

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

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STACY MURRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000684

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PETITION FOR WRIT OF CERTIORARI

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**ISSUE PRESENTED**

Whether the lower court erred by dismissing petitioner's application for post-conviction relief as untimely because it was notarized before the statute of limitations expired, and equitable tolling applied to the time that elapsed before the Clerk of Court received petitioner's application?

## STATEMENT

The September 2018 term of the Greenville County grand jury indicted petitioner for trafficking methamphetamine, possession of cocaine base, and failure to stop for a blue light. App. 54-59. Petitioner's case was called on April 12, 2021, before the Honorable Edward W. Miller. App. 1. Clark L. Grounsell and Grace Barringer represented the state, and R. Asher Watson represented petitioner. App. 1.

Petitioner pled guilty to trafficking methamphetamine, second offense, possession of cocaine base, and failure to stop for a blue light, which the court accepted. App. 3, ll. 2-12; 7, ll. 18-21. The court imposed a total sentence of twelve years' imprisonment comprising of twelve years as to trafficking methamphetamine, second offense, and three years concurrent for possession of cocaine base and failure to stop for a blue light. App. 16, ll. 12-13.

Petitioner then filed an application for post-conviction relief (PCR), which was notarized on April 11, 2022, and received by the Clerk of Court on May 3, 2022. App. 18, 24. The state filed a return and motion to dismiss on July 22, 2024.<sup>1</sup> App. 26-31. Thereafter, on October 8, 2024, an evidentiary hearing was held before the Honorable Patrick Cleburne Fant, III. App. 32-44. Susannah Ross represented petitioner, and Tommy Evans, Jr. represented the state. App. 32.

On April 3, 2025, Judge Fant signed an order of dismissal granting the state's motion to dismiss petitioner's application as untimely and denying and dismissing the application with prejudice. App. 51.

This petition follows.

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<sup>1</sup> The state omitted that its own return was untimely filed by over a year. *See* Rule 12(a), SCRCR ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea."). Nor did it request that the court accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a); *see generally* *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973).

## ARGUMENT

The lower court erred by dismissing petitioner’s application for post-conviction relief as untimely because it was notarized before the statute of limitations expired, and equitable tolling applied to the time that elapsed before the Clerk of Court received petitioner’s application.

### **Relevant facts**

At the evidentiary hearing, PCR counsel requested equitable tolling as there had been a concerted effort to file. App. 35, ll. 21-25. Particularly, petitioner testified that he put his PCR application in the mailbox on time and he had it notarized. App. 36, l. 24 – 37, l.7. He also testified that his counsel sent him mail on August 21, 2024, but as of the date of the hearing, October 8, 2024, he had not received it. App. 37, ll. 1-15. He testified that he was housed at Trenton Correctional Institution. App. 37, l. 21. He described the delays that COVID-19 caused, such as quarantining or “being locked down whenever somebody ha[d] a fever or anything.” App. 38, ll. 2-4. On cross-examination, he agreed that his PCR application was notarized on April 11, 2022. App. 38, l. 25 – 39, l. 2. He explained that he could not personally mail his application, but rather the postmaster had his application in her possession once it was notarized. App. 39, ll. 4-7.

PCR counsel then argued that this Court has determined that the statute of limitations shall be equitably tolled where circumstances that prevent the petitioner from timely filing are beyond his control and unavoidable even with due diligence. App. 41, l. 21 – 42, l. 3. She reiterated her request for equitable tolling as the application was signed “and in their hands before the deadline.” App. 42, ll. 3-5. The state responded that the court had to look at petitioner’s due diligence, and thus, requested dismissal since the application was filed beyond the statute of limitations. App. 42, l. 16 – 43, l. 9. PCR counsel responded that COVID delays

made it difficult for petitioner to have his application notarized at Trenton due to lockdowns and emphasized that petitioner's application was notarized before the due date, and, if mailed immediately, arguably could have been clocked in time. App. 43, ll. 11-19.

The PCR court ultimately granted the state's motion to dismiss petitioner's PCR application as untimely. App. 51. The PCR court determined that petitioner was sentenced on April 12, 2021, did not appeal his conviction or sentence, and therefore, his PCR application was due on April 13, 2022. App. 48. The PCR court explained that petitioner had one year to file a PCR application but "chose to submit the application two days prior to the deadline." App. 49. It continued that any delay in processing was avoidable had petitioner exercised due diligence and that petitioner had not demonstrated a circumstance to warrant equitable tolling. App. 49. It distinguished petitioner's case from *Mose*<sup>2</sup> because he submitted his application two days before the statutory deadline, whereas Mose submitted his application seventeen days before the deadline. App. 50. The PCR court was silent, however, as to the circumstances petitioner described at his evidentiary hearing concerning mail delays and the impacts of COVID-19. *See generally* App. 45-51.

## **Discussion**

The PCR court erred by dismissing petitioner's PCR application as untimely and concluding that equitable tolling did not apply because petitioner demonstrated that he delivered his application to prison authorities before the deadline, exercised due diligence, and the circumstances merited equitable tolling.

Under S.C. Code Ann. § 17-27-45(A):

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or

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<sup>2</sup> *Mose v. State*, 420 S.C. 500, 803 S.E2d 718 (2017).

within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

*See* S.C. Code Ann. § 17-27-45(A). However, equitable tolling may be applied if the defense is proper and the circumstances warrant. *Mose v. State*, 420 S.C. 500, 508, 803 S.E.2d 718, 722 (2017). In so finding, our Supreme Court explained that it was persuaded by the prison mailbox rule. *Id.* The prison mailbox rule, articulated by the United States Supreme Court, provides that a notice of appeal is deemed filed once it is delivered to prison authorities for forwarding to the clerk. *See Houston v. Lack*, 487 U.S. 266, 276, 108 S. Ct. 2379, 2385 (1988). In reaching that conclusion, the United States Supreme Court explained that prisoners could not take the steps that other litigants could to monitor the processing of their notice of appeal and to ensure that the clerk received and stamped their notice before the deadline. *Id.* at 271, 108 S. Ct. at 2382. Even further, the Supreme Court noted that “[n]o matter how far in advance the *pro se* prisoner delivers his notice to prison authorities, he can never be *sure* that it will ultimately get stamped filed on time.” *Id.* (emphasis in original and internal quotation marks omitted). The Supreme Court emphasized that due to confinement, a *pro se* prisoner has no means of proving delay attributable to prison authorities, slow mail, or late stamp. *Id.* Accordingly, the *Houston* court established “a rule of equal treatment . . . to ensure that imprisoned litigants are not disadvantaged by delays which other litigants might readily overcome.” *Lewis v. Richmond City Police Dept.*, 947 F.2d 733, 735 (4th Cir. 1991).

In *Mose*, our Supreme Court determined that considering the rationale in *Houston* and the unique conditions of incarceration, the statute of limitations should be tolled where the circumstances warrant. 420 S.C. at 510, 803 S.E.2d at 723. Moreover, if a PCR applicant relies on equitable tolling “in response to a motion to dismiss, the applicant must substantiate that the

correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations and that any delay in the Clerk of Court's receipt of the application was due to processing.” *Id.* If deemed valid, the statute of limitations will be tolled until the application is delivered and received by the Clerk of Court. *Id.* In making that determination, the PCR judge should “consider any reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for purposes of mailing.” *Id.* at 511, 803 S.E. 2d at 723. Considering the facts in *Mose*, our Supreme Court determined that Mose relinquished control of his application on February 18, 2024,<sup>3</sup> by placing it in the hands of prison authorities and having it notarized. *Id.* It further noted that Mose provided in an affidavit that an associate warden confirmed that his application was mailed before expiration of the statute of limitations. *Id.* at 512, 803 S.E.2d at 723. Our Supreme Court concluded that, viewing the facts in the light most favorable to Mose, he was prevented from timely filing his PR application due to circumstances beyond his control. *Id.*

Generally, the inquiry for whether the statute of limitations shall be tolled is whether the circumstances preventing a petitioner from making a timely filing were both beyond the petitioner’s control and avoidable despite due diligence. *Ferguson v. State*, 382 S.C. 615, 618, 677 S.E.2d 600, 602 (2009).

As in *Mose*, petitioner delivered his application to prison authorities within one year of the date of his conviction. *Mose*, 420 S.C. at 504, 803 S.E.2d at 719; *see also* S.C. Code Ann. § 17-27-45(A). The record supports that petitioner provided conclusive proof that he placed his application in the mailroom on April 11, 2022, as his application was notarized on that date.

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<sup>3</sup> In this case, Mose delivered his PCR application to prison authorities on February 18, 2024. It was stamped as filed by the Clerk of Court on March 10, 2014, three days after the statute of limitations had run. *See generally Mose*, 420 S.C. at 500, 803 S.E.2d at 718.

App. 24. Petitioner also repeatedly asserted equitable tolling during his evidentiary hearing. App. 35, ll. 21-25; 41, l. 21 – 42, l. 5; 43, ll. 11-19; *Mose*, 420 S.C. at 508, 803 S.E.2d at 722. The PCR court thus erred by determining that petitioner's application did not merit equitable tolling and was untimely because petitioner properly raised equitable tolling and the circumstances warranted its application. App. 48-51; *Mose*, 420 S.C. at 508, 803 S.E.2d at 722. Specifically, petitioner testified during his evidentiary hearing that COVID-19 had caused delays including quarantining and lockdowns. App. 38, ll. 2-4. He also illustrated the delays he experienced receiving mail at Trenton Correctional Institution. App. 37, ll. 1-15, 21. However, the PCR court was silent as to the circumstances petitioner described. App. 45-51. The PCR court's conclusion that petitioner failed to exercise due diligence because he submitted his application two days before the deadline ignores the circumstances complicating petitioner's ability to have his application notarized. App. 43, ll. 11-19; 49-50. Such a conclusion also ignores unique conditions of incarceration, amplified here by the impacts of COVID-19. *See Mose*, 420 S.C. at 510, 803 S.E.2d at 723; *Houston*, 487 U.S. at 271, 108 S. Ct. at 2385; *Lewis*, 947 F.2d at 735.

In addition, the PCR court's determination that the petitioner in *Mose* submitted his application seventeen days before the deadline is a distinction without a difference. App. 50. The facts and circumstances in *Mose* did not contemplate delays experienced in having a PCR application notarized, as here. *Mose*, 420 S.C. at 511-12, 803 S.E.2d at 723. Moreover, like *Mose*, petitioner was prevented from timely filing for PCR due to circumstances beyond his control, namely the continued impact of the global pandemic and the lack of control in ensuring that his filing is received and stamped by the Clerk of Court by the deadline. *See id.*; *Houston*, 487 U.S. at 271, 108 S. Ct. at 2385; App. 39, ll. 4-7. Further, petitioner's case is distinguishable

from cases our Supreme Court has held did not warrant equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 552, 662 S.E.2d 618, 621 (2008) (determining that equitable tolling is not warranted where an inmate missed a filing deadline because the application was mailed to the wrong venue); *Leamon v. State*, 363 S.C. 432, 436, 611 S.E.2d 494, 496 (2005) (determining that incarceration in another jurisdiction does not equitably toll the limitations period for PCR). Notably, petitioner's application was submitted before the filing deadline, and, barring delays, arguably could have been filed before the statute of limitations expired.

Finally, under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). Because of circumstances outside of petitioner's control, he did not have that opportunity. Based on the totality of the circumstances surrounding petitioner's pursuit of his PCR action, and compelled by the need to afford equal treatment to imprisoned litigants, petitioner was entitled to equitable tolling and the benefit of his PCR action filed in his case. The record supports that the circumstances preventing timely filing were both beyond petitioner's control and that he exercised due diligence, *Ferguson*, 382 S.C. at 618, 677 S.E.2d at 602, and thus, the PCR court erred by concluding that equitable tolling did not apply.

**CONCLUSION**

Based on the foregoing, petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented.



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Molly M. Keegan  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8<sup>th</sup> day of September, 2025.