

EXPLANATION

NOW COMES, THE Appellant pursuant to Rule 203 & 243 SCACR, appealing the "Final Order To Dismiss" issued on 8th August 2013, by the Honorable Larry B. Hyman, Jr., Judge of the 15th Judicial Circuit in the Court Of common Pleas for Horry County, in the Appellant's P.C.R. Case No. 2013-CP-26-324. The Appellant received the Order on 10th September 2013, and now files this "Notice of Intent To Appeal" with this Honorable Court.

The Appellant by way of the South Carolina Code Of Law §17-27-45(B), the recent U.S. Supreme Court ruling in Lafler v. Cooper, 132 S.Ct. 1376 (March 21, 2012), the Companion Case Missouri v. Frye, 132 S.Ct. 1399 (March 21, 2012), and this Honorable Court's decision in Talley v. State, 640 S.E.2d 878, 880 (2007), will show this Honorable Court that the Honorable Larry B. Hyman, Jr., erred in his decision of the "Final Order To Dismiss" by the abuse of discretion, in error of law by stating that Appellant's P.C.R. claim was successive and untimely.

The Appellant argues that not only was his P.C.R. Application filed timely and not successive, but also that the Appellant has reasonable grounds to be granted an Evidentiary Hearing and/or resentencing to the reasonable plea that was not properly conveyed to the Appellant for the Appellant to make a timely informed decision as to whether to accept the favorable plea bargain that the solicitor deemed sound in the interest of justice.

The Appellant filed a P.C.R. Application with the Horry County Clerk of Court on the 14th of January 2013, under S.C. Code of

§17-27-45(B), which states: "When a court whose decisions are binding upon the Supreme Court of this State or that the Supreme Court of this State holds that the Constitution of the United States or the Constitution of this State or both, impose upon State Criminal Proceedings a substantive standard not previously recognized or a right not in existence at the time of the State Court Trial, and if the standard or right is intended to be applied retroactively, and Application under this chapter may be filed not later than one (1) year after the date on which the standard or right was determined to exist." Also citing Lafler v. Cooper, 132 S.Ct. 1376 (2012).

Under Lafler it was determined by the U.S. Supreme Court that defendants had a right to effective assistance of counsel during the plea-bargain process which is considered a pre-trial stage, constitutionalizing the plea-bargain process when a defendant rejects a favorable plea and goes to trial on the advice of counsel. Therefore, establishing a new definitive standard and right not previously in existence for potential defendants in the pre-trial stage of a criminal proceeding.

Using the Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) test for ineffective assistance of counsel, a defendant needs to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Under Lafler's legal analysis it was determined that the second prong of Strickland, how a defendant (Applicant) was harmed by counsel's ineffectiveness, if the ineffectiveness was proven,

the harm (Prejudice) would be presumed by the Courts in the harsher sentence a defendant (Applicant) received by going to trial and rejecting the a more favorable plea offer.

The State argued that the ruling setforth in Davie v. State, 381 S.C. 601 (2009), was an identical case to Lafler. The Appellant disagrees. Davie uses a different legal analysis than what is setforth in Lafler, because the standard or rights are different for the two different cases. Therefore, the analysis for each case would be different. Prior to the U.S. Supreme Court ruling there was no specific standard of constitutional guarantees in place how to resolve such claims. Court's in South Carolina was left to deal with such claims on a case by case basis, which at the time did not fully define the scope of a defendant's Sixth Amendment Rights when a defendant asserts a claim of ineffective assistance of counsel that resulted in a defendant's refusal to accept a favorable plea bargain on the advise and/or misinformation by counsel, that eventually led to a defendant going to trial, being found guilty, and receiving a harsher sentence than the favorable plea offer.

Davie in 2009 was decided by the S.C. Courts by using the Strickland two prong test for establishing ineffective assistance of counsel. But in Lafler it was a different analysis, in that if an Applicant could prove ineffective assistance of counsel, the 2nd prong of Strickland of how an Applicant was prejudiced and/or harmed, would be inferred through the harsher sentence that was received, which setforth a new legal standard or right.

The State also argued that the Appellant's P.C.R. claim was successive and untimely. The Appellant believes that inaccordance

with the Uniform Post-Conviction Act in the South Carolina Code Of Law §17-27-45(B), citing Lafler, Missouri v. Frye, 132 S.Ct. 1399, and Talley v. State, 640 S.E.2d 878 (2207), that the Appellant should be granted relief in receiving an evidentiary hearing and/or the opportunity of receiving the original plea remedy, due to the fact that Appellant filed his P.C.R. claim within the one (1) year statute of limitations under the rule of law.

Lafler should be applied retroactively to the State of South Carolina because it brings forth a new standard or right determining ineffective assistance of counsel under Lafler, in dealing when counsel, 1) Gives a defendant misinformation of an incorrect legal rule, 2) Does not inform defendant of the plea, 3) Gives a defendant erroneous advice as to whether to accept or reject a favorable plea offer, 4) Allows the plea to lapse, and the defendant proceeds to trial, is found guilty, and receives a harsher sentence.

Appellant filed a P.C.R. under S.C. Code of Law Ann. §17-27-45(B), on 14th January 2013. Lafler was decided on 21 March 2012, imposing upon the state criminal proceedings a substantive standard not previously recognized and binding upon the courts of this State. Therefore, the Appellant was within the one (1) year statute of limitations as defined in S.C. Code of Law §17-27-45(B).

In Talley v. State, 640 S.E.2d 878 (2007), the defendant Talley filed his P.C.R. Application on the assertion that the

U.S. Supreme Court ruling on the Alabama v. Shelton, 535 U.S. 654, 122 S.Ct. 1764 (2002), created for Talley a new substantive standard not previously recognized, nor was in existence at the time of Talley's trial. In Talley v. State, the State of South Carolina moved to summarily dismiss Talley's P.C.R. Application for failure to file within the statute of limitations pursuant to S.C. Code Ann. §17-27-45(A), and Deloquin v. State, 469 S.E.2d 606 (1996). After a thoughtful legal analysis of both Talley's position and the State of South Carolina's position, the Supreme Court ruled that because Alabama v. Shelton, applies retroactively on collateral review, The P.C.R. Judge in Talley's case correctly determined S.C. Code Ann. §17-27-45(B) is the applicable statute of limitations. Our Supreme Court of South Carolina ruled that Alabama v. Shelton, was decided on May 20, 2002), and Talley filed his P.C.R. Application on March 6, 2003. Therefore, Talley's P.C.R. Application was timely filed under S.C. Code Ann. §17-27-45(B).

Appellant believes that Lafler sets similar standard as Talley did, in accordance with S.C. Code Ann. §17-27-45(B), and that his P.C.R. Application was filed timely and is not successive.

CONCLUSION

The Appellant, based on his meritorious claims, has believed he has met the burden of establishing his entitlement to relief by a preponderance of the evidence and showing the probative value supporting the appellant's argument.

The Appellant humbly ask this honorable Court to grant an evidentiary hearing. In addition, the appellant humbly request that counsel be appointed in efforts to defend such claim.

Dated: 10 OCTOBER 13

S. A. C. P. S.
Pro Se