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STATE OF SOUTH CAROLINA S.C. SUPREME COURT
IN THE Supreme Court

APPEAL FROM Georgetown County
Honorable Judge Couch

APPELLATE CASE NO. 2024-000569

Shannon D. McGee

VS

Petitioner

State of South Carolina

Respondent's

Pro-Se Written Explanation

The above-named Petitioner Pro-Se Moves to deny the Respondent's order of the Notice of appeal in the above Post-conviction relief action (PCR) should be denied because there is a genuine issue of material fact for the court's consideration, Respondent is not entitled to Judgment as matter of law, and the interests of Justice require an evidentiary hearing on this matter. See S.C. Code § 17-27-70 (b) and (c) (providing, in relevant part, "disposition on the pleadings and record is not proper if there

exists a material issue of fact,"
see generally *Leamon v State*, 363
S.C. 432 434, 611 S.E.2d 494 495
(2005) Noting the standard of
review to determine whether
summary dismissal is appropri-
ate is as follows:

(1) 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...
When considering the state's
motion for summary dism-
issal of an application, where
no evidentiary hearing has
been held, the circuit court
must assume facts present-
ed by an applicant are true
and view those facts in the

light most favorable to the applicant; similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion) (citations omitted) (emphasis added).

(2) The Court must assume the facts presented by the applicant are true because no evidentiary hearing has been held to develop a record for the court to weight the credibility of the evidence and arguments presented in his pro-se Application and memorandum of Law/Support.

See generally Leamon 363 S.C. at 434, 611 S.E.2d at 495 ("[w]here held, the circuit court must assume facts presented by an applicant are true [.]"); see

See also S. C. Code Ann § 17-27-80 (2003) PCR Actions are governed by usual rules of civil procedure).

(3) "Extraordinary Circumstances" exist in this matter because applicant has alleged that the state withheld exculpatory evidence from his trial counsel Axelrod. See generally S.C. Code § 17-27-20(A)(4) providing "[a]ny person who has been convicted of, or sentenced for a crime and who claims... that there exists evidence material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to see post-conviction relief) Emphasis added

(2) Petitioner has alleged that he and his trial counsel had no knowledge of the letter from the "Jail House snitch" after his trial was over.

(b) It also appears this information was not in the solicitor files provided to the applicant in the motion discovery.

(1) Jail House snitch information is of such a weight and quality that, under the facts and circumstances of this case, the "interest of justice" requires to vacate petitioner convictions and sentences (if applicant can satisfy his burden of proving the state withheld the critical evidence from Applicant after an evidentiary hearing). See S.C. Code § 17-27-45(c) providing "[i]f the applicant contends that

there is evidence of material facts, not previously presented and heard that requires vacation of the conviction or sentence, the Application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or the date when the facts could be ascertained by the exercise of reasonable diligence." (emphasis added)

(2) a genuine issue of material fact exists because of this alleged newly discovered evidence that petitioner argues was unlawfully withheld from his trial counsel. In the light most favorable to Applicant, an evidentiary

hearing is reasonable and Necessary to develop facts and presentation for the courts consideration is determining whether to toll the statute of Limitations based on applicant's arguments of "extraordinary circumstances and wrong doing by the state" see generally *Leamon*, 363 S.C. at 434, 611 S.E. 2d at 495 "[w]hen NO evidentiary hearing has been held, the circuit court must... view those facts in light most favorable to the Applicant."); see S.C. Code Ann § 17-27-80 (citations omitted); see generally *Pelzer*, 378 S.C. at 521 662 S.E.2d. at 620-621 (summarizing the doctrine of equitable tolling. "The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent Plaintiff.

However Equitable Tolling, which allow plaintiff to intate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights or, in other words the Relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." (citations omitted) (emphasis added).

(3) Notably Respondent did not timely file a return within Ninety (90) days as required by Rule (12)(a) of the South Carolina Rule of civil Procedure. Rule 12 SCRPC; see also S.C. Code § 17-27-70(b) (providing, in relevant part, "with in thirty days after the dock-

eting of the application, or within any further time the Court may fix, the state shall respond by answer or by motion which may be supported by Affidavit. 11).

Petitioner filed this Application for PCR on May 26, 2021, And Memorandum in support the PCR Application with attachment May 26 2021

Conclusion

Based on the foregoing reason Petitioner respectfully moves to deny the Respondent's motion to dismiss and request and Evidentiary hearing to present Evidence and arguments in support of this PCR.

Dated 4-24-2024

Sincerely,
Shannon D. McNeel Sr.
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