

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Aug 17 2023

S.C. SUPREME COURT

Appeal from Beaufort County  
The Honorable Maite Murphy, Circuit Court Judge

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ABDIYYAH BEN ALKEBULANYAHH  
aka TYREE ROBERTS, #6012

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2019-000529

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PETITION FOR REHEARING

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On August 2, 2023, this Court issued its unpublished per curiam Opinion No. 2023-MO-012. Therein, this Court reversed the decision of the lower court to dismiss Petitioner's successive PCR application. Pursuant to Rule 221(a), SCACR, counsel for Respondent petitions this Court for rehearing. Counsel respectfully submits that this Court has misapprehended certain factual and legal matters in arriving at its holding. Respondent would respectfully argue as follows:

1. The sole ruling of the lower court was "Applicant's second PCR Application was filed beyond the statute of limitations requirements set forth under S.C. Code of Laws § 17-27-45(C), and consequently the application is time-barred." (App. p. 211). That ruling, and the facts and law relied upon in reaching it, are left completely unaddressed by the Opinion. The result is a reversal unmoored from any identification of error that would warrant the exceptional relief. *Ahrens v. State*, 392 S.C. 340, 348, 709 S.E.2d 54, 58

(2011) (“In an action at law tried by a judge, an appellate court's scope of review extends merely to the correction of errors of law.”).

2. The failure to address the statute of limitations issue in this case is not just contrary to the Court’s standard for appellate review, the failure to apply the statute also constitutes a violation of the separation of powers between the branches of State Government. *State ex rel. Edwards v. Osborne*, 195 S.C. 295, 11 S.E.2d 260, 262 (1940) (“[T]he Courts and the General Assembly are coordinate branches of the State Government and except where constitutional limitations have been clearly disregarded, it is not for this Court to pass on the propriety or soundness of the exercise of the legislative power.”). The respective statutes that set forth the statute of limitations and prescribe the means of demonstrating a basis for filing a non-successive second PCR application are the express intent of the State Legislature. As such, this Court is bound by the plain language meaning of those statutes and may not affix its own legal levers or balances of public policy onto the Legislature’s statutory construction; this Court has on other occasions been cognizant and respectful of this restraint and must choose to remain so by denying relief in this matter. See *Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) (“The most prominent obstacle to Appellants' approach is separation of powers, for we must defer to the will of the legislature as expressed in the Act. If the policy balance struck by the legislature in Act is to be changed, that prerogative lies exclusively within the province of the Legislative Branch.”); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989) (“Once the Legislature has made [its] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.”); *Hodges v. Rainey*, 341 S.C.

79, 87, 533 S.E.2d 578, 582 (2000) (“When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language ....”). The Opinion’s mere reference to other similarly situated litigants and a desire for consistency do not satisfy the law, nor do they constitute an appropriate application of binding statutory directives. (*Infra*).

3. The following findings of fact and law by Judge Murphy were, and remain, critical to the issue of timeliness under S.C. Code of Laws § 17-27-45(C):
  - a. Judge Murphy found that “[t]he record indicates that Applicant became aware of the potential claim at least as early as July 21, 2010.” (App. p. 208; p. 212; p. 255). This fact is irrefutable, as Petitioner’s acknowledges the potential claim in his own motion to remand following the denial of post-conviction relief. Petitioner waited nearly four and a half years after this date to file his second PCR application on November 24, 2014, and seek relief on this claim. This fact was left unaddressed by the Court.
  - b. Petitioner was not only aware of the potential claim, but also aware of the available means of pursuing it via a second PCR application, as admitted to in his own state habeas Reply, filed May 18, 2011. (App. p. 464). This fact is irrefutable, as again, his own pleading demonstrates his knowledge of the claim and his erstwhile failure to file the necessary action. Petitioner waited three and a half years after this date before ultimately filing his second PCR application on November 24, 2014. This fact was left unaddressed by the Court.
  - c. All of Petitioner’s state proceedings ended on March 12, 2013, when this Court denied habeas relief. Despite the total lack of pending state court litigation,

Petitioner waited over a year and a half after this date to file his second PCR application on November 24, 2014. This fact was left unaddressed by the Court.

d. Judge Murphy found that “*Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016) does not create a newly recognized right that would trigger the statute of limitations period under S.C. Code of Laws § 17-27-45(B). Instead, the right to qualified PCR counsel existed before *Robertson*, by way of its codification in S.C. Code of Laws § 17-27-160(B).” (App. p. 211-212). Petitioner continued to stringently rely upon the premise that prior to *Robertson*, a remedy for his claim did not yet exist. (See Brief of Petitioner, p. 8-12). Nevertheless, Judge Murphy’s finding of the inapplicability of § 17-27-45(B) was left unaddressed by this Court.

e. Judge Murphy found that “the Court [in *Robertson*] further held that applicant’s successive application *was timely under § 17-27-45(C)* because it was filed *within one year* after discovery of prior PCR counsel’s lack of qualifications. . . . Therein, the Court made clear that statute of limitations requirements must also be met in order to properly set forth a basis for seeking a successive PCR application.” (App. p. 212)(emphasis added). Judge Murphy’s legal finding that *Robertson required* adherence to the statute of limitations under § 17-27-45(C) was left unaddressed by this Court.

4. The only discernable “reason” for the reversal is set forth in a single sentence within the Opinion: “Rather, as pointed out in Petitioner’s brief, two other similarly situated death-row inmates have received similar relief, and for the sake of consistency, we grant Petitioner a *Robertson* hearing as well.” However, absent from the Court’s

Opinion is any factual finding as to the manner in which these referenced inmates – presumably Robertson and Stanko – are similarly situated. Upon review, they are in fact *not* similar situated to Petitioner.

5. As set forth in the *Robertson* opinion, this Court explicitly found that Robertson had filed his successive application raising his potential qualification of PCR counsel claim within one year of the discovery of the issue, thereby making his claim timely under § 17-27-45(C). This factual finding, and the Court's application of § 17-27-45(C) was relied upon by Judge Murphy as a basis for finding Petitioner untimely. To cite *Robertson* as authority supportive of reversal is both legal and factual error.
6. In *Stanko*, post-conviction relief proceedings before the circuit court were not concluded until September 27, 2017, when the PCR court denied Stanko's Rule 59(e) motion. There are no factual findings demonstrating that PCR counsel were aware of *their own* potential lack of qualification under § 17-26-160(B), but sat on their right to pursue a *Robertson* hearing *so as to disqualify themselves* from their own case. Moreover, Stanko's pursuit of a *Robertson* hearing began: 1) during the pendency of his PCR appeal that followed; 2) on October 3, 2017, less than 1-year after *Robertson* was decided such that Stanko was put on clear notice of the issue (even if it could have been discovered before); and 3) by way of a Motion to Remand, *after* this Court had handed down controlling precedent in *Robertson* that settled as a matter of law the interpretation of § 17-26-160(B), as opposed to the need to timely raise a legal argument against an unsettled legal matter. To suggest that *Stanko* was similar situated to Petitioner, as this Court has done, disregards the fact that nowhere in *Stanko* was statute of limitations a disputed legal issue.

7. Our United States Supreme Court has held that “[s]tatutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” *Bd. of Regents of Univ. of State of N. Y. v. Tomanio*, 446 U.S. 478, 487, 100 S. Ct. 1790, 1796, 64 L. Ed. 2d 440 (1980). This Court has set forth the same exact sentiment. See *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016) (“Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.”)(internal citation omitted); See also *Kavanagh v. Noble*, 332 U.S. 535, 539, 68 S. Ct. 235, 237, 92 L. Ed. 150 (1947)(“Periods of limitation”. . . “are established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary.”); *Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010)(“Statutes of limitations are not simply technicalities. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.”) (internal citation omitted); *State v. McClinton*, 369 S.C. 167, 175, 631 S.E.2d 895, 899 (2006) (quoting *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 19, 528 S.E.2d 408, 413–14 (2000) (“[S]tatutes of limitations ‘are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public [or private] affairs.’”). Had the General Assembly felt that death penalty PCR litigants warranted an exemption from statute of limitations requirements, they could have said so by enacting statutory language to that

end. They did not, and this Court's Opinion is a failure to apply the statutory law of the State. *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023) ("When the statute's language is clear and unambiguous, the rules of statutory interpretation are unnecessary, *as a court has no choice but to apply the statute as written.*")(emphasis added).

8. Despite the Opinion's disclamation that it possesses any precedential value, the stark failure to address the lower court's irrefutably correct application of the statute of limitations in this matter – the sole basis of its ruling – is an invitation to future litigants to 1) sleep of their rights for numerous years, 2) raise a long-lapsed claim for relief, and 3) nonetheless be granted the right to further avenues of litigation; thereby unjustifiably delaying the finality of their conviction and sentence.<sup>1</sup>
9. Mr. Alkebulanyahh was sentenced in October of 2003 – nearly 20 years ago. And, despite his apparent abandonment of the disputed issue and his choice to proceed with federal habeas litigation in 2014, he has now stayed federal proceedings and spent 8 additional years of litigation seeking to reopen his state proceedings which were, as demonstrated above, reached with appropriate finality.
10. The Opinion of this Court is a disregard for the plain language of controlling statutory law, a violation of the standard of review for appeals, a disregard for mathematically certain computations of the statute of limitations, and ultimately an unsupported grant of relief. Respondent's Petition for Rehearing should be granted so as to correct these issues and deny relief.

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<sup>1</sup> In the alternative to the relief sought in this Petition for Rehearing, Respondent will also be filing a motion for expedited proceedings so as to mitigate the additional time that will be taken to reach finality in state collateral proceedings if the Petition for Rehearing is denied.

## CONCLUSION

Based upon the above arguments, Respondent asserts that this Court has misapprehended certain facts and law that led to an improper result in this case. Respondent respectfully petitions for rehearing on this matter, and that for all of the foregoing reasons, submits that the judgments of the lower court should be affirmed.

Respectfully submitted,

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