

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
JOCELYN NEWMAN, CIRCUIT COURT JUDGE

RECEIVED
AUG 09 2024
S.C. SUPREME COURT

CASE NO. 2024-CP-400-1526

KEVIN SMITH #16920 APPELLANT

v.

STATE OF SOUTH CAROLINA
ALAN WILSON - WARREN B. GIESE
R. MARKLEY DENNIS JR. RESPONDENT

AFFIDAVIT
&
SUPPORTING MEMORANDUM IN SUPPORT OF NOTICE TO APPEAL

DISMISSAL OF THIS CASE PURSUANT TO THE POST-CONVICTION PROCEDURES ACT S.C. CODE ANN. § 17-27-20 AND ALL APPLICABLE CODES ATTACHED TO THIS ACT, AS BARRED, SUCCESSIVE OR BEING UNTIMELY BY THE LOWER COURT WAS IMPROPER.

FACTS

1

on January 30, 2024, THE PLAINTIFF (APPELLANT) SUBMITTED HIS NOTICE OF MOTION - AND MOTION FOR A WRIT OF HABEAS CORPUS AND A DECLARATION THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT

AND SENTENCE THE PLAINTIFF BASED UPON VOID-NULL UNFILED
INDICTMENTS NO. 95-GS-40-3705; 95-GS-40-3706; 95-GS-40-3707;
95-GS-40-3708; 95-GS-40-4202; 96-GS-40-2156; TO THE RICH-
LAND COUNTY CLERK OF COURT FOR FILING [ALONG WITH CIVIL ACTION COVER
SHEET AND SUMMONS; NAMING AS DEFENDANTS - STATE OF SOUTH CAR-
OLINA; ALAN WILSON; WARREN B. GIBSE, AND R. MARKLEY DENNIS JR
AND MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS] TO
INCLUDE PLAINTIFF'S VERIFIED COMPLAINT AND SUPPORTING AFFIDAVIT
WHICH WERE FILED CLOCK STAMPED ON MARCH 8, 2024.

2.

ON MARCH 11, 2024 THE PLAINTIFF'S MOTION AND AFFIDAVIT TO PRO-
CEED IN FORMA PAUPERIS WAS GRANTED AND SIGNED BY JUDGE JOCE-
LYN NEWMAN, AND WAS FILED WITH THE RICHLAND COUNTY CLERK OF
COURT - CLOCK STAMPED ON MARCH 12, 2024; TO WHICH PLAINTIFF'S
MOTION FOR A WRIT OF HABEAS CORPUS AND DECLARATION WAS ASSIGNED
CASE NO. 2024-CP-400-1526. SEE: PLAINTIFF'S [APPELLANT'S] EXHIBIT
A-B-ATTACHED

3

AT NO TIME DID THE PLAINTIFF (APPELLANT) COMMENCED-SUBMITTED
OR FILED ANY APPLICATION FOR POST CONVICTION RELIEF (PCR) TO THE
RICHLAND COUNTY CLERK OF COURT ON MARCH 8, 2024; AND THE LOWER COURTS
RECORDS ARE DEVOID OF SUCH FILINGS. SEE: COURTS RECORDS IN THESE PROCEEDINGS

* ARGUMENT - CASE LAW *

4.

In a post conviction proceeding, the focus usually is upon alleged errors made by trial or plea counsel. The applicant attempts to show that his or her attorney erred in a manner that a reasonably proficient attorney would not, and that error prejudiced his case. SUTTON V. STATE, 361 S.C. 644 S.E.2d 779 (S.C. 2004), which is not the case here.

Thus, the lower court (Clerk of Court) improperly construed plaintiff's (Appellants) motion for a writ of Mandamus and Declaratory Judgment Case no. 2024 CP-100-1526, as a post-conviction relief (P.C.R.) application, which this court should find is not applicable ^{law} in this case. See: MILLER V. STATE, 377 S.C. 99; 659 S.E.2d 492 (2008) (noting: "the clerk of court should not construe a petition for a writ of Habeas Corpus as a PCR application.")

Wherefore based upon the above to include supporting documentation (exhibits) there is an arguable basis for Appellants' assertion that the determination by the lower court was improper warranting the court's granting of the writ of certiorari. Respectively

si [Signature]

I SWEAR UNDER OATH BY THE LAWS OF THIS STATE THAT THE ABOVE STATEMENTS AND SUPPORTING CASE LAW - & EXHIBITS ARE TRUE - ACCURATE - GENUINE & CORRECT!

SWORN BEFORE ME THIS 5th DAY OF August 2024 A.M.

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, Sasha Oulter

MY COMMISSION EXPIRES: 2/28/24

