

Appendix

1. Questions on appeal.
2. Statement of facts.
3. Certificate of service.
4. *Letter Requesting disposition on applicants Motion For Enlargement Extension of time.*
5. *Applicants Response to States Conditional order of Dismissal / order of Dismissal with Brief in Support of.*

QUESTIONS ON APPEAL

- I. Did the court error by issuing a Final Order of Dismissal while the Applicant's Motion for Enlargement was pending before the court?
- II. Was the Applicant's time to respond Tolloed by the timely filing of his Motion for Enlargement?
- III. Did the State error by not issuing a response and notice to be served to the Applicant with a newly fixed date to file his response to their Conditional Order of Dismissal?

STATEMENT OF FACTS:

Now comes the applicant Pro se and presents the following statement of facts in the matter of this case (2023-CP-04-01390) for appellate review:

Applicant filed his (PCR) action on July 3, 2023. Respondent made their return Conditional Order of Dismissal on March 12, 2024 (194 days past the 60 days regulatory time frame set out in Rule 12(a), SCRCP). Applicant received service by mail on April 11, 2024 (282 days later).

Applicant filed his Motion For Enlargement on April 15, 2024 requesting an extension of twenty (20) days to respond to the states Conditional Order of Dismissal thereby Tolling his time for response. **(No notification response or ruling to Applicants Motion For Enlargement was ever given or received by the Applicant. And no notification as to any New Fixed date deadline for responding was ever given or received by the Applicant).**

Applicant then received notice by mail on May 16, 2024, dated May 6, 2024 of the state's proposed Order of Dismissal which asserted the Applicants failure to respond to the Conditional Order of Dismissal. Included was a copy from the Anderson clerk of Court of applicants stamped time clock filed Motion For Enlargement and **NO RULING, NOTICE, OR RESPONSE DENYING OR GRANTING THE APPLICANTS MOTION WITH ANY NEW FIXED DATE BY WHICH APPLICANT WOULD BE REQUIRED TO FILE HIS RESPONSE WAS EVER GIVEN.**

Applicant then wrote a letter mailed on May 19, 2024 with copies served to the Anderson clerk of Court, the Attorney general's office, and also to the honorable judge R. Lawton McIntosh explain the applicant filed a timely Motion for Enlargement requesting an extension of time and that any delay of a response to the state's conditional order of dismissal was due to having received no notice of a ruling or response to his motion and the Applicant concluded by requesting a disposition on his Motion For Enlargement of time so that he would know what his deadline for filing would be. **THE APPLICANT RECEIVED NO RESPONSE TO THIS LETTER FROM ANY OF THE PARTIES IT WAS MAILED TO AS LISTED ABOVE AND STILL NO NEW FIXED DATE NOTIFYING THE APPLICANT BY WHICH TIME HE WAS REQUIRED TO FILE.**

The Applicant then mailed his response (with brief in support of attached) to overcome the Conditional Order of Dismissal and the Proposed Order Dismissal, copies notarized and served to the clerk of court and Attorney general's office, **TO WHICH HE RECEIVED NO RESPONSE.** (Please review all attached exhibits of evidence of material fact included with PCR application). The applicant has shown sufficient reason with factual evidence: exhibits presented as evidence of material fact in support of why he should have been entitled to an evidentiary hearing.

The Applicant then received by mail on May 29, 2024 letter from the Attorney general's office dated May 24, 2024 with notice of the final order of dismissal signed by judge

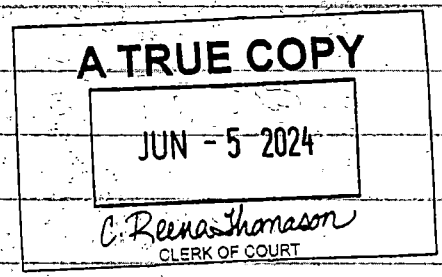
McIntosh on May 17, 2024. Therefore, Applicant appeals this judgment because no disposition and notification was ever given to the Applicants Motion For Enlargement and no new fixed date and timeline by which he was required to file his response to conditional order of dismissal thus creating delay. If the applicant would have received a response to his motion he could have then requested an additional extension of time due to the circumstances of the institution and staff shortages which create security lockdowns which limits his access to the mailroom as well as supplies.

24 JUN 4 AM 11:24:26
Anderson, SC DOC. CP/66

Steven McElrath #328413
Ridgeland C.I. / GB-7
5 Correctional Road
Ridgeland, S.C. 29936

May 30, 2024

Anderson Clerk of Court
C. Reena Thomason
P.O. Box 8002
Anderson, S.C. 29622



Re: Steven C. McElrath vs S.C. 2023-CP-04-01390

I am requesting with all due respect, Copies of the following:

- 1). Stamped, clocked, filed Copy of letter dated May 19, 2024, addressed to: (Clerk of Court, Attorney General, and Judge McIntosh) where I was requesting disposition on My Motion To Enlarge.
- 2). Stamped Clocked Copy of My Motion Response to States Request for Dismissal with included Brief in Support of attached.
- 3). Stamped clocked filed Copy of The disposition Response/Ruling to my Motion to Enlarge with newly fixed date for filing and letter Notifying Applicant.

Thank you most Sincerely for your time and help
with these requests.

24 JUN 4 04:11:29
Anderson, SC CDD, CP/65

Sincerely, *Steven McElrath*
Steven McElrath #328413

24 MAY 24 AM 11:07:26
Anderson, SC CDC, CP/SS

Steven McElrath #328413
Ridgeland C.T. / GB-7
5 Correctional Road
Ridgeland, S.C. 29936

May 19, 2024

The Honorable R. Lawton McEntosh
Teah Judicial Circuit Chief Administrative Judge
P.O. Box 8002
Anderson, S.C. 29622

Anderson Clerk of Court
C. Reena Thomason
P.O. Box 8002
Anderson, S.C. 29622

Office of the Attorney General
P.R. Division - 10th Circuit
P.O. Box 11549
Columbia, S.C. 29211

Re: Steven C. McElrath #328413 v. S.C. 2023-CP-04-01370

This Applicant did Pro se file in a timely manner
his "Motion For Enlargement" for an enlargement of time -
page 1 of 2

A TRUE COPY

JUN - 5 2024

C. Reena Thomason
CLERK OF COURT

on the date of April 9, 2024 and was Stamp, clocked,
dated by the Anderson Clerk of Court on April 15, 2024.

Applicant Forwarded a Copy also to the Attorney
Generals office.

Applicant at this time has received "NO" Ruling or
Response to his "Motion For Enlargement" of time, and
any delay of response by the applicant in response to the
Conditional order of dismissal is a result of waiting
for a Ruling Response to his motion For Enlargement.

Applicant Requests a disposition on the above
referenced Motion.

Sincerely,

Steven C. McElrath #328413

Steven C. McElrath

cc: Your personal Files

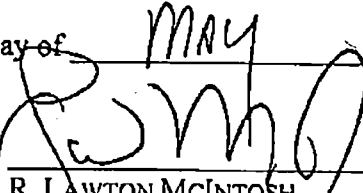
Applicant's request, and he has failed to file a response to the Conditional Order of Dismissal with specific reasons why the dismissal should not become final.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his application, and failed to respond with reasons the Conditional Order of Dismissal should not become final. Therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal in addition to the reasons set forth in this Final Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17 day of MAY, 2024.



R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina.

the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Evidence were Ex Parte Communication letters between the S.C. Court of Appeals and applicants Counsel (See Exhibits 1A, 1B-5)

Under the PCR Code applicant filed within one (1) year time limit. Exhibit 1B was received July 22, 2022 and applicant filed PCR on July 03, 2023.

Respondant failed to respond within the 60 days required under Rule 12(a) SCRCP. In Fact there was around a two hundred (200) day delay.

Applicant filed a Motion For Enlargement for extension of time on April 15, 2024 to which the Courts gave no response. Applicant has been awaiting a ruling of response.

Applicant Requests an evidentiary hearing to present the evidence supporting his claims. Applicant also requests that he be given the same exception as respondent in regards to to filing his response to respondents Motion request for dismissal exceeding the Standard time limits.

RECEIVED
NOV 29 2024
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
County of Anderson) FOR THE TENTH JUDICIAL CIRCUIT

Steven C. McElrath # 328413) CASE NO. 2023-CP-04-01390
Applicant.)

v.) BRIEF IN SUPPORT OF
State of South Carolina)
Respondent.)

Now Comes the Applicant, Steven C. McElrath before this
Honorable Court and Moves to overcome Conditional order
of Dismissal

The Applicant contends that this matter before the Court
is "NOT" a Successive PCR application, but is a request for
an evidentiary hearing, Not for a new or Successive PCR hearing but
for a Complete "FULL BITE" adjudication on "ALL" available
grounds for relief.

Applicant raises ground(s) that are Non-Frivolous
and are supported by Submitted Exhibits which are
Evidence of Material Fact and demonstrate a clear
violation(s) of the applicant's Constitutional rights as
Submitted in this PCR application.

24 MAR 29 AM 11:09:44
Printer's Use Only - Do Not Write

This matter before the Court is "NOT" a Successive PCR application, is "NOT" Procedurally barred as untimely, is "NOT" barred by the Statute of Limitations, is "NOT" Successive to applicants previous PCR applications, is "NOT" barred by the doctrine of res judicata, and applicant is "NOT" failing to Comply with the Uniform PCR Procedures Act, S.C. Code Ann § 17-27-10 et Seq (2014), as the State erroneously contends, as the applicant will demonstrate in the following with Exhibits Submitted in his PCR application "Evidence of Material Facts", and clearly support applicants claims and demonstrate clear Constitutional Rights violations.

The applicant overcomes this Conditional order of Dismissal by the following:

Summary Dismissal Based on Successiveness

Pursuant to S.C. Code Ann § 17-27-90, Successive PCR applications are barred Unless an applicant can indicate a "Sufficient Reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E. 2d 392 (1991). In Aice, the S.C. Supreme Court held that PCR rules

"Contemplate an adjudication on the merits of the original petition, "one Bite at the apple as it were":
Id. at 452, 409 S.E. 2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E. 2d 118, 119 (1989)). The Court also noted, "[F]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E. 2d at 394.

Along this line of thought, Applicant contends that he was deprived of having "ALL" Available grounds for relief raised and adjudicated and has Submitted Non-frivolous grounds supported by Exhibits of evidence of material fact, Clear Constitutional rights violations included in his application.

"The State affirms" applicants Claims were known and easily could have and should have been raised in the original PCR action. See: Exhibit page 8 of 11 Conditional order of Dismissal.

Pursuant Gamble v. State (above referenced), 298 S.C. 176, 178, 379 S.E. 2d 118, 119 (1989). In light of these known claims the state affirms existed and could have and should have been raised in the initial PCR action but was not, there then fails to be achieved any semblance of effectiveness in dispensing justice!

In fact the State is attempting to disregard and turn their head to the effective dispensing of Justice by refusing to honor the U.S. Constitutional promise of fair and equal protection of the Constitution for "ALL" people. "The State Affirms these Claims were known."
See Exhibit: Page 8 of 11, Conditional order of Dismissal.

Here the applicant will meet the burden of proving these grounds for relief could not have been raised in the initial PCR Application and is supported by S.C. Code Ann § 17-27-90 and not barred.

Pursuant S.C. Code Ann § 17-27-90, this Court may entertain this PCR application for grounds for relief applicant is asserting which for "sufficient" reasons was not asserted or was inadequately raised in the original, Supplemental, or Amended application.

Here applicants Claims were not asserted and were not adequately raised in his original, Supplemental, or amended application for the following reasons:

Pursuant Rule 71.1(d) SCRPC, Appointment of Counsel for Hearing. "... Counsel "SHALL" insure "ALL" available grounds for relief are included in the

application and "SHALL" "PROVIDE" The application if necessary." Mandatory Language "SHALL"

24 MAY 29 AM 11:09:59
Anderson, SC CDC, CPMS

Under this rule the obligation is placed upon Counsel to insure that "ALL" available grounds for relief are included in the application. However Counsel failed to do so, and thus causing irreparable harm.

Applicant trusted in good faith in his Counsel to provide proper representation and to insure that "ALL" available grounds for relief were raised in the initial application as Rule 71.1(d) SCRPC Requires.

And now the States Contentions that applicants failure to raise these grounds for relief constitutes as a waiver is preposterous in light of the fact that applicant trusted in good faith that Counsel would raise all available grounds as is required by Rule 71.1(d) SCRPC.

Therefore the assertion by the State in this regard amounts to a fundamental denial of Due process, depriving the applicant of "one full and complete bite at the apple" resulting in a gross miscarriage of Justice.

Furthermore regarding due diligence, what would be an adequate amount of time for the applicant, a lay person uneducated in matters of law, having only completed the 8th grade in public school, a 9th grade drop out, to comprehend the complexities of law in order to exercise due diligence?

The Applicant further would have been prohibited under the "Hybrid Representation" Rule from self representation and filing on his own after the appointment of Counsel. Represented by PCR Counsel George Sands

In this PCR action, the applicant points to "Non Frivolous Claims Supported by Evidence of Material Fact" (see attached exhibits submitted with applicants PCR, Exhibits 1A, 1B-6).

Factual Constitutional Rights Violations that for the purpose of dispensing with and upholding justice, an evidentiary hearing must be had for this honorable Court to determine and correct these errors which are shocking violations to the universal sense of justice.

Ex Parte Communication

Applicants Exhibits display the discovery of "Ex Parte" Communication between Plea Counsel

24 MAY 29 AM 11:10:09
ANDERSON, SC COND CP/BS

Scott D. Robinson and the Court of Appeals,
Only Discovered July 1, 2022 (See Exhibits
1A, 1B-6).

The Applicant was not an included party where
Plea Counsel Scott D. Robinson and the Court of Appeals
Neglected to include the Applicant in the Chain of
Communications, Evidenced by Each Letter Submitted
as Evidence of Material Fact, Exhibits of Evidence
(See Exhibits 1A, 1B-6).

Further Evidence Showing where Plea Counsel
Scott D. Robinson Sabotaged Applicants Appeal by
Incorrectly addressing his letter to the applicant that
Should have informed him he had 20 days to take up
the appeal and Submit his own issues for appeal.

Counsel Scott Robinson addressed the letter to the
Applicants name however to the wrong persons SCDC
ID Number that was not the Applicant. Applicant
by law could not receive legal mail incorrectly
addressed bearing a completely different Persons ID
Not his client the Applicant but a different
person entirely.

Applicant could not have received this.

24 MAY 29 PM 11:10:16
Hinder Form. St. Doc. CP/68

Applicant was abandoned by Counsel in the appeal process a "Constructive Denial of Counsel"
Applicant had no assistance of Counsel during the Appeal process and no aid of Counsel other than the Filing a Notice of Appeal.

Counsel Scott Robinson Filed No Briefs in this Case and is Confirmed by the Court of appeals letter Submitted (Exhibit 1B) Please see exhibit.

Applicant was deprived of his right to Appeal his Sentence or Conviction by Counsel Completely abandoning the applicants appeal, having Submitted a (response) letter to the Court of appeals that required he Submit any one arguable issue for appeal, Counsel Scott D. Robinson reply was "I feel there are no issues for appeal and Submitted No Briefs, Similar to a "No Merits" letter Such as in the Case of Anders v. California, 386 U.S. 738 (1967).

Due to these Ex Parte Communications, Applicant was Never included in the Chain of Communications between the Court of Appeals and Plea Counsel Scott D. Robinson, thus Applicant had No Knowledge of this issue and Constructive Denial of Counsel depriving him his right to Appeal

his Conviction or Sentence, thus violation the
applicants Constitutional Rights and an evidentiary
hearing is a Necessity for the purpose of
upholding and dispensing with Justice and
Correcting this wrong, To protect the applicants
Constitutional Rights and to provide equal and fair
protection of Law. Failure to do so would result
in a gross Miscarriage of Justice.