

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2023-CP-34-00282

Weldon W. Stewart, Jr., #295095

Petitioner,

v.

State of South Carolina,

Respondent.

EXPLANATION PURSUANT TO RULE 243(c), SCACR

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S.C. SUPREME COURT

INTRODUCTION

Pro se petitioner, Stewart, implores this Court to uphold its decades-long practice of holding PCR courts accountable for signing orders, prepared by counsel, which fail to specifically address issues raised by the opposing party. In the current action, Respondent prepared three orders which were signed by the PCR court. These orders contained general rulings which were adverse to Stewart. However, the rulings in these orders did not specifically address Stewart's claims, and misstated, or failed to mention, key facts presented by Stewart in support of his claims.

The PCR court failed to amend these rulings, despite Stewart's repeated requests and his diligent efforts in bringing said omissions to the court's attention. Thus, Stewart is left with no option but to request that this Court vacate the three orders signed by the PCR court and remand his case to the PCR court to conduct discovery and an evidence hearing, or, at a bare minimum, to prepare an order which complies with the law.

The circumstances in this case are unique, where a novel freestanding actual innocence claim, implicating subject matter jurisdiction, is supported by credible new evidence that C.A., the person Stewart is wrongfully convicted of killing, committed suicide. Said new evidence includes a sworn statement and other written admissions from Dr. Russell Harley, the pathologist who conducted C.A.'s autopsy. Dr. Harley now confirms the possibility he provided false testimony regarding C.A.'s cause and manner of death, albeit inadvertently, based upon his review of credible new evidence that C.A. perished by suicide.

Dr. Harley, in his sworn statement, attached weight and credibility to a report from Dr. J.C. Upshaw Downs, a forensic pathologist retained by Stewart to conduct a scientific analysis of C.A.'s autopsy. Dr. Harley specifically noted the finding of Dr. Downs that the culmination

of the evidence, old and new, indicates the skull fracture Dr. Harley ruled caused C.A.'s death was actually a "postmortem" injury, or an injury sustained after death. Dr. Harley did not rebut this conclusion. Rather, he candidly admitted his trial conclusion C.A. died from blunt force trauma "could be wrong". Dr. Harley further confirmed procedural omissions during C.A.'s autopsy that apparently resulted in evidence of suicide being overlooked.

Both Dr. Harley and Dr. Downs stated further information is required, including further forensic analysis of C.A.'s autopsy files, in order to definitively determine the matters in question, namely if C.A. committed suicide and if the skull fracture was sustained after death. However, both pathologists clearly indicated that suicide cannot be ruled out based on the incomplete original autopsy, combined with credible new evidence of suicide. Dr. Harley further stated he has "no objection" deferring to Dr. Downs to complete the forensic analysis of C.A.'s autopsy files, as Dr. Harley is "retired from active work". Based on these factors, Stewart requested leave of the PCR court to conduct discovery, specifically requesting the court issue an order whereby Dr. Downs would be granted access to C.A.'s autopsy files for the above stated purpose.

The PCR court, in its general denial of this request, failed to specifically address or mention the supporting evidence presented by Stewart, namely the statements from Dr. Harley and the report from Dr. Downs. The PCR court further failed to address or mention this evidence in its summary dismissal of Stewart's claims, despite the fact this evidence forms the basis of Stewart's claims. Instead, the orders signed by the PCR court reference facts and issues not presented by Stewart.

The circumstances in this case are identical to those in other cases where this Court remanded the cases for the PCR courts to prepare adequate orders. For without such action in this case, Stewart would be faced with the impossible task of appealing the PCR court's

decision by speculating as to the court's underlying rationale for its rulings. As this Court has clearly expressed through longstanding case precedent it is unacceptable for PCR courts to sign orders that do not specifically address claims raised by applicants, Stewart respectfully requests that the Court vacate the PCR orders in this action and remand his case to the PCR court to prepare an order which complies with the law.

BACKGROUND

Stewart commenced this post-conviction relief (PCR) action with the filing of a PCR application on October 30, 2023. With the application, Stewart filed a motion to be allowed to represent himself with appointed standby counsel in this proceeding. Stewart began discovering admissions from Dr. Harley on March 7, 2024, five months **AFTER** filling the application. On April 1, 2024, Stewart filed a motion requesting leave to conduct discovery ("Discovery Motion"), based on the newly discovered admissions from Dr. Harley and the report from Dr. Downs. On April 18, 2024, he filed a supporting memorandum of facts ("Discovery Memo").

Respondent filed its return ("Return") on May 3, 2024, and submitted with it a proposed conditional order ("Conditional Order") for the PCR court to sign. The Conditional Order was filed on August 12, 2024, and served on Stewart on August 27, 2024. Stewart was notified that he would have twenty days to submit his response to the Conditional Order stating reasons why this Order should not become final.

Stewart filed his initial response ("Response I") to the Conditional Order on June 10, 2024, prior to the PCR court signing and filing the Conditional Order, based on a copy of the same that was provided to him by Respondent. Stewart filed his supplemental response ("Response II") to the Conditional Order on September 8, 2024. On September 24, 2024, Stewart filed a motion requesting leave to supplement his Responses with two proposed orders for the PCR court to sign.

The PCR court filed the final order of dismissal ("Final Order") on October 15, 2024, and it was received by Stewart from the institution mail room on November 5, 2024. On November 7, 2024, Stewart filed a motion to alter/amend judgment pursuant to Rule 59(e), SCRCPP ("59(e) Motion"). The filing of this motion tolled the thirty-day deadline for Stewart filing his notice of appeal to this Court. Respondent filed its return to the 59(e) Motion ("59(e) Return") on November 20, 2024, and submitted a proposed order ("59(e) Order") to the PCR court for signing. Stewart filed a reply ("59(e) Reply") to the 59(e) Return on December 3, 2024. With the 59(e) Reply, Stewart notified the PCR court that the proposed 59(e) Order, a copy of which Respondent had provided him, failed to address the issues raised by Stewart.

The PCR court signed the 59(e) Order on December 9, 2024, and it was filed on December 13, 2024. Stewart received the filed 59(e) Order from the institution mail room on January 2, 2025. His receipt of the 59(e) Order restarted calculation of the thirty-day deadline for him to file his notice of appeal with this Court. Thus, Stewart's notice of appeal must be filed with this Court by January 30, 2025.

ARGUMENT

Statutory provisions in this state mandate the "court shall make specific findings of fact, and state expressly its conclusions of law, related to each issue presented". *S.C. Code Ann. § 17-27-80. See Rule 52(a), SCRCPP*. This Court has for decades, in numerous case rulings, admonished PCR judges against signing "prepared" orders that fail to address facts and issues presented by PCR applicants. See *Reese v. State*, 425 S.C. 108, 820 S.E.2d 376 (2018). In such instances, this Court has consistently vacated these PCR orders and remanded the cases to the PCR courts to prepare "a new PCR order that complies with the law". *Id at 425 S.C. 109-10, 820 S.E.2d 377-78 (citing numerous rulings by this Court on this issue)*.

Additionally, it tends to violate due process when judges, without proper review, sign orders prepared by a party in an action, because the party preparing the order acts as both litigator and judge, effectively depriving the opposing party of a fair opportunity for the action to be decided by an impartial jurist. It is also unreasonable for a judge to defer his judgement to a party in an action, as it is unlikely the party will render a judgement against its own interests.

Stewart commenced the current action on October 30, 2023, with the filing of his PCR application. In his application, he raised three main claims: (1) subject matter jurisdiction based on new evidence, (2) freestanding actual innocence, and (3) he was tried while mentally incompetent in violation of due process. *Conditional Order p. 10.*¹ Five months after filing his application, on March 7, 2024, Stewart began discovering admissions from Dr. Harley. He subsequently filed the Discovery Motion, thereby amending his claims based on this new evidence. Stewart argued his claims were a matter of science, based on the admissions from Dr. Harley and the report from Dr. Downs. *Discovery Motion pp. 5-6.* He further argued that both pathologists clearly indicated discovery was necessary in order to fully develop scientific evidence essential to the resolution of his claims. *Id.*

Respondent filed its Return and submitted a fundamentally identical Conditional Order to the PCR court for signing, which the PCR court eventually signed. However, the Conditional Order did not address the claims raised by Stewart, as the legal conclusions contained in this order are based on misrepresented facts. A specific instance of a legal conclusion based on misrepresented facts, the Conditional Order misstates the factual basis for Stewart's newly discovered evidence claim as being: "[Stewart] claims that he discovered on March 7, 2023,

¹ Stewart, a pro se applicant, is entitled to the benefit of the court liberally construing his claims. *Wall v. Ransick*, 42 F.4th 214 (4th Cir. 2022).

that counsel did not file a Rule 5, SCRCrimP, for his discovery". *Conditional Order p. 17.*²

These misrepresented facts are followed by a legal conclusion, based on these facts, that Stewart's newly discovered evidence claim is "barred by the statute of limitations" and the claim "shall be summarily dismissed". *Conditional Order p. 18.*

Directly following this improper legal conclusion, the Conditional Order states that Stewart's request for discovery is denied on this basis, or because "[Stewart] cannot establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed". *Id at p. 19.* However, the court's ruling denying discovery does not address or mention the scientific evidence presented by Stewart in support of his request for discovery, namely the admissions from Dr. Harley and the report from Dr. Downs. *Id at pp. 18-19. See 59(e) Motion pp. 16-19.* Moreover, the language framing the PCR court's denial of discovery clearly indicates this ruling is based solely on improper legal conclusions arising from misrepresented facts. *Id at p. 18.*

In response to the Conditional Order, Stewart contended it was premature and unfair for the PCR court to summarily dismiss the action until he was afforded a full and fair opportunity to complete discovery. *Response I p. 7.* He emphasized that two pathology experts, including the trial expert for the State, clearly indicated discovery is necessary in order to fully develop the scientific evidence supporting his claims. *Id at pp. 11-15.* Stewart further contended clear legal precedent dictated his subject matter jurisdiction claim could not be waived or forfeited, raising a material dispute as to whether this claim could be procedurally barred and necessitating a hearing to resolve this factual dispute. *Id at pp. 6-8.*

In addition, Stewart clarified that his newly discovered evidence claim was based on

² Stewart's newly discovered evidence claim is based on admissions from Dr. Harley which were initially discovered on March 07, 2024. *59(e) Motion p. 14.*

"newly discovered admissions" from Dr. Harley. *Response II p. 3*. He also reiterated that his freestanding actual innocence and subject matter jurisdiction claims were based on Dr. Harley's admissions and the report from Dr. Downs, as statements made by the two pathologists add weight and credibility to Stewart's claim C.A. committed suicide. *Response I pp. 9-12*.

Despite these arguments and objections, the PCR court signed a Final Order prepared by Respondent summarily dismissing the action. However, the Final Order contained a general denial, merely stating the action is denied and dismissed "for reasons set forth in the Court's Conditional Order of Dismissal". *Final Order p. 3*. By signing the Final Order prepared by Respondent, the PCR court failed to address any of Stewart's objections to the Conditional Order, failed to correct the misrepresented facts contained therein, and failed to amend the rulings of the court to address the correct facts and issues presented by Stewart.

Stewart filed his 59(e) Motion, wherein he outlined these omissions in painstaking detail, and requested that the PCR court amend its ruling to address the correct facts and issues presented by him. For instance, he again pointed out that the timing and litigation of his newly discovered evidence claim was based upon his initial discovery of Dr. Harley's admissions, or "March 7, 2024". *59(e) Motion p. 14*. He then requested the PCR court amend its ruling on this issue to address the correct factual predicate, as opposed to ruling on this issue based on misrepresented facts, as reflected in the Conditional Order. *Id at pp. 15-16*. Stewart devoted 22 pages of his 59(e) Motion to precisely restating the correct, unaddressed facts and issues presented by him, and requesting the PCR court amend its rulings to address the same. *59(e) Motion pp. 5-27*.

Despite his efforts, the PCR court signed the 59(e) Order prepared by Respondent. This order contained a mere one-paragraph reference to the 59(e) Motion followed by a general denial of the same, stating the previous "order of dismissal issued by this Court contains the

appropriate findings of fact and conclusions of law". 59(e) Order p. 19.³ As the rulings in the orders issued by the PCR court fail to address the facts and issues presented by Stewart, and the lower court failed to properly respond to his 59(e) Order, he is left with no other recourse than to petition this Court.

The circumstances in this case are identical to those in Reese v. State, supra, where this Court held the circumstances warranted the PCR order being vacated and the case being remanded to the PCR court. Specifically, as in Reese, the PCR court in this case failed to address Stewart's claims and improperly denied his 59(e) Motion with a general denial. This Court has been unwavering in holding under these circumstances that the deficient PCR orders must be vacated and the cases remanded to the PCR courts. Stewart prays only that this Court will act in his case in accordance with its long-standing precedent established through its numerous prior rulings on this issue.

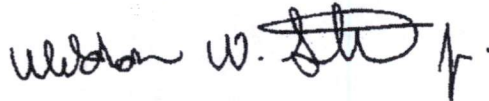
Additionally, Stewart implores the Court to review the PCR court's denial of discovery for abuse of discretion, as the court's refusal to grant discovery is based upon an erroneous legal conclusion applied to misrepresented facts. 59(e) Motion p. 18. See State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017)(An "abuse of discretion" occurs when the court's decision is unsupported by the evidence or controlled by an error of law). See also State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)("It is equal abuse of discretion to refuse to exercise judicial authority when it is warranted as it is to exercise discretion improperly ").

³ After Respondent filed its 59(e) Return, and prior to the PCR court signing the proposed 59(e) Order, Stewart filed his 59(e) Reply wherein he outlined facts and issues presented by him that were not addressed in the proposed order. Stewart took this additional step to avoid spending time seeking a remand from this Court, as every day spent addressing matters that should have been resolved in the lower court means extra days he must remain illegally detained for a crime that was never committed. At some point, Stewart believes these unreasonable delays, among other compelling factors, should warrant him being granted bail pending the resolution of this appeal.

CONCLUSION

Based on the foregoing, Stewart respectfully requests that the Court vacate the orders of the PCR court and remand his case to the lower court to conduct discovery and an evidence hearing. In the alternative, Stewart respectfully requests that the Court vacate the orders of the PCR court and remand his case to the lower court to prepare an order which complies with the law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Weldon W. Stewart, Jr.", with a stylized flourish at the end.

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January 24, 2025