

file a second PCR Application raising additional issues not raised in the first PCR under the rubric of ineffective assistance of the first PCR Counsel. **409 S.E.2d 393**

3) **Geiger**, likewise to Austin and Odom, is effectively [attacking] the PCR procedure used in his first PCR case; therefore, the South Carolina statute of limitations, **S.C. Code 17-27-45(A)**, do not apply to the present Application, **2024-CP-40-0037 filed January 18, 2024**, a sum of sixteen (16) years, three (3) months, seven (7) days, three (3) hours and one point two (1.2) seconds after timely filing the first PCR Action.

Austin v. State: The Supreme Court of South Carolina reversed the dismissal of a second application and remanded it for an evidentiary hearing, where the Petitioner alleged in his second Application that his first PCR Counsel was ineffective for failing to seek Appellate review (**409 S.E.2d 395**). Specifically, the Court stated: "Because Petitioner is entitled to the assistance of Appellate Counsel on PCR and because we must craft a remedy to correct the unfairness which has occurred, we find that his Counsel failed to seek review in this case sufficiently states a claim for ineffective assistance of Counsel (**409 S.E.2d 396**).

Odom v. State: The South Carolina Supreme Court reversed PCR Judge's order of dismissal, finding that the Petitioner never received a "full" bite at the apple because both of his

applications were summarily dismissed before he was appointed legal counsel (523 S.E.2d 753). Thus, the Court found that Odom's Austin appeal is attacking the PCR procedure used in his case, not the merits of his sentence, so the one (1) year statute of limitations [] is not applicable (523 S.E.2d 757).

Applicant's amended application for Post Conviction Relief is to include the following claims: 10(a), 10(b), and 10(c).

10(a): Whether Applicant akin to Austin expressed instructions for PCR Counsel to preserve all unaddressed issues and was denied his fundamental State law due process rights to raise in 59(c) motion pursuant to SCRPC 71.1(d) unpreserved rubric claim: Trial Counsel was ineffective for failing to point out inconsistencies between the victims various accounts of the incident which led to your arrest as readily demonstrated by documents provided by the State in the discovery process.

10(b): Whether Applicant akin to Austin unknowingly and unintelligently waived his fundamental State law due process rights to obtain an adjudication on the merits of duly raised pursuant to SCRPC 71.1(d) claim: Trial Counsel was ineffective for failing to point out inconsistencies between the victims various accounts of the incident which led to your arrest as readily demonstrated by documents provided by the State in the discovery process, that was supported with evidence during first evidentiary hearing?

10(c): Whether PCR Counsels ineffectiveness demonstrated that she was not a genuine representative agent for not insuring in accordance to Applicant's asserted state law right **SCRCP 71.1(d)** that allegation: Trial Counsel was ineffective for failing to point out inconsistencies between the victims various accounts of the incident which led to your arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in **59(e)** motion filed on his behalf.

Austin was denied his State created law right **SCRCP 71.1(g) 409 S.E.2d 393**; Odom was denied his State created law right **SCRCP 71.1(d, g)**; Geiger, the present Applicant, was denied his state created law right **SCRCP 71.1(d)**.

Procedural error preventing a fair bite at the apple nevertheless Austin policy would be frustrated if one (1) year statute of limitations applied to errors made by the PCR Court.

Robertson v. State 795 S.E.2d 29: Justice Beatty "In this capital Post Conviction Relief ("PCR") James D. Robertson ("Petitioner") filed a second PCR application alleging, among other things, that his prior counsel were not qualified under section 17-27-160(B) of the South Carolina Code and failed to competently represent him. Without a hearing, the PCR Judge dismissed the application on the grounds that it was successive and barred by the one (1) year statute of limitations and laches. The Court granted Certiorari to review the Circuit

Court's dismissal of Petitioner's application. Petitioner contends his second PCR application should not have been summarily dismissed as successive because his case presents unique circumstances warranting review of prior PCR Counsel's assistance.

Applicant's amended application for Post Conviction Relief is to include the allegation **10(c)**: Whether PCR Counsel's ineffectiveness demonstrated that she was not a genuine representative agent for not insuring in accordance to Applicant's asserted State law right **SCRCP 71.1(d)** that allegation: Trial Counsel was ineffective for failing to point out inconsistencies between the victims various accounts of the incident which led to your arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in **59(e)** motion filed on his behalf.

Justice Scalia and Thomas: The Court ensures that today's opinion will serve as a template for future Petitioners seeking to evade Coleman's holding that ineffectiveness of Post Conviction Counsel will not furnish cause to excuse procedural default (111 S.Ct. 2546). The trick will be to allege, not that Counsel was ineffective, but rather that Counsel's ineffectiveness demonstrates that he or she was not a genuinely representative agent. No precedent should be so easily circumvented by word games, but the damage is particularly acute

when the affected precedent is so firmly "grounded in concerns of comity and federalism."

Where an Applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR's and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing (**McCoy, 737 S.E.2d at 626**).

CONCLUSION

Respondent's Motion to Dismiss and/or Summary Judgment should be denied because a conflict exists between the Respondent and Applicant whether the statute of limitations should be applicable or not applicable due to the nature of Eddie Geiger's claims akin to Austin attacking the PCR procedure used in his first PCR case.

Respectfully Submitted,

Eddie Geiger

Eddie Geiger #189709
Lee Correctional Institution F6-B-1257
990 Wisacky Highway
Bishopville, South Carolina 29010

This 23 day of August 2024.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Eddie Geiger #189709,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2024-CP-40-00337

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Response In Opposition Of The Respondent's Return and Motion To Dismiss have been served upon Assistant Attorney General D. Russel Barlow II on this 23 day of August 2024 by depositing in the U.S. Postal Mail to the Office of the Attorney General P.O. Box 11549 Columbia, South Carolina 29211.

S/ Eddie Geiger

Eddie Geiger #189709
Lee Correctional Institution F6-B-1257
990 Wisacky Highway
Bishopville, South Carolina 29010

October 17, 2024

The Honorable Jeanette W. McBride
Richland County Clerk of Court
P.O. Box 2766
Columbia, South Carolina 29202-2766

RE: Eddie D. Geiger, #189709 v. State of South Carolina
Case No: 2024-CP-40-000337

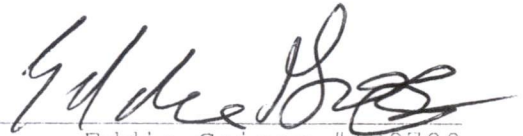
Dear Ms. McBride,

Enclosed please find Applicant's 59(e) Motion with attachments in the above captioned case for filing in your office.

Please forward proof of service and a certified copy back to Eddie Geiger for his file.

Sincerely,

S/



Eddie Geiger #189709
Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
Eddie Geiger #189709,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO: 2024-CP-40-00337

RULE 59(e) SCRPC MOTION
TO ALTER OR AMEND

RICHLAND COUNTY
FILED
2024 OCT 21 PM 1:58
JEFFREY W. HARRIS
CLERK OF COURT

NOW COMES the Applicant in the above-captioned case, respectfully requesting that this court alter or amend its order of dismissal pursuant to **Rule 59(e) SCRPC**. In support of this Motion, the Applicant would show unto this Honorable Court the following:

The Respondent is mistaken that the Applicant should have filed this present application sixteen (16) years, three (3) months and seven (7) days ago. As much as Applicant advanced three (3) allegations and filed a motion for appointment of counsel that were not addressed in the Court's Order of Dismissal prior to the summarily dismissal of Applicant's 2024 application without a hearing.

Applicant received Order of Dismissal on **October 10, 2024**.

The first Applicant argued whether Applicant, akin to **Austin**, expressed instructions for PCR Counsel to preserve all unaddressed issues and was denied his fundamental state law due process rights to raise in the **Rule 59(e) Motion** pursuant to

71.1(d) unpreserved rubric claim: Trial Counsel was ineffective for failing to point out inconsistencies between the victim's various accounts of incident which led to your arrest as readily demonstrated by documents provided by the state in the discovery process. The South Carolina Legislature enacted the SCRCF to govern all aspects of PCR including strict time deadlines and the duties of Applicant's PCR Counsel South Carolina Civil Procedure 71.1(d) taking into account the express purpose of 71.1(d) the Applicant asserts the Legislature intended for appointment of Counsel.

Austin v. State 409 S.E.2d 395: The South Carolina Supreme Court reversed the dismissal of a second application and remanded it for an evidentiary hearing where Petitioner alleged in his second application that first PCR Counsel was ineffective for failing to seek Appellate review "specifically" the Court stated because Petitioner is entitled to the assistance of Appellate Counsel on PCR and because we must craft a remedy to correct the unfairness which has occurred, we find that his Counsel failed to seek review in this case sufficiently states a claim for ineffective assistance of Counsel.

Odom v. State 523 S.E.2d 753: The South Carolina Supreme Court reversed PCR Judge's Order of Dismissal, finding that the Petitioner never received a "full" bite of the apple because both of his applications were summarily dismissed before he was

appointed legal counsel; additionally, the Court found that Odom's Austin appeal is attacking the PCR procedure used in his case, not the merits of his sentence so the one (1) year statute of limitations is not applicable.

Robertson v. State 795 S.E.2d 29: Justice Beatty in this capital post conviction relief (PCR); James D. Robertson (Petitioner) filed a second PCR application alleging, among other things, that his prior Counsel were not qualified under **Section 17-27-160(B)** of the **South Carolina Code** and failed to competently represent him. Without a hearing, the PCR Judge dismissed the application on the grounds that it was successive and barred by the one (1) year statute of limitations and laches. The Court granted Certiorari to review the Circuit Court's dismissal of Petitioner's application. Petitioner contended his second PCR application should not have been summarily dismissed as successive because his case presents unique circumstances warranting review of prior Counsel's assistance.

The General Assembly prerogative to establish procedural safeguards which it deems necessary to the fair administrations of SCRPC in PCR proceedings where the undisputed facts do not demonstrate a conscious waiver of a strategic decision to forgo one of the special protections mandated by the PCR ACT and SCRPC.

71.1(d) - Appointment of Counsel for Hearing: If after the state has filed its return the application presents questions 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 a 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.

Austin supra was denied his state created law right **71.1(g)**; **Odom supra** was denied his state created law right **71.1(d) (g)**; **Robertson supra** was denied his state created law right **17-27-160(B)**; and present Applicant **Geiger**, likewise to the above, was denied his state created law rights **71.1(d) (g)** and **Rule 59(e)** during initial PCR proceedings. Applicant contends he should have been granted a hearing on his 2024 PCR Application because (1) a **conflict exists** whether Applicant invoked his state created law right **71.1(d)** and was denied that right during a critical stage of initial PCR proceedings to raise in **Rule 59(e) Motion** unaddressed sixth amendment claim while represented by Tara Dawn Shurling; (2) A **conflict exists** whether the statute of limitations **17-27-45(A)** applies to Applicant's 2024 application attacking the PCR procedures of initial timely filed PCR Application; and (3) a **conflict exists** whether violation of Applicant's state created law right **71.1(d)**

is not foreclosed by **Aice** or its progeny and constitutes sufficient reason to avoid the prohibition of **17-27-90** against successive PCR Applications. Where an Applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR's and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing. **McCoy, 737 S.E.2d 626**

The second Applicant argued whether Applicant, akin to **Austin**, unknowingly and unintelligently waived his fundamental state law due process rights to obtain an adjudication on the merits of duly raised pursuant to **SCRCP 71.1(d)** claim: Trial Counsel was ineffective for failing to point out inconsistencies between the victim's various accounts of the incident which led to your arrest as readily demonstrated by documents provided by the state in the discovery process, that was supported with evidence during the first evidentiary hearing.

The South Carolina Legislature enacted the SCRCP to govern all aspects of PCR including strict time deadlines and the duties of Applicant's PCR Counsel South Carolina Civil Procedure 71.1(d) taking into account the express purpose of 71.1(d) the Applicant asserts the Legislature intended for appointment of Counsel.

Austin v. State 409 S.E.2d 395: The South Carolina Supreme Court reversed the dismissal of a second application and remanded it for an evidentiary hearing where Petitioner alleged in his second application that first PCR Counsel was ineffective for failing to seek Appellate review "specifically" the Court stated because Petitioner is entitled to the assistance of Appellate Counsel on PCR and because we must craft a remedy to correct the unfairness which has occurred, we find that his Counsel failed to seek review in this case sufficiently states a claim for ineffective assistance of Counsel.

Odom v. State 523 S.E.2d 753: The South Carolina Supreme Court reversed PCR Judge's Order of Dismissal, finding that the Petitioner never received a "full" bite of the apple because both of his applications were summarily dismissed before he was appointed legal counsel; additionally, the Court found that Odom's Austin appeal is attacking the PCR procedure used in his case, not the merits of his sentence so the one (1) year statute of limitations is not applicable.

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dismissed the application on the grounds that it was successive and barred by the one (1) year statute of limitations and laches. The Court granted Certiorari to review the Circuit Court's dismissal of Petitioner's application. Petitioner contended his second PCR application should not have been summarily dismissed as successive because his case presents unique circumstances warranting review of prior Counsel's assistance.

The General Assembly prerogative to establish procedural safeguards which it deems necessary to the fair administrations of SCRCF in PCR proceedings where the undisputed facts do not demonstrate a conscious waiver of a strategic decision to forgo one of the special protections mandated by the PCR ACT and SCRCF.

71.1(d) - Appointment of Counsel for Hearing: If after the state has filed its return the application presents questions 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 a 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.

Austin supra was denied his state created law right **71.1(g)**; **Odom supra** was denied his state created law right

71.1(d)(g); Robertson supra was denied his state created law right 17-27-160(B); and present Applicant Geiger, likewise to the above, was denied his state created law rights 71.1(d)(g) and Rule 59(e) during initial PCR proceedings. Applicant contends he should have been granted a hearing on his 2024 PCR Application because (1) a conflict exists whether Applicant unknowingly and intelligently waived his state created law right to raise sixth amendment claim in 59(e) Motion filed on his behalf by Tara Dawn Shurling; (2) A conflict exists whether the statute of limitations 17-27-45(A) applies to Applicant's 2024 application attacking the PCR procedures of initial timely filed PCR Application; and (3) a conflict exists whether violation of Applicant's state created law right 71.1(d) is not foreclosed by Aice or its progeny and constitutes sufficient reason to avoid the prohibition of 17-27-90 against successive PCR Applications. Where an Applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR's and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing. McCoy, 737 S.E.2d 626

The third Applicant argued whether PCR Counsels demonstrated that she was not a genuine representative agent for not insuring in accordance to Applicant's asserted state law

right **SCRCP 71.1(d)** that allegation: Trial Counsel was ineffective for failing to point out inconsistencies between the victim's various accounts of the incident by documents provided by the state in the discovery was duly raised in **59(e) Motion** filed on his behalf.

The South Carolina Legislature enacted the SCRCP to govern all aspects of PCR including strict time deadlines and the duties of Applicant's PCR Counsel South Carolina Civil Procedure 71.1(d) taking into account the express purpose of 71.1(d) the Applicant asserts the Legislature intended for appointment of Counsel.

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both of his applications were summarily dismissed before he was appointed legal counsel; additionally, the Court found that Odom's Austin appeal is attacking the PCR procedure used in his case, not the merits of his sentence so the one (1) year statute of limitations is not applicable.

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one of the special protections mandated by the PCR ACT and SCRCF.

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Austin supra was denied his state created law right **71.1(g)**; **Odom supra** was denied his state created law right **71.1(d)(g)**; **Robertson supra** was denied his state created law right **17-27-160(B)**; and present Applicant **Geiger**, likewise to the above, was denied his state created law rights **71.1(d)(g)** and **Rule 59(e)** during initial PCR proceedings. Applicant contends he should have been granted a hearing on his 2024 PCR Application because (1) a **conflict exists** whether Applicant's PCR Counsel demonstrated that she was not a genuine representative agent for not insuring in accordance to **SCRCF 71.1(d)** that Applicant's duly raised sixth amendment claim was raised in **59(e) Motion** filed on his behalf by Tara Dawn Shurling; (2) A **conflict exists** whether the statute of limitations **17-27-45(A)** applies to Applicant's 2024 application

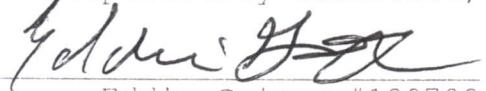
attacking the PCR procedures of initial timely filed PCR Application; and (3) a conflict exists whether violation of Applicant's state created law right **71.1(d)** is not foreclosed by **Aice** or its progeny and constitutes sufficient reason to avoid the prohibition of **17-27-90** against successive PCR Applications. Where an Applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR's and those facts are not conclusively refuted by the record before the PCR Court, a question of fact is raised which can only be resolved by a hearing. **McCoy, 737 S.E.2d 626**

Fourth Applicant contends the Court's Order of Dismissal did not address Applicant's Motion for Appointment of Counsel prior to summarily dismissing 2024 PCR Application since Applicant should have been granted Motion for Appointment of Counsel. He now asks this Court to correct this error of law. In the alternative, he requests that this Court issue an amended order making findings of fact and law on appointment of Counsel Motion to preserve Applicant's right to seek appellate review. **Gary v. State 557 S.E.2d 662.**

CONCLUSION

For the above reasons, the Applicant now prays that this Court might amend its Order of Dismissal pursuant to **Rule 59(e) SCRPC** and grant relief remand for a hearing and appointment of Counsel.

Respectfully Submitted,



Eddie Geiger #189709
Lee Correctional Institution F6-B-1257
990 Wisacky Highway
Bishopville, South Carolina 29010

This _____ day of October 2024.

Applicant Supplement 59(e) Motion With:

(1) Letter from Applicant in regards to filing 59(e) Motion during first PCR proceedings. **2007-CP-401288**

(2) Correspondence from Tara Dawn Shurling regarding filing a 59(e) Motion during first PCR proceedings. **2007-CP-40-1288**

(3) Letter regarding Tara Dawn Shurling emphasizing the importance of filing a 59(e) Motion in PCR matters. **RE: David Brown v. State of South Carolina 2007-CP-15-436**

(4) Published opinion in the matter of Shurling Respondent.

(5) Copy of Applicant's 59(e) Motion in second PCR proceedings which was never ruled on by Honorable [redacted] Newman.

RICHLAND COUNTY
FILED
2024 OCT 21 PM 2:04
JENNIFER E. W. McBRIDE
CLERK, GA. 2. FD.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Eddie Geiger #189709,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2024-CP-40-00337

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC has been served upon opposing Counsel Assistant Attorney General D. Russel Barlow II on this 17 day of October 2024 by depositing in the U.S. Postal Mail to the Office of the Attorney General P.O. Box 11549 Columbia, South Carolina 29211.

RICHLAND COUNTY
FILED
2024 OCT 21 PM 2:04
JEANLITE W. McBRIDE
CLERK, CLERK OF COURT

s/ 

Eddie Geiger #189709
Lee Correctional Institution F6-B-1257
990 Wisacky Highway
Bishopville, South Carolina 29010

Ms. Tara Dawn Shurtliff
Attorney AT LAW
3615 Landmark Dr. Suite D
Columbia SC 29204

Eddie Geiger # 189709
Lee C.I. S-5 Rm # 2156
990 Wisacky Hwy
Bishopville S.C. 29010

RE: Rule 59(E) Motion To Amend

RECEIVED

SEP 4 2008

LEECI MAIL ROOM

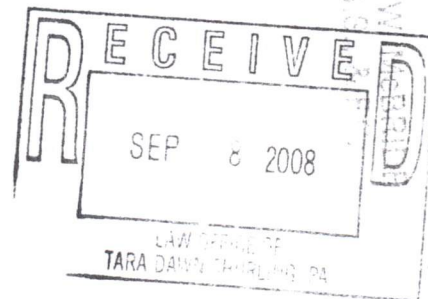
Dear Ms. Shurtliff,

I respond to you in regards to my PCR-
Order the Honorable Judge Keester stated I would be informed
through within 30 days of the convening of the evidentiary
hearing that was held June 23, 2008. Evenmore in case
Honorable Judge Keester does not rule on all of my PCR
issues, I request beforehand that you go ahead and
file a Rule 59(E) motion to include all the issues that
the Honorable Judge Keester failed to rule on. Lastly
I thank you dearly for your assistance in this very
important matter.

Sept 4th 2008

Bishopville South Carolina

151 ~~Eddie Geiger~~



JEANETTE W. WATSON
2008 SEP 21 PM 2:04
RICHLAND COUNTY
FILED

LAW OFFICE OF



 **FILE COPY**

TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson
Associate Attorney

September 15, 2008

Eddie Geiger, 189709
Lee Correctional Institution Room #2156
990 Wisacky Highway
Bishopville, SC 29010

RE: Eddie Geiger, 189709 v. State of South Carolina; 2007-CP-40-1288.

Dear Mr. Geiger:

I am in receipt of your letter dated September 4, 2008. Although Judge Keesley has decided to rule against you, he has not yet signed the State's proposed Order of Dismissal. When he signs that Order and files it, I will receive a copy of it. I will then file a Rule 59(e), SCRCP, motion to alter or amend *if it does not address all of the issues which we raised at your PCR hearing*. If I determine that a Rule 59(e) motion is not needed, I will then file a Notice of Appeal on your behalf. Of course, once I receive the Order of Dismissal, I will send you a copy. Rest assured that I ensure that your issues are preserved for appeal. If we file a 59(e) motion, the Notice of Appeal will not be filed until after the judge rules on that motion.

I will send you more detailed information about each of these steps in the process if and when I need to take them. If you have any further questions or concerns, please do not hesitate to contact me. For now, I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive style with a large, looping initial "T".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/ts

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

Jeremy A. Thompson

Associate Attorney

August 5, 2010

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: David Brown v. State of South Carolina; 2007-CP-15-436.

Dear Mr. Shearouse:

In this PCR action this client represented to the Court that he was never advised that he could receive a life sentence if he pleaded guilty to murder. He was told repeatedly that if he went to trial and was found guilty he was going to get a life sentence. He insists that he did not realize he could still get a life sentence if he entered a plea of guilty. That issue was apparently developed in the client's first PCR action but, was not ruled upon in the Order of Dismissal. No Rule 59(e) motion was filed to address this oversight. The Applicant's second PCR was dismissed without a ruling on the merits. Judge Buckner allowed me to articulate the issue I felt should be heard from the third PCR application but, ultimately dismissed the application as successive. I argued that the issue was one which so impacted fundamental due process that he client should be allowed to be heard on the merits notwithstanding the fact that his PCR attorney in his first PCR action had not taken steps to insure that the issue was properly preserved by filing a Rule 59(e) motion when the Order of Dismissal was issued without findings of fact and rulings of law on this crucial issue. Specifically, I argued that this was one of those rare cases where the extraordinary circumstances provisions of Aice v. State, 305 S.C.448, 409 S.E.2d 392 (1991) should apply.

I continued to be deeply troubled by the pattern of court-appointed attorneys waiving issues for PCR appeals by failing to file motions pursuant to Rule 59(e) SCRCP, where an inmate has articulated the claim in his circuit court PCR action but, has not gotten an Order of Dismissal which contains the required findings of fact and rulings of law on all his issues. I would respectfully continue to assert that the ends of justice are not served by denying a PCR applicant his right to an appeal on an issue developed in the lower court because the Court neglected to make appropriate finds in the order and the PCR lawyer failed to take steps to bring that omission to the attention of the lower court. The problem is exacerbated by the fact that applicant represented by counsel are prohibited from filing *pro se* pleadings. Therefore, even if the applicant observes the omissions in his Order of Dismissal, he can not file a Rule 59(e) motion *pro se*.

I thank the Court for its time in consideration of this appeal and remain,

Sincerely,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

cc: Matthew J. Friedman, Assistant Attorney General
David M. Brown, 267095

441 S.C. 130

IN THE MATTER OF TARA DAWN SHURLING, RESPONDENT
APPELLATE CASE NO: 2023-0001523 AND 2023-0001524

SEPTEMBER 28, 2023

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to **Rule 17(b)** and **Rule 17(c)** of the **Rules of Lawyer Disciplinary Enforcement (RLDE)** contained in **Rule 413** of the **South Carolina Court Rules (SCACR)**. The petition also seeks appointment of the Receiver to protect the interests of Respondent's clients pursuant to **Rule 31, RLDE, Rule 413, SCACR**. It is ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 EDDIE GEIGER, 189709)
 Applicant,)
)
)
)
 STATE OF SOUTH CAROLINA)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-2691
 2016-CP-40-2557
 (merged)

Rule 59 (e) SCRCR MOTION
 TO ALTER OR AMEND

FILED
 2017
 AUG 21 2:47
 CLERK OF COURT

Now comes the Applicant in the above caption case respectfully requesting that this Court alter or amend it's Order/Order of Dismissal pursuant to Rule 59(e) SCRCR. In support of this motion the Applicant would show unto this Honorable Court the following:

At the hearing convened January 31, 2017 in this case, Applicant sought to motion to strike defense and or answer due to the fact Respondent Jessica Kinard alleged in Return and Motion to Dismiss that Applicant raised ineffective assistance of PCR counsel. Applicant testified that he raised professional misconduct allegations incorporated with ineffective assistance of trial counsel claims.

Applicant testified that he was aware that ineffective assistance of PCR counsel was not a cognizable claim and that there was no right to counsel in State or Federal collateral review proceedings. Applicant testified that the professional misconduct allegations circumvents the precedent in Coleman v Thompson. Applicant testified that the professional misconduct allegations were generated between Sept 22, 2008 and Oct 8, 2008. Applicant testified in the event the Honorable Court does not strike Respondent's defense and/or answer PCR counsel was ineffective could possibly cause him a problem later during his proceedings.

A bare allegation should not be relied upon to support a motion for Summary Judgement. A sham answer is one good in form but false in fact and not pleaded in good faith. A motion to strike a defense as sham presents a question of fact to be determined by the Court upon evidence. Motions to strike an answer or defense as sham are not favored in law and should be granted only where the evidence demonstrates pleading is manifestly false and was made in bad faith. Burkehalter v Townsend, 138 SE 34 (1927); Union Guano Co v Garrison, 126 SE 133 (1924); Germofert Manufacturing Co v Castles, 81 SE 665 (1914).

Applicant received order of Dismissal August 21 2017

Asmuch as Respondent Jessica Kinard did not offer any evidence during Applicant's argument for the Honorable Court to grant Motion. Since Applicant should have been granted motion to strike Respondent's answer PCR counsel was ineffective he now asks that this Honorable Court correct this error of law because Order/Order of Dismissal did not address.

Furthermore, since Applicant should have been granted motion to strike in the alternative he requests that this Court issue an amended Order making findings of fact and rulings of law to preserve Applicant's right to seek a proper appellate review.

Additionally the Honorable Court's Order/Order of Dismissal did not address Applicant's Motion for Appointment of Counsel. Applicant testified that the Court's stated in our view the plain and unambiguous language of Rule 71.1(d) mandates the appointment of counsel for indigent PCR Applicants wherever a PCR hearing is held to determine questions of law or fact. Therefore we hold that when a PCR Application is not dismissed before a hearing is held the PCR judge must appoint counsel or obtain a knowing and intelligent waiver of that right by the Applicant. Whitehead v State, 426 SE 2d 315; Gary v State, 557 SE 2d 662.

The Respondent Jessica Kinard did not offer any evidence during Applicant's oral argument of Motion to Appoint Counsel. Since Applicant should have been granted motion for appointment of counsel he now asks the Honorable Court to correct this error of law. In the alternative he requests that this Court issue an amended Order making findings of fact and law on appointment of counsel motion in order to preserve Applicant's right to seek an appellate review.

Next Applicant testified that the Respondent contended Applicant could have raised new in his prior application. Applicant has failed to present any reasons why he should be allowed to proceed with successive application. Accordingly Respondent moves for Summary Dismissal of the application because it is successive. Applicant testified 17-27-90 which permits an Applicant to file a subsequent application only if the Applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. Applicant testified the professional misconduct allegations were generated during initial PCR proceedings. Applicant demonstrated that first PCR application was filed Feb 27, 2007. Order of Dismissal issued Sept 22, 2008, and 59(e) alter to amend judgement motion

later. Exhibit: Respondent return page 5 of 7 and 6 of 7.

Applicant testified nevertheless in regards of the jurisdiction claims encompassed in present application Applicant emphasize lack of jurisdiction of the cause or subject matter can be raised anytime citing State v Robertson 278 SE 2d 770; State V Funderburk 191 SE 2d 520; State v Heyward 564 SE 2d 379 (SC Ap 2002) Citing Anderson v Anderson 382 SE 2d 897.

Applicant testified as much as the PCR court may grant a motion by either party for summary disposition of the PCR application when there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law SC Code 17-27-70(c).

Applicant testified onwordily when considering the State's motion for summary dismissed, where no evidentiary hearing has been held the PCR judge must assume facts presented by the Applicant are true and view those facts in light most favorable to the Applicant Leamon v Sate 363 SC 432, 611 SE 2d 495 (2005) citing SC Code 17-27-80 where an applicant alleges facts that would establish an exception either to the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court a question of fact is raised which can only be resolved by a hearing Delaney v State 269 SC 555, 238 SE 2d 679 (1977).

Applicant testified henceforth as to the timeliness issue in regards to jurisdiction allegations the Respondent submits Applicant was required to file those claims within one year after entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal whichever is later. Importantly Applicant argues jurisdiction issues may not waived even by consent of parties and may be raised at any time.

Applicant testified most importantly based on this factual dispute a hearing is necessary to resolve this critical issue more the Respondents motion to dismiss present application which encompasses jurisdiction allegations which can be raised anytime should be denied and Applicant should be allowed to proceed with second application.

Respondent Jessica Kinard did not offer any testimony evidence during Applicant's oral argument in opposition of motion to dismiss application as timebarred. The Honorable Court advised present Applicant that he should have raised jurisdictional claims in first application.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

EDDIE GEIGER, 189709)
Applicant,)

STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-2691
2014-CP-40-2557
(merged)

CERTIFICATE OF SERVICE
BY HAND DELIVERY

The undersigned hereby certifies that one copy of Motion to Alter or Amend pursuant to Rule 59(e) SCRPC has been served upon opposing counsel Jessica Kinard, Assistant Attorney General by US Mail on this day of August 25th 2017

Eddie Geiger
Eddie Geiger

cc: Honorable Jocelyn Newman
Richland County Clerk of Court

FILED
2017 SEP 11
JEANIE C. S. S.
RICHLAND
PM 2:48