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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Patrick Cleburne Fant III, Circuit Court Judge

Appellate Case No. 2024-000474

David D. Stalk.....Appellant,

v.

The State of South CarolinaRespondent.

AUSTIN PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether David Stalk be granted a PCR proceeding when he missed the statute of limitations for that proceeding but when he was unrepresented by counsel and possesses severe learning disabilities?

STATEMENT OF THE CASE

David Stalk was indicted by a Lancaster County Grand Jury for murder, attempted armed robbery, and possession of a deadly weapon during the commission of a violent crime in May 2013. The indictments came after the alleged armed robbery and death of Kelvisus Anthony in January 2013. Mr. Stalk intended to enter a guilty plea to manslaughter, but later changed his mind. He proceeded to a jury trial before the Honorable R. Knox McMahan on January 13-17, 2014, and was found guilty on all charges as indicted. Mr. Stalk was represented by Lancaster County Assistant Public Defender Mark Beard at trial. Judge McMahan sentenced him to concurrent terms of 45 years for murder, 20 years for attempted armed robbery, and five years for the weapons charge. Through counsel, Mr. Stalk timely filed a direct appeal, arguing the trial court erred in failing to suppress his confession because the statement was made following a promise of leniency, and threats or promises were made to his family. The Court of Appeals affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR. *State v. Stalk*, 2016-UP-341 (S.C. Ct. App. filed June 29, 2016).

Mr. Stalk filed a *pro se* application for post-conviction relief (PCR) August 28, 2018. He later filed an amended PCR application May 26, 2020. He was not appointed counsel and did not retain counsel. On October 3, 2020, the State moved to summarily dismiss the application on the basis that there was no genuine issue of material fact to necessitate an evidentiary hearing. On

October 9, 2020, the Court issued a Conditional Order of Dismissal. The application was dismissed with prejudice by an Order dated January 22, 2021, filed by the Honorable Eugene C. Griffith, Jr.

Mr. Stalk filed a second PCR application on January 6, 2023, and an evidentiary hearing was held February 21, 2024, before the Honorable Patrick Cleburne Fant III. This second PCR application was dismissed with prejudice on March 22, 2024, and a notice of appeal was filed with the South Carolina Supreme Court.

ARGUMENT

Should David Stalk be granted a PCR proceeding when he missed the statute of limitations for that proceeding but when he was unrepresented by counsel and possesses severe learning disabilities?

David Stalk, although serving a 45-year prison sentence after trial, has never had a PCR hearing. He missed the statute of limitations and the Attorney General's Office submitted a proposed order of dismissal to the circuit court judge. Stalk attempted to raise several claims in that initial application for post-conviction relief. Specially, the following:

- i. "False Statements"
- ii. "No Evidence"
- iii. "Officers threatening family"
- iv. "Counsel was ineffective during the jury charge by failing to object or file motions to the jury charge that inferred malice may arise when the deed is done by a deadly weapon"
- v. "Counsel was ineffective during jury deliberations to the answering two questions out of six that were asked to the Court, by the jury."
- vi. "Counsel was ineffective for failing to file motions or object to the time of death of the deceased to wit 1/28/2013 or 1/26/2013 by indictment or 1/16/2013 all in violation of due process"

The Court of Appeals denied Stalk's direct appeal on June 29, 2016. App. 570. He submitted an initial application for post-conviction relief on August 28, 2018, and filed an amended application on May 26, 2020, that requested a reduction in his sentence. App. 573, 580. On August 8, 2019, he filed a letter with the Clerk of Court asking if a lawyer had been appointed to represent him for the PCR. App. 585.

In his letter to the circuit court, dated November 2, 2020, regarding the conditional order of dismissal provided to the circuit court by the Attorney General's Office, Stalk informed the court that he had been placed in restricted housing and that he had been moved around often. He wrote that he did not realize there was a time limitation on filing a PCR application and that this was the first time he had been in trouble with the law. He also claimed he had filled out a PCR application but that it appears the court never received it. App. 586. The circuit court did not even address this letter in its final order of dismissal. It appears the court did not consider Stalk's explanations for why he missed the deadline at all which shows the fiction of this process whereby the Attorney General's Office obtains these orders of dismissal without any input from counsel on behalf of a sentenced inmate. In practice, an inmate under these circumstances has no meaningful opportunity to have his unique circumstances considered before he is denied the ability to exercise a statutory right provided to him by the South Carolina General Assembly.

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). Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Aice v. State*, 305 S.C. 448, 452, 409 S.E. 2d 392, 395 (1991).

This “bite” includes an applicant’s right to appeal the denial of a PCR application, and the right to the assistance of counsel in that appeal.” *See Aice*, 305 S.C. at 448, 409 S.E.2d at 392.

The Attorney General’s Office, as an adversary in these proceedings, should not be the gatekeeper for deciding whether inmates attempting to pursue post-conviction relief are entitled to counsel. Here, David Stalk has well-documented learning disabilities as provided in the petition for a writ of certiorari that is being filed along with this *Austin* petition. After he was convicted, it appears he was moved around within the Department of Corrections and that he lacked access to his legal materials while he was placed in restricted housing. In short, there are significant facts that should have been brought to bear on the question of whether he should have been allowed to exercise his statutory right to a PCR. But he was unrepresented by counsel, and neither the AG nor the circuit court judge engaged in any meaningful consideration of his situation. This Court should grant David Stalk his right to a PCR with the appointment of counsel. *See Case v. State*, 277 S.C. 474, 289 S.E.2d 413 (1982) (allowing a successive PCR application where the applicant’s first PCR application was dismissed without the assistance of legal counsel and without a hearing); *Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987) (permitting a successive application where the applicant did not have PCR counsel that differed from his trial counsel). Additionally, this Court should require the appointment of counsel to represent inmates before their cases are summarily dismissed by circuit court judges due to the Attorney General’s claim they have missed the statutes of limitations so a circuit court can meaningfully consider the full universe of factors that bear on the question of whether a defendant knowingly and voluntarily waived his or her right to a post-conviction proceeding.

CONCLUSION

This Court should grant David Stalk his right to a post-conviction proceeding with the appointment of counsel.

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