

RECEIVED

JAN 21 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
COBLE, CIRCUIT COURT JUDGE

EDDIE GEIGER PETITIONER

V.

STATE OF SOUTH CAROLINA RESPONDENT

PETITION FOR WRIT OF CERTIORARI

EDDIE GIEGER

PRO SE

Lee Correctional Inst. / F6B - 1257

990 Wisacky Hwy

Bishopville, SC 29010

INDEX

INDEX 1

ISSUES PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 5

Exhibits *i, ii, iii, iii*

ISSUES PRESENTED

Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged 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(e) motion pursuant to SCRCF 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) filed on his behalf?

Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged whether applicant akin to Austin unknowingly and unintelligently waived his fundamental state law due process right to obtain an adjudication on the merits of duly raised pursuant to SCRCF 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) filed on his behalf?

Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged whether Counsel's ineffectiveness demonstrated she was not a

genuine representative agent for not ensuring in accordance to Applicant's asserted state law SCRC 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) filed on his behalf?

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the April 2004 term of the Richland County Grand Jury for: assault with intent to commit criminal sexual conduct – 1st degree (2004-GS-40-2701). Douglas Strickler, Esquire, represented the Applicant. Fifth Circuit Assistant Solicitors K. Luck Campbell, Esquire, and Dietrich Lake, Esquire, prosecuted the case.

On October 10–13, 2004, Applicant proceeded to a jury trial before the Honorable Clifton Newman. The jury convicted Applicant as indicted. Judge Newman sentenced Applicant to life without parole.

Applicant filed a timely Notice of Appeal. Appellate Defender Tara S. Taggart, Esquire, perfected Applicant's appeal. The South Carolina Court of Appeal affirmed Applicant's conviction and sentence by published opinion. State v. Eddie Geiger, Op. No. 4151 (Ct. App. filed September 25, 2006). The Remittitur was returned to the lower court on October 11, 2006.

FIRST PCR ACTION AND SUBSEQUENT APPEAL: 2007–CP–40–1288

Applicant filed his first PCR action on February 27, 2007. In that application, Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Due Process Violations

An evidentiary hearing was held on June 23, 2008, before the Honorable William P. Keesley. In a written order signed September 5, 2009, Judge Keesley denied relief and dismissed the application. On October 8, 2008, Applicant made a motion pursuant to Rule 59(e), SCRCP, to alter or amend. On February 19, 2009, Judge Keesley denied the motion to reconsider. Applicant then moved to have outside counsel appointed to him, but this was also denied.

STATEMENT

Second PCR Action 2014-40-02557 January 31, 2017. A motion hearing was held. Subsequently, Judge Newman denied and dismissed application with prejudice by filed order August 17, 2017 thereafter 59(e) motion was filed, thus the PCR Court refused to make a ruling on the 59(e) motion on appeal.

Third PCR Action, subsequent appeal. January 18, 2024. Petitioner filed third application in which Judge Coble issued a written order of dismissal on this case 2024-CP-40-00337 October 1, 2024. However, the order denying subsequent 59(e) was not filed until November 15, 2024 and received by Lee Mail Room November 25, 2024. Petitioner filed appeal.

ARGUMENT

I. Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged 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(e) 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) filed on his behalf?

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 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 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**

PCR Judge erred for summarily dismissing Petitioner's 2024 PCR Application without hearing where a question of fact existed whether the statute of limitations was applicable or equitably tolled because of Petitioner's procedural attack of first PCR proceedings and not the merits of Petitioner's sentence.

ARGUMENT

II. Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged whether applicant akin to Austin unknowingly and unintelligently waived his fundamental state law due process right to obtain an adjudication on the merits of duly raised pursuant to SCRCF 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) filed on his behalf?

31

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

6

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

PCR Judge erred for summarily dismissing Petitioner's 2024 PCR Application without hearing where a question of fact existed whether the statute of limitations was applicable or equitably tolled because of Petitioner's procedural attack of first PCR proceedings and not the merits of Petitioner's sentence.

7

ARGUMENT

III. Whether the PCR Judge erred for summarily dismissing third application for failure to comply with the one-year statute of limitations SC Code Ann. §17-27-45 CA) whence Petitioner alleged whether PCR Counsel's ineffectiveness demonstrated she was not a genuine representative agent for the ensuring in accordance to applicant's asserted state law 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 Petitioners arrest as readily demonstrated by documents provided by the State in the discovery process was duly raised in 59(e) 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.

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 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 SCRCP.

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's PCR Counsel demonstrated that she was not a genuine representative agent for not insuring in accordance to **SCRCP 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**

PCR Judge erred for summarily dismissing Petitioner's 2024 PCR Application without hearing where a question of fact existed whether the statute of limitations was applicable or equitably tolled because of Petitioner's procedural attack of first PCR proceedings and not the merits of Petitioner's sentence.

CONCLUSION

For all the foregoing reasons certiorari should be granted the PCR order summarily dismissing 2024 application should be vacated and remand for a hearing from the denial of relief.

Respectfully submitted
Eddie Geiger
Eddie Geiger
PRO-SE Petitioner

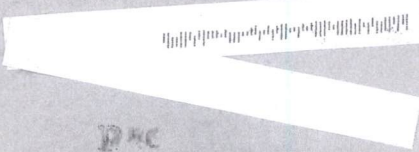
This day of
this 17 day of January 2025

Eddie Geiger # 189709
Lee CI F6B 1257
990 Wisacky Hwy
Bishopville SC 29010

LEE CI INMATE



US POSTAGE
ZIP 29010 \$002.59⁰
02 4W
0000373648 JAN 17 2025



PAID

RECEIVED

JAN 21 2025

S.C. SUPREME COURT

The Honorable Patricia Howard
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia SC 29211-1330

