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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. : 2025-000507

James R. Rose,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING

The Petitioner, James R. Rose, moves this Honorable Court, for rehearing pursuant to Rule 221 (a), SCACR. In support of this petition, Petitioner will respectfully show the Court: Rule 221 (a), of the South Carolina Appellate Court Rules provides in relevant part:

" Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court.

A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR.

Petitioner's United States Constitutional Right to Due Process and the equal protection of laws were violated when the South Carolina Court of Appeals relieved his Appellate counsel, and dismissed his PCR appeal, without a hearing. Petitioner is entitled to an "Austin" review. See *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) ("a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal."). See also *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (The Supreme Court set forth procedure to be followed when a defendant petitions for certiorari pursuant to *Austin* based on allegedly invalid waiver of right to appellate review of denial of petition for postconviction relief. Rules App. Proc., Rule 227(d).).

The denial of Petitioner's second PCR application was improper because the PCR court erred in finding, without a hearing, that the application was successive and untimely.

"The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70 (c). When considering the state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. *Leamon v. State*, 363 S.C. 432, 434, 411 S.E. 2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80). Where an application alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. Cf. *Delaney v. State*, 269 S.C. 555, 556, 238 S.E. 2d 679 (1977).

Petitioner asserts that genuine issues of facts exist as to whether his claims are successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. Petitioner has demonstrated sufficient reasons why his claims were not included in his first PCR application in that the South Carolina Court of Appeals relieved his appellate counsel and dismissed his PCR appeal, without a hearing, after his first PCR application was dismissed. However, the State contends Petitioner withdrew from his PCR appeal and, therefore, *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), is not applicable. Based on this factual dispute, a hearing is necessary to resolve this critical issue.

Although Petitioner's PCR claim may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits, the PCR judge erred in granting the State's motion for summary dismissal because genuine issues of material facts exist as to whether Petitioner's PCR claims are successive or untimely. See *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (citing S.C. Code Ann. § 17-27-70 (b)-(c))

(noting summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief).

CONCLUSION

For the reasons stated, Petitioner prays this Court reverse and remand this matter for a hearing pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991).

May 23, 2025
Pelzer, South Carolina

Respectfully submitted,

James R. Rose
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