

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petition for Writ of Certiorari to
Berkeley County
Honorable J. Mark Hayes, Plea Judge
Honorable Walton J. McLeod, IV, PCR Judge

Appellate Case No. 2024-000793

NATALIA CHISOLM,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the circuit court erred by dismissing Petitioner's PCR action for failure to comply with the statute of limitations, where circumstances preventing Petitioner from making a timely filing were both beyond her control and unavoidable despite due diligence, since equitably tolling the statute was warranted?

RESPONDENT'S COUNTERSTATEMENT OF QUESTION PRESENTED

Did the PCR court, which gave Petitioner the benefit of the doubt by considering the timeliness of this application *from the time Petitioner learned the appeal had been dismissed* rather than from the remittitur date, properly conclude Petitioner did not establish extraordinary circumstances to warrant equitable tolling?

STATEMENT OF THE CASE

Petitioner is presently incarcerated in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In June 2015, the Berkely County Grand Jury indicted Petitioner for two counts of contributing to the delinquency of a minor (2015-GS-08-01048, -01057); first-degree burglary (-01051), second-degree burglary (-01049); unlawful carrying of a pistol (-01050); three counts of armed robbery (-01052, -01053, -01054); three counts of kidnapping (-01055, -01056, -1059); and possession of a weapon during the commission of a violent crime (-01058). These charges arose from a home invasion on October 21, 2014.

On June 30, 2016, Petitioner pled guilty before the Honorable J. Mark Hayes to first-degree burglary, one count of armed robbery, and one count of kidnapping. Melisa Gay, Esquire, represented Petitioner, and Assistant Solicitor Elizabeth Sigal represented the State. The State did not provide a sentencing recommendation and *nolle prossed* the remaining charges. Judge Hayes sentenced Petitioner concurrently to 20 years for each charge.

On July 11, 2016, Petitioner (through counsel) filed a notice of appeal. The appeal was later dismissed for failure to provide an explanation for appealing a guilty plea. The remittitur was sent December 30, 2016.

On September 22, 2020, Petitioner untimely filed this PCR action. Although she did not raise any specific allegations in her application, she filed a memorandum in support of an evidentiary hearing, asserting the statute of limitations should be equitably tolled. Respondent filed a return and moved to dismiss this application as untimely based on the statute of limitations. On March 12, 2024, a hearing on the State's motion to dismiss convened before the Honorable Walton J. McLeod, IV. On April 26, 2024, Judge McLeod issued an order denying equitable tolling and dismissing the application as untimely. This petition followed.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court gave Petitioner the benefit of the doubt by considering the timeliness of this application *from the time Petitioner learned the appeal had been dismissed* rather than from the remittitur date, and in doing so properly concluded Petitioner did not establish extraordinary circumstances to warrant equitable tolling.

Petitioner contends the PCR court erred in dismissing this application based on the statute of limitations because equitable tolling should have applied. She specifically contends her belief that the statute had previously expired (based on the dismissal of her appeal) was an extraordinary circumstance that prevented her from filing despite due diligence, and she was unable to obtain vital information bearing on the existence of her claim despite due diligence.¹ However, the PCR court properly concluded that Petitioner did not demonstrate any extraordinary circumstance prevented her from filing, and her ignorance regarding the statute of limitations was (under caselaw) not a valid basis to equitably toll the statute.

A PCR application “must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur . . .” S.C. Code Ann. § 17-27-45(A). “Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.” Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008). “Equitable tolling is reserved for extraordinary circumstances.” Id. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use.” Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009).

¹ Petitioner’s argument that she was unable to obtain vital information despite due diligence was not presented in her application or at the PCR hearing and thus is not preserved for review. Rather, the narrow issue presented in Petitioner’s application and at the hearing was whether her belief that the statute of limitations had expired when she learned about the dismissal of her appeal warranted equitable tolling.

Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. Pelzer, 378 S.C. at 521, 662 S.E.2d at 619-20.

“[T]he unique conditions of incarceration require a holding that the statute of limitations should be tolled *if the circumstances warrant.*” Mose v. State, 420 S.C. 500, 510, 803 S.E.2d 718, 722 (2017) (emphasis added). Equitable tolling should be used sparingly and “only when the interests of justice compel its use.” Id. at 511, 803 S.E.2d at 723. In the context of PCR applications, appellate courts have held the statute of limitations may be equitably tolled when document processing by prison authorities delays a PCR applicant’s application. Id. at 508, 803 S.E.2d at 722. Likewise, the statute of limitations may be equitably tolled when an applicant fails to timely file the application due to mental incompetence. Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009). However, “[i]gnorance of the statute of limitations is not an excuse for late filing.” Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005) (emphasis added). Likewise, the statute of limitations should not be equitably tolled when the PCR applicant fails to file his application in the correct court. Pelzer, 378 S.C. at 522, 662 S.E.2d at 621

The PCR court properly concluded this action was barred by the statute of limitations. Here, Petitioner pled guilty and was sentenced on June 30, 2016. Petitioner filed a timely notice of appeal, which was dismissed for failing to set forth a valid explanation for appealing a guilty plea. The remittitur was sent December 30, 2016. This PCR application was filed September 22,

2020—almost three years *after* the filing period expired.²

This PCR court also properly concluded Petitioner did not establish equitable tolling. At the PCR hearing, Petitioner testified she planned to file a PCR application but was waiting for her appeal to become final. She testified her attorney never contacted her about the status of her appeal, and she did not learn it had been dismissed until 2018. On cross-examination, she clarified she learned her appeal had been dismissed when the Court of Appeals sent her a letter in 2018.

This PCR court properly found Petitioner did not set forth a sufficient basis to toll the statute of limitations. *Critically, the PCR court gave Petitioner the benefit of the doubt by analyzing her diligence and timeliness from the time she learned her appeal had been dismissed.* At the PCR hearing, Petitioner acknowledged she learned about the dismissal of that appeal when the Court of Appeals notified her of its dismissal in its June 1, 2018, letter. Notwithstanding this, Petitioner waited until September 20, 2020—over two years—to file the current application.

The PCR court properly concluded that Petitioner’s claim that she did not file the application sooner because she believed the statute of limitations had already expired was not a valid basis for equitable tolling. See Leamon, 363 S.C. at 435, 611 S.E.2d 496 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”). Critically, Petitioner did not allege any wrongdoing by the State, nor did she allege any circumstance beyond her control or unavoidable despite due diligence that prevented her from timely filing. See Pelzer, 378 S.C. at 522, 662 S.E.2d

² Respondent concedes the order contains a scrivener’s error in that it states this application was filed almost four years after the filing period expired when it was, in fact, filed almost three years after the filing period expired. However, this three-year period is still almost three times as long as the statute of limitations. Further—and critically—*this scrivener’s error did not impact the PCR court’s conclusion that equitable tolling would not apply.* Specifically, in analyzing equitable tolling, the PCR court gave Petitioner the benefit of the doubt by analyzing it from the time Petitioner received notice that her appeal had been dismissed—which was around June 1, 2018. Notwithstanding this, Petitioner still waited until September 20, 2020, to file the application.

at 621 (“Here, Pelzer has not alleged any wrongdoing by the State.”); Mose, 420 S.C. at 508, 803 S.E.2d at 722 (“[T]his Court has determined the statute of limitations shall be equitably tolled where circumstances preventing a petitioner from making a timely filing [are] both beyond the petitioner's control and unavoidable despite due diligence.” (internal quotation marks omitted) (alteration in original)).

Petitioner’s reliance on Pelzer to support equitable tolling is patently misplaced. In Pelzer, the Court concluded the applicant’s mistake in mailing the application to the wrong courthouse did not warrant equitable tolling:

We disagree that his error resulted from any lack of legal skill rather than simple neglect. Pelzer's PCR application, which was filled out by hand and signed, clearly instructs: “When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.” Three lines below this directive, the applicant is asked to name the location of the court which imposed his sentence. Pelzer answered “Richland County.” Under these facts, the narrow window by which Pelzer's application missed the statute of limitations cannot be construed as so exceptional a circumstance as to warrant equitable tolling.

Pelzer, 378 S.C. at 522, 662 S.E.2d at 621. Notably, the Pelzer Court affirmed the circuit court’s dismissal based on the statute of limitations when the application was filed less than a month after the statute expired. Here, giving Petitioner the benefit of extending the period until she learned the appeal was dismissed (June 2018), her application was still not filed until September 2020—more than two years after learning her appeal was dismissed, and more than a year after the extended deadline had passed.

As elucidated by the Fourth Circuit Court of Appeals, equitable tolling should be used sparingly:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of

clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where-due to circumstances external to the party's own conduct-it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000) (cited with approval in Pelzer, 378 S.C. at 522–23, 662 S.E.2d at 621).

Ultimately, Petitioner did not establish (1) extraordinary circumstances prevented her from filing despite due diligence, (2) she actively pursued judicial remedies by filing a defective pleading during the statutory period or was induced or tricked by Respondent’s misconduct into allowing the filing deadline to pass, or (3) despite all due diligence, she was unable to obtain vital information bearing on the existence of her claim. Pelzer, 378 S.C. at 521, 662 S.E.2d at 619-20. Because Petitioner did not meet her burden of setting forth a sufficient basis for equitably tolling the statute of limitations, the PCR court properly granted Respondent’s motion to dismiss.

CONCLUSION

Based on the foregoing, this Court should deny the Petition for a Writ of Certiorari.

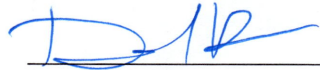
Respectfully Submitted,

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This 7th day of July, 2025.