

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petition for Writ of Certiorari
to Jasper County
Bentley D. Price, First PCR Judge
Carmen T. Mullen, Second PCR Judge

Appellate Case No. 2023-001186

ANTONIO DEMAZIO SCOTT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

Did the PCR judge who signed the final order of dismissal err in failing to recuse herself when she was the trial judge and did both judges, the judge who signed the conditional order of dismissal and the judge who signed the final order of dismissal, err in dismissing the application for post-conviction relief as being filed outside the one-year statute of limitations without appointing counsel and without conducting a hearing when there is evidence in the record that Petitioner, an unrepresented indigent party, mailed the application from the South Carolina Department of Corrections to the Jasper County Clerk of Court, at the correct address, presenting questions of law and fact that entitle Petitioner to the appointment of counsel and an evidentiary hearing on the statute of limitations issue as well as ineffective assistance of counsel claim?

Is Petitioner entitled to a hearing on the narrow issue of whether the statute of limitations should be equitably tolled?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving a thirty-year-sentence. In April 2011, the Jasper County Grand Jury indicted Petitioner for murder (2011-GS-27-00192). On December 5-7, 2011, Petitioner proceeded to a jury trial before the Honorable Carmen T. Mullen. Public Defender Robert Hughes represented Petitioner, and Assistant Solicitor Robert Ferguson prosecuted the case. The jury convicted Petitioner of murder, and Judge Mullen sentenced him to thirty years' imprisonment.

Petitioner filed a direct appeal, which was perfected by Appellate Defender Benjamin J. Tripp, who filed a brief arguing the trial court erred in failing to instruct the jury on involuntary manslaughter. The Court of Appeals affirmed on the merits. Petitioner filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was granted. On September 9, 2015, the Supreme Court issued an opinion affirming. The remittitur was sent December 16, 2015.

On October 12, 2021, Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of counsel, Brady violation, and due process violation. The State filed a return and motion to summarily dismiss the application based on the statute of limitations. On February 23, 2022, the court issued a Conditional Order of Dismissal.¹ Applicant filed responses to the Conditional Order of Dismissal on February 8, 2022, and August 1, 2022, again asserting he had attempted to file a PCR application in 2016. On June 27, 2023, the Court issued a Final Order of Dismissal. This Petition for a Writ of Certiorari followed.

¹ Pertinently, the Conditional Order of Dismissal noted that Petitioner sent a letter to the Supreme Court of South Carolina on September 9, 2021, asserting he mailed a PCR application to Jasper County Clerk of Court on January 15, 2015, and an amendment in April 2016, but he had not received a clocked copy of his application or amendment. The Order further noted the Supreme Court forwarded the letter to the Jasper County Clerk of Court on September 15, 2021, and the Jasper County Clerk of Court sent Petitioner a letter on September 30, 2021, indicating it did not have a PCR application filed for Petitioner or any record that an application was ever received or filed.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations for this PCR action should be equitably tolled.

Petitioner asserts the PCR court erred in summarily dismissing his PCR application when he presented a question of fact as to whether the statute of limitations should be equitably tolled. Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations for this PCR action should be equitably tolled.

“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.” Pelzer v. State, 378 S.C. 516, 519, 662 S.E.2d 618, 619 (Ct. App. 2008). “When considering the State’s motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.” Id. at 519, 662 S.E.2d at 619.

“[S]tatutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Id. at 520, 662 S.E.2d at 620. “Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.” Id. “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.” Id. at 521, 662 S.E.2d at 620. However, “equitable tolling . . . is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” Id.

For PCR actions, equitable tolling has been applied when the applicant timely notarized his application and alleged a warden confirmed it was mailed before the expiration of the statute

of limitations. Mose v. State, 420 S.C. 500, 511-12, 803 S.E.2d 718, 723 (2017). However, “[t]olling the statute of limitations in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to no fault of his own does not create an exception by which incarcerated litigants may avoid time restrictions.” Id. at 510, 803 S.E.2d at 723 (internal quotations omitted).

“[I]f a PCR applicant raises the doctrine of equitable tolling as a defense to the statute of limitations, the judge should make the fact-specific determination of whether equitable tolling is justified.” Id. at 511, 803 S.E.2d at 723. “As part of this determination, the judge should consider any reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for purposes of mailing.” Id. “[I]f the circumstances warrant, the statute of limitations shall be tolled from receipt of the document by the prison until formally filed with the clerk's office, **provided that the applicant can verify by competent evidence the date prison authorities received the document for mailing.**” Id. (emphasis added).

Here, Petitioner sent a letter to the Supreme Court of South Carolina in September 2021, asserting he attempted to mail a PCR application to the Jasper County Clerk of Court in January 2016. Although mailing itself does not constitute filing for purposes of a PCR application,² Respondent concedes Petitioner has alleged facts that, if true, *could* support equitable tolling. Thus, Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations should be equitably tolled. At the hearing, the PCR court can assess Petitioner's credibility and review any evidence submitted by the parties on this issue.

Respondent further contends Petitioner's request for an evidentiary hearing on the merits of his PCR allegations is premature; the proper procedure here is a remand appointment of counsel

² See Mose, 420 S.C. at 507, 803 S.E.2d at 721 (“[M]ailing does not constitute filing of a PCR application for statute of limitations purposes.”).

and a hearing on the State's motion to dismiss. Should the PCR court find Petitioner is entitled to equitable tolling, Petitioner would then be entitled to an evidentiary hearing on the merits of his PCR allegations.³

CONCLUSION

Based on the foregoing, Respondent requests this Court grant certiorari, dispense with further briefing, and remand this matter to the PCR court to consider the narrow issue of whether the statute of limitations should be equitably tolled.

Respectfully Submitted,

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This 8th day of July, 2024

³ Respondent does NOT concede that Petitioner is entitled to an evidentiary hearing on the merits of his PCR allegations, but rather that Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations should be equitable tolled. Respondent reserves the right to continue to assert the statute of limitations.