

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

Derek J. Brown #297592
Applicant

} Rule 59(e), SCRPC motion

State of South Carolina
Respondent

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SUPREME COURT

Pursuant to Rule 59(e), SCRPC, Derek J. Brown #297592 moves this Court for an order altering and amending the order of dismissal dated November 7, 2023, filed November 9, 2023, and received by applicant on November 14, 2023. This motion is based on the following grounds.

This matter comes before this Court by way of an application for post-conviction relief filed by the applicant on October 30, 2019. Respondent made its return and moved to summarily dismiss the action as successive. Some (4) years later which have caused an inordinate and inexcusable delay.

Threshold matter

As a threshold matter, the procedure followed by this court denied Mr. Brown an opportunity to have his post-conviction relief 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." McCray v. State, 305 S.C. 329, 330, 408 S.E. 2d 241 (1991). Pruitt v. State, 310 S.C. 254, 423 S.E. 2d 127 (1992). This court did not do that, but rather delegated that responsibility to the Attorney General Office. See attached letter dated October 6, 2023. Applicant does not know this court's reasons for denying his post-conviction relief application because this court did not provide any instructions 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 § 18. Addressing section 17-27-80, our Supreme Court⁶⁶ strongly encouraged PCR judges to draft their own findings of fact and conclusions of law. *Hall v. Catare*, 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, 429, 735 S.E. 2d 471, 475 (2012).

1. Procedural History

The applicant agrees with the recitation of the procedural history in the conditional order of dismissal. pg[#] 1-3

II. Current Action Before Court

Applicant contend that he is being held in custody unlawfully for the following reasons

1. Ineffective Assistance of
 2. Actual Innocence / manifest miscarriage of justice
 3. Denial of due process / structural errors
- Amended application

1. Ineffective Assistance of Counsel for failure to investigate
 2. Newly Discovered Evidence
 3. Fraud upon the Court
 4. Due process violation
- Hard at one / Hard of All instruction

There exist evidence of genuine issue of material facts not previously presented and heard that require vacation of applicant's conviction and sentence. This matter come by way of newly and after discovered evidence. The applicant have filed this 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)

III Findings and Conclusions

Applicant can and 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 an omission inconsistent with the rudimentary demands of a fair procedure. It would be a denial of due process to not give the applicant a evidentiary hearing on the within claims. The applicant have filed his PCR action within one year after date of actual discovery of fact. 17-27-20 (A) (4) + 17-27-45 (E)

Applicant request this Honorable Court to appoint counsel pursuant to Rule 21.1 (D) which provides it after the state has filed its return, the application presents question of law and facts, as in the case at bar, the Court shall promptly appoint counsel to assist the applicant. 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. As of date, applicant have not been appointed an attorney to assist in this case.

(11)

This proposed conditional order of Dismissal is based on an unreasonable determination of the facts in light of the evidence submitted to this Court by the Respondents.

Success, res, statute of limitation, untimely, res judicata and failure to meet the burden for newly & after discovered evidence does not apply to this case. It would be a denial of due process to not appoint counsel when the respondents move for summary dismissal of this PCR action.

Applicant have shown that his newly and after discovered evidence (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.

There is a reasonable probability that but for this error of counsel, the result to the applicant would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Applicant motion/request this Honorable Court to alter/amend its judgment for the foregoing reasons, enter an order granting applicant Brown post-conviction relief and remand this case to the General Sessions for a new trial, and/or appoint counsel pursuant to Rule 71.1(D) to assist applicant in a PCR hearing.

Llered Brown