness of a dismissal. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 494. “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.” *McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) (internal citations omitted) (emphasis added).

In *McCoy, supra*, the South Carolina Supreme Court reviewed the summary dismissal of McCoy’s second PCR application which alleged a newly discovered material fact, specifically that a juror had withheld information about her relationship to the prosecuting solicitor’s office. *McCoy* at 366, 737 S.E.2d at 625. The state argued McCoy’s application was barred as untimely and successive because McCoy had failed to present sufficient reason why he could not have raised the juror allegation in his first PCR application. *Id.* at 367-68, 737 S.E.2d at 625-26. The PCR court granted the state’s motion for summary dismissal, finding that the application was untimely because it had not been filed within one year of McCoy’s trial. The PCR court also found the application successive stating McCoy had not demonstrated a sufficient reason why the juror allegation could not have been raised in his first PCR application. *Id.*

The Supreme Court reversed the PCR court holding that summary dismissal of McCoy’s second application had been improper because genuine issues of material fact existed as to whether the application was successive or barred by the statute of limitations. *Id.* at 368, 737 S.E.2d at 626. In reaching its decision the Court noted that the PCR court improperly calculated McCoy’s original PCR application deadline using the date of his conviction, instead of the date

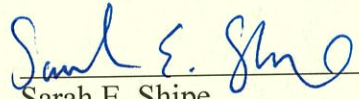
that the appellate court had issued the remittitur, and that the PCR Court had failed to consider section 17-27-45(C).

In *Tilley v. State*, 334 S.C. 24, 511 S.E.2d 689 (1999), Tilley entered a guilty plea to kidnapping, first degree criminal sexual conduct, and possession of a firearm during the commission of a violent crime. *Tilley*, at 26, 511 S.E.2d at 690. At the time of his plea Tilley believed he was parole eligible. Tilley received a letter from SCDPPPS on October 26, 1995, informing him that he was not eligible for parole. *Id.* Within a month of receiving the letter Tilley filed a fourth PCR application alleging his plea was involuntarily entered because he was not fully aware of the no-parole consequences of his guilty plea. *Id.* The state argued that Tilley's application should be dismissed as successive. The Supreme Court held that Tilley's application concerning parole eligibility was not successive because he could not have raised the claim prior to being informed of his parole ineligibility on October 26, 1995. *Id.* at 28, 511 S.E.2d at 691.

The PCR court erred in summarily dismissing petitioner's PCR application. The PCR court's ruling was premature where there had been no facts alleged when it summarily ruled the application was successive. Additionally, Petitioner's application was not successive because he could not have raised this claim prior to having the resentencing hearing. Petitioner is entitled to a remand for an evidentiary hearing on this matter.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of May, 2023.

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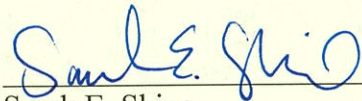
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael T. Quarles states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Maite Murphy, which was held on May 26, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Michael T. Quarles.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of May, 2023.

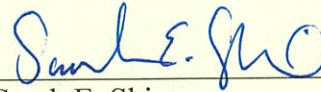
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 11th day of May, 2023.