

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 13 2024

S.C. SUPREME COURT

Applicant

Charles J. Davis

South Carolina vs

Respondent

CASE NO. 2024-000682

Applicant Written Explanation

The above-named applicant, by and through the pro-se counsel, moves to deny the Respondent's motion to dismiss and respectfully requests an evidentiary hearing based on the following reasons,

Respondent's motion to dismiss the Application for Post-Conviction Relief (PCR) should be denied because there is a genuine issue of material fact for the Court's consideration. Respondent is not entitled to Judg-

ment as a 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 (2005) Noting the standard of review to determine whether summary dismissal is appropriate is as follows: "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 dismissal of an

Application, where no evidentiary hearing has held, the circuit court must assume facts presented by an applicant are true and view those facts in 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 PCR application and Memorandum of Law/Support.

see generally Leamon 363 S. C. at 434, 611 SE2d at 495 ("[W]here no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true [9]"); see

also S.C. Code Ann § 17-27-80; 2003)
PCR Actions governed by usual
rules of civil Procedure).

- 3) Extraordinary Circumstances" exist in this matter because applicant has alleged Counsel was ineffective assistance of Counsel failed to investigate the applicant mental health background. see generally S.C. Code § 17-27-20(A)
- (4) providing "I am a person who has been convicted of, or sentenced for a crime and who claims, ... that there exists evidence of material facts not presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to post-conviction relief) Emphasis added
- (a) Applicant has alleged that he and his trial counsel had discuss the issue in regards of his mental health background.

In the light most favorable to applicant, an evidentiary hearing is reasonable and necessary to develop facts and present evidence for the Court's consideration is determining whether to toll the statute of limitation based on applicant's arguments of "extraordinary circumstances" and wrongdoing by the state." see generally Leamon, 363 S.C. at 434, 611 SE2d at 495 " [w]here no evidentiary hearing has been held, the circuit court must... view those facts in most favorable to the applicant."); see S.C. Code Ann. § 17-27-80 (citation omitted); see generally Pelzer, 378 S.C. at 521 662 SE2d at 620-621 (summarizing the doctrine of equitable tolling. "The time requirements in law suit between private litigants are customarily subject to equitable tolling is

such tolling is necessary to prevent unfairness to a diligent plaintiff. However equitable tolling, which allow plaintiff to initiate 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 S.C.R.P.; see also S.C. Code § 17-27-70 (b) ("Providing, in relevant part, "within thirty days after the docketing 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.").

Conclusion

Based on the foregoing reason Applicant respectfully moves to deny the Respondent's motion to dismiss and request an evidentiary hearing to present evidence and arguments in support of this PCR.

Sincerely

Dated

5/9/

2024

/s/ Charles J. Davis