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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Jasper County Court of Common Pleas  
Chief Administrative Judge, Carmen T. Mullen  
C/A NO 2021-CP-27-00444

State of South Carolina.....Respondent

v.

Antonio Demazino Scott, # 320475.....Appellant

243 EXPLANATION

This cause is before this court pursuant to Rule 243, SCACR, to explain why the ruling of the lower court was improper. In this matter the Respondent alleges that Petitioner's filing procedure does not comply with the Uniform Post Conviction Act, and Petitioner filed his application too late to be properly filed. In this case Petitioner was never appointed counsel and he was never given a chance to present his claims to the PCR court. Odom v State, 337 S.C. 256, 523 S.E.2d 753 S.C. 1999).

Petitioner filed his PCR January 15, 2016, and when he did not hear anything from the PCR court, he wrote the Supreme Court of South Carolina on September 13, 2021. In that letter he mention that he wrote a letter inquiring about his PCR application any amended Return was January 24, 2020. Petitioner noted he received absolutely no reply from the Clerk of Court. Petitioner said, he mailed another PCR Application on September 9, 2021, requesting a copy just for the record. By request of the clerk of court the PCR application was resubmitted and sent to the Clerk's attention, he she said she would make sure it was process in a timely manner. See Letter dated September 30, 2021.

This court was also sent a copy. There exist a genuine issue of material fact whether Petitioner's first PCR that he sent to the Clerk was misplaced and never filed and did the clerk letter and stating resubmit meant, she just did not filed the first Application. 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). Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Court of Appeal 2008) quoting Leamon v State, 363 S.C. 432, 611 S.E.2d 494 (2005). 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 thos facts in

the light most favorable to the applicant. It quoting Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). Likewise, this court must view the facts in the same fashion when reviewing the appropriateness of a dismissal.

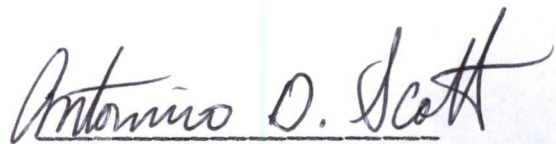
The applicant did not alleged that he attempted to filed a PCR application in 2016, he alleged that he did and the clerk of court for Jasper County in her letter said, please resubmit your application and send it to my attention.

The applicant request his case be remanded for a full hearing arguing the statute of limitations. See Barnes v. State, 433 S.C. 399, 859 S.E.2d 260, where the court said, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failure, including the document is contained on the proper form, because the Clerk's role is ministerial in this respect, the clerk shall not be concerned with the merit of the paper or with their effect and interpretation. See also Mose v State, 420 S.C. 500, 803 S.E.2d 718, where the judge rule the application was untimely, and this court overrule the lower court's findings.

#### CONCLUSION

This concludes applicant's 243(c) explanation, and applicant prays for a remanded for a hearing.

DATED  
August 31 2023

  
Antonio D. Scott