

RECEIVED

JAN 31 2013

S.C. SUPREME COURT

Phillip M. Miller, #301097
Petitioner
v

In The Supreme Court of
South Carolina

The State of South Carolina
Greenville County
Respondent

Appellate Case no: 2013-00093

January 28th 2013

Petitioner's response to the Supreme Court of South Carolina
Daniel E. Shearouse Clerk of Court, January 18, 2013
letter requesting an explanation concerning why the
determination of the circuit Court in its order of case
NO 2012-CP-23-03347 Issued on September 19, 2012
is improper.

See attached January 18, 2013 letter:
also see attached Explanation to why Petitioner
PER case number 2012-CP-23-003347 should not be
barred as being successive and/or as being
untimely under the statute of limitations.

Explanation

Pursuant to SCACR 243 (c) Petitioner's explanation to why the Judgment of the 13th Judicial Circuit Court of Common Pleas of Greenville County Conditional order of dismissal of his PCR Application, civil case number 2012-CP-23-3347 on grounds that the action is barred as being successive and /or as being untimely under the statute of limitations is improper. on grounds that the cause for his procedural default pursuant to the anti-terrorism and effective Death Penalty Act (AEDPA) was because of the ineffectiveness of his PCR attorney Rodney Richey. failure to insure that the grounds for relief raised in his 2nd PCR Application 2012-GS-23-3347 were amended in his 1st PCR Application, civil case number 2009-CP-23-6453, as required by SCACR 71.1(d), which states if after the state filed its return, the application presents Question of law or fact which will require a hearing. The court shall promptly appoint counsel to assist the applicant if he is indigent. Counsel shall be given reasonable time to confer with the Applicant. Counsel shall insure that all available grounds for relief are included in the Application and shall amend the application if necessary.

Once the clerk of Court of General Session Court for Greenville County appointed Rodney Richey as ~~my~~ Petitioner's PCR Counsel, pursuant to SC laws Petitioner's pro se access to the court has ended, all filing with the court must be made by Counsel, no action will be taken on Pro-se filings. See

Jones v State 348 S.C. 13, 558 S.E.2d 517 (2002);

State v Stuckey, 333 S.C. 56, 508 S.E.2d. 564 (1998);

Foster v State, 298 S.C. 306, 379 S.E.2d 907 (1984).

The circuit court is saying that Petitioner is basically procedurally Barred because he did not ~~cor~~ meet the requirements of SC 1976 Code Ann § 17-27-45 (or ~~and~~ ^s 17-27-90.

Petitioner ~~also~~ ^{claims} ~~argues~~ that had PCR Counsel Rodney Richey amended his 1st PCR Application as required By SCRPC 71.1(d), he would not have had to file ~~another~~ a 2nd PCR Application. Petitioner ~~also~~ ^{claims} further ~~argues~~ claims that In Supreme Court of the United States Louis Mariano:

Martinez vs Charles L. Ryan Director Arizona Department of Corrections, S.Ct. - 2012 - WL 912950 (US) NO-10-1001

argued Oct 4th, 2011, Decided March 20th, 2012 ~~Had~~

By the Supreme Court Justice Kennedy held that Antiterrorism and effective Death Penalty Act (AEDPA) did not Bar petitioner from using ineffectiveness of his ~~PCR~~ Post Conviction attorney to establish

'cause' for his procedural default:

~~Petition based~~

In conclusion

Petitioner claims that his cause for the procedural default, is because his PCR counsel failed pursuant to SCRCP 71.1(d) to insure that all available grounds for relief, he is now raising his his 2nd PCR application 2012-CP-23-3347 was amended and raised in his 1st PCR application. civil case number 2009-CP-23-6453, and for this reason, and ground stated forth in his 'Explanation', that the circuit court order in case 2012-CP-23-3347 is improper, and should be dismissed: Pursuant to

Supreme Court of the United States

Louis Mariano Martinez

-vs-

Charles L Ryan Director Arizona Department
of Corrections, S.Ct. - 2012 - WL 912450 (US)
NO-10-0001.

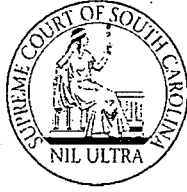
Respectfully Submitted by

Phillip M. Miller 301097 F4-B-139

M. C. I.

386 Redemption Way

M^o McCormick SC 28899



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
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January 18, 2013

Phillip M Miller, 301097
P. O. Box 21787
Columbia SC 29221

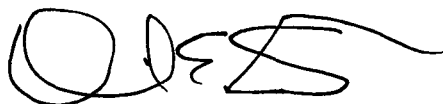
Re: Phillip Miles Miller, # 301097 v. State
Appellate Case No. 2013-000093

Dear Petitioner:

This Court has received the notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Please provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,



CLERK

cc: Karen Christine Ratigan

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Proof of Service

I observed Phillip M Miller on Jan 24, 2013 pick up from the M.C.I. mailroom a letter dated Jan 18, 2013 addressed to him from Daniel E. Shearouse Clerk of Court of The Supreme Court of South Carolina. Requesting an explanation to the Circuit Court's conditional order of dismissal of civil case 2012-CP-23-3347. I further observed Phillip M Miller on January 29, 2013 place in the M.C.I. Mail window his explanation to why the circuit court judgment in civil case 2012-CP-23-3347 is improper addressed to Daniel E Shearouse Clerk of Court of the SC Supreme Court in reference to his January 18, 2013 letter.

Witnessed by Robert M Waffers 243803 RA-197A

Respectfully submitted

P.S.

Phillip M Miller 301092

F4-139-B

M.C.I.

386 Redemption Way

M^cLeimick ~~SC~~ SC

2E899

sworn to before me on this
29th day Jan month 2013 year

SC Notary J Franklin Exp. Dub: 12-16-2019

Phillip M Millere 301097 P4-139B

M.C.F.
386 Redemption Way
Ms Cormick SE 21889

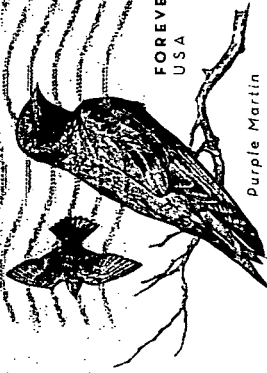
The Supreme Court of South Carolina
Daniel E Shearouse Clerk of Court
Post Office Box. 11330
Columbia South Carolina 29211

Legal.

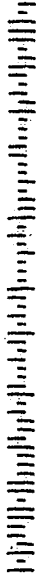
AUGUSTA GA 30602

29 JAN 2013 PM 11 L

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JAN 29 2012

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