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JAN 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
ROBERT LEE ANDERSON#133610
applicant,
v.
STATE OF SOUTH CAROLINA
Respondent,

} APPEALS TO AND OBJECTION TO
} REPLY OF THE STATE CONDITIONAL
} ORDER OF DISMISSAL, BY THE
} APPLICANT,

Applicant filed an application for post-conviction(PCR) ON JUNE 6 2019. applicant has moved for under Rule 8 (C) is amended to add the affirmative defense of duress to conform the rule to the comparable law because federal rule, the amendment does not change substantive or procedural law because duress is recognized as an affirmative defense and the concluding clause of the first sentence requires it to be asserted as a matter of avoidance. (Laches) is an affirmative defense and must be plead, Emery v. Smith (S.C. App2004)361 S.C.207,603 S.E.2d598, and is not barred from litigation under leches timely filed.

PROCEDURAL HISTORY

Applicant Robert Lee Anderson, is presently confined in the south carolina department of correction pursuant to order of commitment from the Greenville county clerk of court, Applicant pled guilty to first degree burglary, GS-96-23-0018 (indictment number report by applicant on january 1, 1996. was stated by the state solicitor and was sentence to life imprisonment run current by judge FRank P, McGawan Jr, applicant record will shows by public record one trial for the burglaries that same day(1996-~~GS~~-23-03273).

Applicant filed his first PCR application in 1996-cp-23-0327

ALLEGATIONS

Applicant is challenging both of his burglary first degree conviction,. He alleges that he is being held in custody unlawful for the following reason;

The applicant's life sentence for his burglary conviction was in violation of south carolina statutory law; exeeded the maximum authorized by south carolina statutory law! and the lawful sentence to which he was entitled to has expired to entitle him to release from his unlawful confinement.

Applicant alleges that because S.C.code!17-558.4(applicant's cite in cludes a 'mercy proviso! he is entitled to 30 years imprisonment instead of life. he cites state v. kimbrough, 212 S.C.348 46 S.E 2d273 (1948) in support of his argument.

FINDINGS OF FACT AND CONCLUSION OF LAW

Pursuant to s.c. code Ann (The State's failure to plead affirmative defense of laches precluded state from asserting laches on appeal concerning application for post-conviction relief (PCR) Dearybury v. state (S.C.2006). 367 s.c.34,625 S.E.2d212.

state waived right to raise defense of laches to Robert Lee Anderson defendant's second post-conviction relief application asserting Austin claim that his first post-conviction relief counsel was ineffective for failing to seek review of denial of first post-conviction relief application.

- (a) Doctrine of laches may be raised as defense to Austin claim,
- (2) state waived right to raise defense of laches to defendant's Austin claim, and remand was required for purposes of reconstructing first post-conviction record,

Austin v. state, 409 S.E.2d 395 supreme court of S.C.

Robert Whitehead v. state 574 S.E.2d 200 December 16, 2002, 352 S.C. 215 supreme court of S.C.

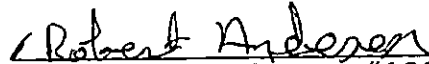
- (1) Rule of procedure like statutes, should be given their plain meaning when the text of a rule is clear and unambiguous judicial inquiry is complete, see, e.g. Business guides v. chromatic communications enter prise, inc 498 U.S. 533, 111 S.Ct. 922 112 L Ed 2d 1140 (1991) clear and unambiguous text in the federal rules of civil procedure is given its plain meaning

prior felony convictions need only be found by judge based on preponderance of evidence for sentence enhancement purposes U.S. v. MURDOCK, 735 F.3d 106, 112-13 (2d Cir 2013).

CONCLUSION

Pursuant to S.C. code Ann. 17-553.4 and the 3533(a) this court intends to dismiss this motion of the state by the objection reply by the applicants in this case, of the mercy provisions statute to 30 years sentence, and new trial motion.

date 1-24- 2024.


Robert Lee Anderson #133610