

Larry Edward Hendricks  
10 Faith Lane, A-15  
Winnsboro, SC 29180

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The Supreme Court of South Carolina  
Columbia, SC

JUL 15 2013

S.C. Supreme Court

Re: Hendricks v. State, Appellate case # 2013-000813.

July 12, 2013

Dear Justices of the Supreme Court:

I, the Petitioner received notice from the Court, that pursuant to Rule 243(c) of the South Carolina Appellate Court Rules, I must provide an explanation as to why a determination of my appellate action to be successive or untimely under the statute of limitation, would be improper.

To begin with, I would like to draw the Court's attention to its most recent ruling regarding how a case that the State motions for dismissal, where no evidentiary hearing had been held, must assume facts presented by the Petitioner to be true. McCoy v. State, 237 SE2d 623 (2013). This case further decided that where PCR applicant established an exception to either the statute of limitation or the prohibition against

Successive applications, and those facts are conclusively sustained, by the Record, a question of fact is raised which can only be resolved by a hearing.

The Petitioner originally filed this action in 2010 pursuant to S.C. Code of Law §17-27-45(B). This state statute allows the filing for Post-Conviction Relief (PCR) upon a binding decision, holding the Constitution of The United States, impose upon state criminal proceedings a substantive standard not previously recognized.

The statute requires an application under that chapter to be filed within one year after the date on which the standard or right was determined to exist. This Honorable Court first recognized this statute in Talley v. State, 640 SE2d 878 (SC 2007). The Petitioner relied upon the U.S. Supreme Court's decision in Padilla v. Kentucky, 130 S.Ct. 1473 (2010), making the application timely because, it was clocked stamped by the clerk of court on November 24, 2010, pursuant to the statute.

The Petitioner's original application does not lose applicability because it was self-generated whereas the standard form application does not indicate the differences between subsections (A), (B), or (C). The State did not even request it be submitted in a specific form until after the Petitioner filed a motion for

Summary Judgment, which was never answered or adjudged.

Once notified by The Respondent, then the Petitioner re-filed using the Form 5, on October 4, 2011, keeping the original docket number. The Petitioner at that time again clearly, declared on the face of the application, underneath the title, that it was pursuant to S.C. Codes of Law §§ 17-27-20(a)(1), and 17-27-45(B). This fact is visually supported upon review.

In the detailed "Argument in Support of PCR Application," the Petitioner briefed in detail his concerns, supported by legal citations. In those arguments the "mis-advice of Counsel" standard invoked by Padillia was shown through Court records from the previous PCR hearing. The Petitioner clearly showed a constitutional violation of his Due Process rights as recognized through court precedent.

Based upon McLoy, supra, the Petitioner had shown the necessary requisite for relief, and The Respondent was in error NOT to allow an evidentiary hearing.

The Respondent further violated statutory law when it failed to provide an answer to the Motion for Summary Judgment, after acknowledging its existence, and the Fifth Circuit Court of Common Pleas made error by not deciding that Motion before the ending of the proceedings.

The matter further had not been considered properly because The Final order of Dismissal (2010-CP-40-8589)

of March 11, 2013, was signed by Judge L. Casey Manning. This was the same judge who sentenced the Petitioner. A Motion for Recusal was sent to the Court pursuant to Floyd v. State, 400 SE2d 145 (sc 1991), which stated that the judge who heard the plea is prohibited to hear PCR matters. The Petitioner never received a decision on that motion.

The Petitioner filed a motion for Summary Judgment, with the appropriate subparts, on August 15, 2011, as said earlier it had not been decided. Thereafter, the Petitioner amended his PCR Application on September 2, 2011, to ask for a Declaratory Judgment to look at S.C. Code § 16-15-410, in conjunction with § 16-15-375(2), and its significance to the Petitioner's circumstances.

The Petitioner's argument was that a clear reading of those two statutes would concur that the number of items in possession must be treated as one, verses several, as was done and allowed through mis-advice of counsel. This affected the Petitioner's liberty interest.

The Petitioner specifically pointed to and referenced in the arguments from the Brief "In Support of Post-conviction Relief Application," of October 4, 2011, where the Court Transcript established the mis-advice of counsel occurred and was not refuted in the record. Again this was ignored.

Based on the decision in McCoy, supra, the Respondent was obligated to act, and the matter could not be barred

For any procedural issue. As such, based upon the precedent presented, Remand to The Circuit Court should be Ordered with instructions to rule on all previously submitted issues and motions, individually, and hold evidentiary hearings where applicable. The Court should also keep in mind that the statutory test governing newly discovered evidence as grounds for PCR is properly applied when relief is sought based on evidence discovered post-trial, which is material to the protection of Petitioner's Constitutional rights.

The Petitioner has utilized reasonable diligence to bring his issues to the attention of the Judicial Branch. The Respondent's disregard for the U.S. Supreme Court's decision regarding "affirmative misadvice," goes contrary to the Supremacy Clause of the Constitution and established precedent.

As such the Petitioner believes he has explained why the determination of successiveness and/or untimeliness is improper, and prays this Court will decide in his favor. Because the Petitioner does not have access to a copier, he would humbly ask that the Record be provided by Respondent.

The Petitioner appreciates the Court's attention to this matter. Have a good day!

Very Truly Yours  
Larry Edward Hand

cc: Sally W. Elliott, Esq.

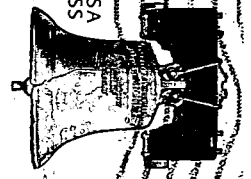
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Mr. Larry Edward Hendricks  
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Winnsboro, SC 29180

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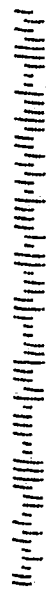
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The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211-1330

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