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MAR 24 2025
S.C. SUPREME COURT

State of South Carolina } Supreme Court
County of Laurens } 2019-CP-30-0948

Derek J. Brown # 297592
Appellant

vs

State of South Carolina
Respondent

243(C),
Explanation

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The appellant in the above case was denied a post conviction relief hearing because the lower court determined that the PCR action was barred as successive and untimely under the statute of limitation. Based upon Rule 243(C), the appellant will show that the lower courts determination was improper pursuant to the facts and argument of appellant.

The appellant is appealing the denial of his post conviction relief application. This appeal is taken from the Order of Dismissal dated January 16, 2025, and the denial of appellant's 59(e) motion, which was denied on February 13, 2025 and received by Appellant on March 11, 2025.

(1)

Appellant Brown was indicted in Sept 2001 in Laurens County for murder & possession of a weapon during the commission of a violent crime. On October 29, 2003, appellant was found guilty as charged and was sentenced to LWOP for murder and 5 years for possession of a weapon during the commission of a violent crime.

Brown timely appealed and was represented by the S.C. office of Appellate Defense who raised the following issue: The judge erred by refusing to direct a verdict acquitting Brown of the crimes charged, where the state failed to introduce any evidence that he committed, or aided and abetted the commission of, the murder of Philip Johnson.

On December 7, 2006 S.C. Court of Appeals issued an order affirming the decision of the lower court. Brown's ~~pro se~~ petition for rehearing was denied January 18, 2007. Pro se PCR app. was filed on February 7, 2007.

On Nov. 24, 2009, PCR denied & dismissed PCR application. Brown appealed by way of Petition for writ.

On Aug 19, 2011 S.C. Supreme Court granted Brown's petition for writ as to issues 1A & 1B and denied writ as to the remaining issues. On May 9, 2012, S.C. Supreme Court issued an opinion dismissing the petition as improvidently granted.

As a threshold matter, the procedure followed by the PCR court denied Brown an opportunity to have his PCR claims adjudicated by a judicial officer. "S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to make specific findings of fact, and state expressly its conclusion of law relating to each issue presented." McCoy v. State, 305 S.C. 329, 408 S.E2d 241 (1991), Pruitt v. State, 310 S.C. 254, 423 S.E2d 127 (1992). The PCR court did not do that, but rather delegated that responsibility to the Attorney General's office. See attached letter dated October 6, 2023

Applicant does not know the PCR court's reasons for denying his PCR application because the PCR court did not provide any instruction to the Attorney General's office regarding the reasoning to include in its proposed order

Although the Attorney General did not address the merits of each issue presented, the reasoning in the order is entirely that of an advocate and not an independent judicial officer, which violates the separation of powers, S.C. Const. Art. I §118. Addressing Section 17-27-80, our Supreme Court strongly encourage PCR judges to draft their own findings of fact and conclusions of law. Hall v. Colwe, 360 S.C. 353, 601 S.E.2d 335 (2004)

As a result of the error, the order of dismissal reads like an advocate trying to save the conviction that a judicial officer safeguarding the rights of litigants. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012)

In the current action before the PCR court, the applicant contend that he is in custody unlawfully for the following reasons:

- 1) Actual innocence / miscarriage of justice
- 2) Ineffective Assistance of Counsel
- 3) Due Process violation / structural errors
- 4) Newly Discovered Evidence
- 5) Fraud on the Court
- 6) Hand of one Hand of all jury charge
- 7) Failure to investigate (u)

In this case, there exist evidence of genuine issue of material facts not previously presented to the court and heard that require vacation of applicant's conviction and sentence. This matter come by way of newly and after discovered evidence. See State v. Devin S. Johnson
^{444 S.C. 442}
Applicant have filed his PCR application and amendments within one year after date of actual discovery of the facts, and after the date when the facts could have been ascertained by reasonable diligence. S.C. Code Ann. 17-27-20(A)(4) and 17-27-45(C).

Applicant have made a prima facie showing that he is entitled to relief 17-27-20(A)(4). The fundamental defects alleged in this PCR action are standards that require establishment of a complete miscarriage of justice and a omission inconsistent with the rudimentary demands of fair procedure.

It would be a denial of due process to not give the Appellant a evidentiary hearing on the within claims. The appellant have filed his PCR application within one year after date of actual discovery of fact pursuant to State v. Devin Johnson, supra.

The PCR court was in error by not appointing counsel to Appellant pursuant to Rule 21.1(D) which provide if after the state has filed it's return, the application presents question of law and facts, as in the case at bar, the PCR court should have promptly appointed counsel to assist the appellant. Counsel should have been given a reasonable time to confer with appellant about his meritorious 6th Amendment and due process claims. As of date, appellant have never been appointed an attorney to assist in this case, which violates the PCR statute and the Responding statute.

The proposed conditional order of Dismissal and Final order from the PCR court was an unreasonable determination of the facts in light of the evidence submitted by the Respondents, as discussed earlier.

The PCR court was in error when it ruled that successiveness, statute of limitation, res judicata, and the failure to meet the burden for newly and after discovered evidence does not apply to this case. Appellant should be given a summary judgment hearing because the respondent moved for summary dismissal.

Appellant can show that his newly and after discovered evidence pursuant to the Hand of one Hand of All theory/jury charge (1) is such that it would probably change the result if a new trial were granted (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching.

Appellant have shown by the above that the Lawrence County PCR court was in error for not stating its findings of fact and conclusion of law pursuant to *Pruitt v. State*, supra. It was error to adopt the attorney general's opinion about the case. It was error for the PCR court to not appoint counsel pursuant to Rule 21.1(D). It was also error in the PCR court to hold this case for over 3 years before they responded. Appellant request this Honorable Court to appoint counsel and remand this case back to the Lawrence County Common Plea Court for a hearing.

March 19, 2025

Alex Brown

State of South Carolina }
County of Laurens } Common Pleas
2019-CP-30-0948

Derek J. Brown #297592 }
Applicant } Certificate of Service
v. }
State of South Carolina }
Respondent }

I, Derek J. Brown #297592 certify that I have served the Respondent with a copy of my 59(c) motion by placing a copy in the Perry mailroom hands for mailing, postage prepaid, addressed as follows:

Zachary W. Jones
Asst. Att. General
P.O. Box 11549
Columbia, S.C. 29211

I, Derek J. Brown #297592 certify and verify under the penalty of perjury that the foregoing is true and correct.

March 19, 2025

Derek Brown