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May 28 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Daniel Coble, Circuit Court Judge

Lower Court Case No.: 2020-CP-40-4935

Jose Reyes, Jr., #375827,..... Petitioner

vs.

State of South Carolina,Respondent.

EXPLANATION PURSUANT TO RULE 243(C)

Petitioner, in explanation pursuant to Rule 243 (c) would respectfully respond as follows:

On September 13, 2023 an evidentiary hearing convened in Richland Count solely on the issue of whether counsel was ineffective for failing to file an appeal. Judge Coble ruled that he would take testimony on the claims within the application and would hear arguments on the motion at the end.

The matters before the Court were:

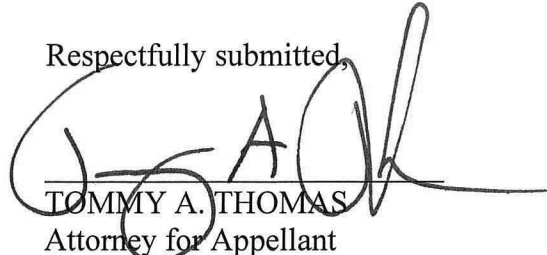
1. Whether the statute of limitations should be equitably tolled to allow Applicant a post-conviction relief hearing on the merits; and
2. Was the Applicant entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statute period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008).

On direct examination, Applicant testified that he pled guilty in July 2017 and was sentenced in September 2017. Applicant testified that he was held in Alvin S. Glenn Detention Center until April 2018, when he was transferred to Kirkland Correctional Institution. Applicant testified that he was transferred to Lee Correctional Institution just before the riots occurred. Applicant testified that they were locked down for a year and a half. Applicant testified that he could not file a PCR application during that time. Applicant testified that he could not go to the law library and had to wait for the mail to come to the door. Applicant testified that he could not take anything to the mailroom. Applicant testified that he learned what PCR was from his roommate. Applicant also testified that he had some learning disabilities, so he had to "learn some type of way." Applicant testified that he believes it was the State's actions in the lockdown as a result of the riot that prevented him from filing his PCR application within one year of sentencing.

The Applicant would respectfully request that the Court allow this Appeal to go forward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. A. Thomas', written over a horizontal line.

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