

The State of South Carolina  
In the Supreme Court

Appeal From Greenville County  
Court of Common Pleas

G. D. Morgan, Jr. Circuit Court Judge

Case No: 2023-CP-23-2605  
Appellate Case No. 2024-001108

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AUG 09 2024

S.C. SUPREME COURT

Quasean Marshall,

Appellant,

v.

State of South Carolina,

Respondent.

Brief of Appellant

Quasean Marshall #371676  
Lee Correctional Institution  
990 Wilsacky Hwy.  
Bishopville, SC 29010

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Conclusion. Reverse and remand, the Judgment of the Circuit Court, For a New Trial or to reconsider sentence.

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## Statement of Issues on Appeal

I. Did the Court err by dismissing Postconviction Relief Application (Case No: 2023-CP-23-2605) as barred as being successive and/or as being untimely where procedural irregularities denied due process during the course of judicial process.

II. Did the Court err by not granting Rule 60(b) Motion, or Motion to order the production of the Audio by Subpoena Duces Tecum.

III. If incompetent at a hearing can I file a successive Application?

### Statement of the Case

On May 24, 2023 I, Quasean Marshall, the Applicant filed the captioned application (Case No: 2023-CP-23-2605) for Post Conviction Relief. I Amended it on November 29, 2023 claiming ineffective Assistance of First PCR Counsel, ineffective Assistance of Trial Counsel and violation of my Constitutional Rights guaranteed within the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution and of South Carolina Constitution Article I Section 3 and 10 and 14. And Sixth Amendment U.S. Const.

March 12, 2024 the Respondents sent me a copy of the Conditional order of Dismissal that was not ordered yet. On April 1, 2024 I sent my reasons why it should not be dismissed within the twenty days.

I was served a copy of the same Conditional order of Dismissal April 9, 2024 with the Judges signature. On April 24, 2024 I filed my reasons why it should not be dismissed however it was filed May 9, 2024. The Clerk of Court is not filing my Paper work until a week or two later.

On May 31, 2024 I Filed a Motion to Order the production of the Audio by Subpoena duces tecum; however it was filed on June 14, 2024. On July 10, 2024 the Respondent denied it.

Respondent Says Applicant only States that the transcript is Fraudulent and demands the Audio of his evidentiary hearing.

I also State and produce Material Facts regarding my Competence. I am Mental Health and was not competent From December 2022 through the end of 2023. I wrote things I remembered from the hearing and made many Complaints of the Courts misconduct.

I paid For the full hearing. I said my name and SCDC number and much more that is not in the transcript and have challenged it.

The official record is the written transcript; however, the Audio recording can not make such errors. If this is the correct proceeding I want to know also for medical reasons. I was not competent for months; however, I wrote what I remembered from the beginning. If what I remember is correct then my transcript is incorrect. But if I am wrong I would like proper mental health assistance and also a doctor from outside of the institution who can properly diagnosis me and help me so I can properly rehabilitate self and become a productive citizen in society even with my mental issues.

If the recording shows the transcript is incorrect then the Court Reporter has made a error or the Court committed some kind of misconduct to allow a miscarriage of justice to occur.

In Moses v. State 442 S.C. 263, 898 D.E. 2d 154 says the South Carolina Court of Appeals held that, "the PCR Act provides that [a]ll rules and statutes applicable in civil proceedings are available to the parties.

If produce Audio I will be able to present Material Facts and Evidence to the Court.

17-27-150 is also what the respondents quote for their reason to dismiss motion, they quote half the other half says. "If Necessary for the effective utilization of discovery Procedures, Counsel may be appointed by the Judge for an applicant who qualifies for appointment pursuant to section 17-27-60 or similar applicable provisions of Law.

On June 11, 2024 the case was dismissed with prejudice by the Honorable G.D. Morgan, Jr. I served Notice of Appeal on Respondents) on June 25, 2023.

On July 8, 2024 The Supreme Court of South Carolina granted me twenty days from the date of the letter to send a brief, However, I got the letter July 15, 2024.

## Facts and Arguments

I. Because of States errors, I Quasean Marshall the Petitioner, was deprived of due process from its procedural irregularities during the course of Judicial process which resulted in my case being procedurally barred.

Clerk and First PCR Counsel served me Documents untimely. The order of Dismissal of original PCR (Case No.: 2019-CP-23-1945) was ordered May 12<sup>th</sup>, 2023. The Clerk of Court Filed it May 22, 2023 (10) ten days later, but sent it to my Attorney June 13<sup>th</sup>, 2023. Twenty two (22) days later. A total of (32) thirty two days later. My Attorney sent it to me June 20, 2023 (7 days later) a total of (39) Thirty nine days before I was served making any motion untimely. The prejudicial errors even made my notice of Appeal untimely.

In Washington v. State 324 S.C. 232, 236 (1996) The Supreme Court granted petitioner relief because of the States misconduct and petitioner was not procedurally barred, even though PCR Application may have been successive, because of ~~many~~ many procedural irregularities that occurred during course of Petitioner's Judicial process that deprived him of due process.

II. Because my incompetency prevented my ability to assist my Counsel on a Fact based claim of ineffective assistance of Counsel my Claims could not be raised properly.

On December 26, 2022 I was in a crisis state of mind and was not competent until months later. I was held in Crisis Intervention / suicide watch and in lock up (RHU) two weeks before my hearing and was not allowed a "Full bite" at the Apple, because it includes rights to the appeal process. See ODom v. State 337 S.C. 256, 523 S.E.2d 753 (1999).

Under the Post Conviction relief Rules of Civil Procedure Rule 71.1(g) SCRCP says an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple. This "bite" includes an applicants right to appeal the denial of a PCR Application and the right to assistance of counsel in that appeal.

Counsel did not assist me.

A PCR Applicant is entitled to an appeal if the PCR Judge affirmatively finds either: 1) the Applicant requested and was denied an opportunity to seek appellate review; or 2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See Code 1976 §17-27-90; Rules Civil Procedure Rule 71.1(g)

Due to these prejudicial errors I was Denied right to appeal and couldn't petition for certiorari.

This Court has allowed successive PCR Applications where the Applicant has been denied complete access to the Appellate process. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

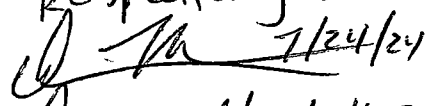
In Ferguson v. SC 382 S.C. 615 The Court Noted at 617 that "If at a future date, the petitioner regains his competency and discovers that at his original PCR hearing his incompetency prevented his ability to assist his counsel on a fact based claim of ineffective assistance of counsel he may then raise that claim in a subsequent proceeding.

Council v. Catwe 359 S.C. 120, 597 S.E.2d 782 (2001) The Court held a mentally incompetent applicant who later regains competence will have an opportunity to raise fact based issues at a later date.

Martinez v. Ryan 132 U.S. 1309 (2012) Says where the Claims  
Should have been raised Counsel was ineffective under the  
standards of Strickland v. Washington 466 U.S. 688, 164 S.Ct. 2052  
(1984)

### Conclusion

For the reasons stated, I ask this Honorable Court to  
reverse and remand the Judgment for a New Trial or to  
reconsider sentence.

Respectfully Submitted  
  
Quaseen Marshall 371676  
Lee Correctional Inst.  
990 Wizacky Hwy.  
Bishopville, SC 29010