

The South Carolina Supreme Court

Spartanburg County Court of
Common Pleas

GARY LAMONT PETTY APPELLANT

v.

The State of South Carolina Respondent

Rule 243(c) SCACR, EXPLANATION

The Appellant in the above entitled case respectfully moves this honorable court with prima facie showing, that the post conviction relief court (general sessions judge) made an erroneous ruling on applicant's per application (2019-CP-42-04184) and not granting relief nor a hearing.

This 2^{3rd} day of April, 2025

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S.C. SUPREME COURT

Rule 243 (C) Explanation (B)(v)

Appellant states the following as an arguable basis for asserting that the PCR Courts' [General Sessions Judge] determination that PCR Application 2019-CP-42-04184 was barred by: Statute of Limitations, pursuant to Section 17-27-45(A), (Final Order pg. 9 of 10, L. 2-6) which states that an application is to be filed within 1yr after entry of conviction or within 1yr after the sending of the remittitur to the lower court...

Successiveness, stating that the claims could have been raised previously and that applicant had not proven why the issues could not have been raised earlier, and;

Res Judicata, stating that applicant had a full opportunity to litigate all allegations in his prior actions; was improper. See final order attached pg.

The PCR Courts final order is based upon error of law and factual findings without evidentiary support, an abuse of discretion by the court, State v. Winkler, 388 S.C. 574.

Appellant contends that had the PCR Court actually read and reviewed the final order, the court would have recognized the state's inconsistencies and

Misrepresentation of facts:

As stated in final order (pg. 8 of 10, L. 2-3) where it stated that applicants' only backing to the serious allegations was his own words. But on pg. 2 of 10, L. 6-7, and pg. 4 of 10, L. 21-22, it stated that there was actually multiple documents and exhibits attached to the amendment.

The final order does indicate that appellant had made the required showing that entitled a hearing with relief granted.

As stated in appellants' amendment to prior application 04184 and objection to the conditional order becoming final, the amendment to the application was filed pursuant to section 17-27-45(C), (see final order pg. 1 of 10, L. 13; pg. 4 of 10, L. 4-5 and pg. 5 of 10, L. 12.) due to there being evidence of material fact not previously presented and heard that required vacation of conviction and sentence; and the application was filed within 1yr after the date of actual discovery of the facts and the facts being ascertained by the exercise of reasonable diligence, McCoy v. State, 401 S.C. 363 [3] [4]

This section is clearly distinguished from section 17-27-45(A)

Appellant stated that the doctrine of successiveness 17-27-90, did not bar his PCR application and amendment as sufficient reason for the claims not being asserted in a prior application was because the evidence of the claims could not have been discovered until well after the first and prior applications were dismissed; raised within 1 year see final order (pg. 5 of 10)

The states case dna evidence item submission form was from a 2016 dna retest preparation, discovered inside an appendix made by the attorney general's office and provided to applicant 5 years later. The final order mis-stated what the submission form actually showed, (pg. 5 of 10, L. 9) stating that appellant had stated that his dna had not been submitted for dna retesting; Applicant had actually stated that claims were based upon the fact that the submission form showed that the state had not submitted any crime scene collected dna evidence for the dna retesting.

Appellant had also stated that the doctrine of res judicata did not bar the amended issues as the claim had not been relitigated nor decided in

Any previous action as the subject matter was not the same, ERVIN V. STATE OF SOUTH CAROLINA, 438 S.C. 559,

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Pursuant to LEAMON V. STATE, 611 S.E. 2d at 495 citing 17-27-80, and DELANEY V. STATE, 238 S.E. 2d 679, (1977) Appellant established exceptions to both the statute of limitations and the prohibition against successiveness as issues were not refuted by the record where questions of fact arose, which could only be resolved by a hearing.

The Appellate Court will reverse the PCR Court where there is no probative evidence to support the decision or the decision is controlled by an error of law, EDWARDS V. STATE, 710 S.E. 2d 60, 64 (2011)

- Petition for bail pursuant to SCACR RULE 243(K) after the service of the notice of appeal.

FACTORS

There's a high probability that petitioner will prevail on appellate review as the PCR court's ruling was an error of law and fact resulting in an abuse of discretion, as the state's final order indicates that applicant was procedurally entitled to a hearing and vacation of conviction based on the merits of the newly discovered/ascertained evidence showing that appellant's DNA had not been collected from the "crime scene" as stated during trial.

The lower court clerk's intentional failure to timely serve petitioner with the PCR final order to hinder appellate review and petition for bail also shows a high probability that petitioner will prevail.

In reference to the seriousness of the offense, all offenses are serious in nature as degrees don't distinguish the seriousness. Due to the unlawful conviction of petitioner

THE STATE HAD NOT PROVEN THAT ALLEGED BRUISE TO VICTIM'S TOE AND KNEE WAS CAUSED BY ASSAILANT AS THERE WAS NO MEDICALLY DETERMINED PENETRATION TO THE VICTIM'S BODY. THERE WAS ONLY PROPERTY DAMAGE IN THE CASE.

THE SERIOUSNESS OF THE OFFENSE CAN NOT BE ATTRIBUTED TO APPELLANT AS FACTS AND EVIDENCE SHOW THAT APPELLANT WAS NOT ASSAILANT IN THE CRIMES.

PETITIONER CAN NOT POSE A DANGER TO ANY COMMUNITY AS AN INNOCENT MAN OF NO PRIOR FELONY CONVICTIONS, ON GPS MONITORING IN HIS COMMUNITY OR IN A HALF WAY HOUSE, MAINTAINING A BARBER JOB AT PRO CUTS BARBER SHOP AND CONTINUING LEGAL STUDY TO BE A PARALEGAL. DUE TO HIS INNOCENCE SHOWN, APPELLANT WOULD NOT FLEE AS APPELLANT IS FROM THE SPARTANBURG COUNTY AREA AND WILL HAVE THE SUPPORT OF HIS FAMILY AND PASTOR AT THE BARBER SHOP.

PETITIONER WAS MADE TO ATTEMPT TO ADJUST TO VERY INHUMAN PRISON LIFE AT AN EARLY AGE AND HAS MADE SEVERAL CARELESS MISTAKES ALONG THE WAY OF BECOMING A MAN OF A DIFFERENT OUTLOOK ON LIFE. PETITIONER HAS MAINTAINED JOB ASSIGNMENTS AND CONTINUES TO FIGHT FOR HIS FREEDOM. PETITIONER ASSERTS THAT HE CAN ADJUST TO CIRCUMSTANCES OF LIVING IN SOCIETY AFTER SERVING 25 YRS.