

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Walton J. McLeod, IV, Circuit Court Judge

LOWER COURT CASE NO.: 2022-CP-08-02904

Natalia Chisolm #368859

Petitioner,

v.

State of South Carolina,

Respondent,

EXPLANATION PURSUANT TO RULE 243(C)

That in explanation pursuant to Rule 243 (C), the Appellant would respectfully submit the following:

Petitioner is presently incarcerated in the South Carolina department of Corrections serving an active twenty-year term sentence. In June 2015, the Berkeley County Grand Jury indicated Petitioner on two counts of contributing to the delinquency of a minor (2015-GS-08-01048, -01057); burglary in the second degree (2015-GS-08-01049); unlawful carrying of a pistol (2015-GS-08-01050); burglary in the first degree (2015-GS-08-01051); three counts of armed robbery (2015-GS-08-01052, -01053, -01054); three counts of kidnapping (2015-GS-08-01055, -01056, 01059); and possession of a weapon during the commission of a violent crime (2015-GS-08-01058). These charges arose from a home invasion on October 21, 2014.

According to the State, Petitioner and her three co-defendants held three victims at gunpoint

while they stole various items from the house. The next day, Petitioner was arrested for having an open container in her vehicle. Upon a search of Petitioner's vehicle, police discovered the masks, rubber gloves, and one of the pistols used in the home invasion. Police later lawfully obtained an executed a search warrant for Petitioner's home and discovered items belonging to the victims.

On June 30, 2016, Petitioner pled guilty before the Honorable J. Mark Hayes to burglary in the first degree (2015-GS-08-01051), one count of armed robbery (2015-GS-08-01054) and one count of kidnapping (2015-GS-08-01055). Melisa Gay, Esquire represented Petitioner and Elizabeth Sigal, Esquire represented the State. The State did not indicate a sentencing recommendation and *nollo prossed* the remaining charges. Judge Hayes sentenced Petitioner concurrently to 20 years for each charge.

On July 11, 2016, Melisa Gay, Esq., filed a Notice of Appeal on Petitioner's behalf, which was denied pursuant to an order dated December 8, 2016. The remittitur was sent December 30, 2016.

No action was taken by Ms. Gay from her letter of August 3, 2016 in response to the Courts request for an explanation pursuant to Rule 203. She remained attorney of record for Petitioner and never requested to be relieved. It is apparent that she never forwarded any information to Petitioner because, seventeen months later, on May 11, 2018, Petitioner contacted the court to request an update on her case because she was trying to "put in for PCR" and could not do so until her appeal was concluded. The Court responded to her via letter on June 1, 2018 to inform Petitioner that he appeal was concluded nearly a year and a half prior. Understandably, Petitioner was quite upset. Particularly, she was under the mistaken belief that she could only file for post-conviction relief within a year after her original sentencing. She believed that the

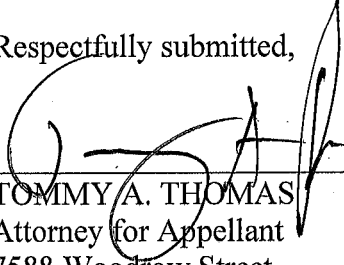
length of the appeal process – including the period during which it had been over and she was not aware – had precluded her from filing for post conviction relief. It was not until the summer of 2020 that she found out she actually had one year for the conclusion of her appeal and contacted undersigned counsel.

On September 22, 2020, Petitioner filed an Application for Post Conviction Relief along with a Memorandum in support of an evidentiary hearing asserting the statute of limitation should be equitably tolled. On March 12, 2024, a hearing on Respondent’s Motion to Dismiss was heard by the Honorable Walton J. McLeod, IV. Judge McLeod signed an Order of Dismissal on April 8, 2024 finding that Petitioner did not set for the a sufficient basis for the statute of limitations to be equitably tolled; thus, Respondent’s Motion is granted and the PCR application is dismissed with prejudice.

There is precedent for the courts of this State of allow filings out of time for equitable reasons. Recently, our Supreme Court considered the idea of equitable tolling of a post-conviction relief application and held that it is allowable in certain situations. Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017). In Mose, the court held that equitable tolling was appropriate when an inmate’s initial post-conviction relief application missed its filing deadline due to unusual mail delays, because Mose placed his application in the mail seventeen days before the filing deadline. This opinion discussed other issues, such as the mailbox rule and prison mailbox rule, but ultimately held that equitable tolling applied because the circumstances were both “beyond the Petitioner’s control and unavoidable despite due diligence.” Id., 420 S.C. at 508, 803 S.E.2d at 722, citing Ferguson v. State, 382 S.c. 615, 618, 677 S.E.2d 600, 602 (2009) (quoting Commonwealth).

As such, the Petitioner is informed and believes that her appeal should be allowed to proceed in order to consider the weight and quality of the evidence and potential for vacation of her guilty plea under South Carolina Appellate Court Rule 243(c).

Respectfully submitted,



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