

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Roger M. Young, Circuit Court Judge

RECEIVED

OCT - 7 2013

S.C. Supreme Court

WILLIAM CHESSER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000937

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT	4
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

ISSUE PRESENTED

Whether petitioner's application for post-conviction relief should have been summarily dismissed because it did not comply with the one-year statute of limitations when the South Carolina Department of Corrections changed his sentence?

STATEMENT

On December 1, 2010, petitioner appeared before the Honorable Kristi L. Harrington in Berkeley County and pled guilty to second-degree burglary. He was sentenced under the Youthful Offender Act to six (6) years suspended to two (2) years probation. Debra K. Littlejohn, Esquire, was plea counsel. Ashley Cornwell, Esquire, was the assistant solicitor. (App. p. 1 – p. 13).

Petitioner filed an application for post-conviction relief on February 6, 2012. (App. p. 15 – p. 25). Respondent filed a return and motion to dismiss dated May 25, 2012. (App. p. 26 – p. 29). The Honorable Deadra L. Jefferson filed a conditional order of dismissal dated December 13, 2012. (App. p. 30 – p. 32). Petitioner filed an objection to the conditional order of dismissal on January 17, 2013. (App. p. 33 – p. 37).

On April 2, 2013, the Honorable Roger M. Young, Sr. filed a final order of dismissal because petitioner failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act because he did not file his application within the one-year statute of limitations. (App. p. 38 – p. 39).

This petition follows.

ARGUMENT

Petitioner's application for post-conviction relief should not have been summarily dismissed because it did not comply with the one-year statute of limitations when the South Carolina Department of Corrections changed his sentence.

Petitioner was indicted for second-degree burglary that was alleged to have occurred on September 20, 2010. Petitioner pled guilty on December 1, 2010. He was twenty (20) years old. The judge sentenced him under the Youthful Offender Act not to exceed six (6) years. He then ordered, "Suspend the balance, place you on probation for two years." (App. p. 12, lines 5 – 9).

Petitioner alleged in his application for post-conviction relief the following:

"Kirkland changed my 10 months on a Y.O.A. sentence to a mandatory Y.O.A. sentence due to the fact that June 2, 2010 the law changed for Burglary 2nd degree. That I did not know about and my lawyer did not inform me about."

(App. p. 17).

He then explained later that he was sentenced illegally under the Youthful Offender Act because the statute for burglary in the second degree under the Youthful Offender Act was changed to a mandatory three (3) year sentence. (App. p. 22). Section 31 of Act No. 273 amended Section 24-19-10 of the 1976 Code dealing with youthful offenders. Section 24-19-10(d) states that a "Youthful offender" means an offender who is:

(IV) Seventeen but less than twenty-one years of age at the time of conviction for burglary in the second degree (Section 16-11-312). The offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three-year minimum sentence.

In its return and motion to dismiss, respondent moved for summary dismissal as follows:

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to – 160. S.C. Code Ann. § 17 -27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment 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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S. E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on December 1, 2010. This Application was filed on February 6, 2012, which was over two (2) months after the statutory filing period had expired.

(App. p. 27)

The PCR court brought up the statute of limitations in its conditional order of dismissal. (App. p. 31) Petitioner responded and again raised the issue of the change in the law that made his sentence a mandatory three (3) year sentence. (App. p. 33 – p. 37) In spite of this, the court issued a final order of dismissal on April 2, 2013. (App. p. 38 – p. 39)

PCR appellate counsel would submit that petitioner deserves a full evidentiary hearing with the appointment of counsel. Petitioner raised a proper claim with respect to his sentence being

changed. S.C. Code § 17-27-20 provides remedies under paragraph (a)(1), (2), (3), (5) and (6) where a sentence is called into question. Petitioner is questioning his sentence and when he found out that the South Carolina Department of Corrections had changed his sentence, he filed an application for post-conviction relief. The statute of limitations should not be used to bar his application.

CONCLUSION

Petitioner's writ should be granted and his case should be remanded for an evidentiary hearing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
ROGER M. YOUNG, CIRCUIT COURT JUDGE

WILLIAM CHESSER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000937

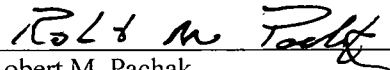
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Chesser states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on na. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for William Chesser.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of October, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Roger M. Young, Circuit Court Judge

WILLIAM CHESSER,

PETITIONER,

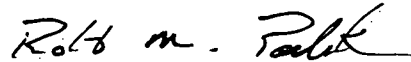
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

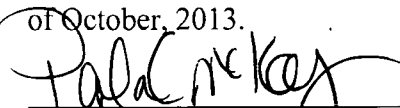
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and William Chesser, #348724, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 7th day of October, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of October, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.