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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

R.Lawton McIntosh, Circuit Court Judge

Case No: 2025-002377

Anthony Marlar,
Appellant

V.
State Of South Carolina
Respondent

Amended Notice Of Appeal

Anthony Marlar submits the amended notice of appeal from the judgement of the Honorable R. Lawton McIntosh. The original notice of appeal did not include the Explanation Requirement..

Under Rule 243(c). If the lower court has determined that the post conviction Relief action is barred as successive or untimely under the statute of limitations, The petitioner must provide an explanation as to why this determination was improper.

Procedural History -----

Appellant first filed an application for post conviction relief on August 18th, 2000 In which he asserted the following issues.

- 1: Due Process fo law
- 2: Ineffective assistance of Counsel on multiple issues
- 3: Brady violation
- 4: Miranda Vilation

An evidentiary hearing was held on January 29th, 2002. Shortly after, Judge Nicholson issued an order of Dismissal on September 30th, 2003.

A Timely notice of appeal was filed with the South Carolina Supreme Court, where The case was subsequently transferred to the S.C Court of Appeals, and on September 19th, 2005, that the court granted the petition for writ of certiorari.

Following oral argument on September 14th 2006 the S.C., Court of Appeal vacated the denial of PCR Relief and remanded with instructions for the lower court to include findings of fact and conclusion of law. On March 25th, 2007. Marlar v. State, OP No: 4225, 644 S.E 2D 769 (S.C. CT. APP.2007).

The state then filed for writ of certiorari with the S.C Supreme Court on June 15th 2007 in which it raised the following.(1) The court of Appeals erred in finding that the issue of the sufficiency of the PCR Court's order was reserved for appellate review rule 59(e).

The S.C. The Supreme Court then issued on November 5th, 2007 an opinion that Marlar did not file a Rule 59(e) motion for specific findings of fact and conclusions of law that his issues were procedurally barred.

Marlar then filed a petition for habeas corpus with the United States District Court On May 13th, 2008 Marlar sought relief on the following grounds.

- 1: Actual innocence
- 2: Due Process
- 3: Ineffective assistance of Counsel (Multiple Issues)
- 4: Brady Vilation
- 4: Miranda Vilation

Honorable Robert S. Carr's report and recommendation stated that Marlar's issues were procedurally barred because Marlar did not file a Rule 59(e) Motion requesting "Finding of fact and conclusion of law".

On December 5th, 2008 the Honorable R. Bryan Harwell U.S. The District Judge adopted the report and recommendation of Magistrate Judge Robert S. Carr to dismiss With prejudice.

On December 15th, 2008 Malar filed a notice of appeal with the United States Court of Appeals for the Fourth Circuit. Marlar asked for relief on the following grounds.

- 1: Actual innocence
- 2 :Due Process
- 3: Ineffective assistance of Counsel (11 issues)
- 4: Brady Violation
- 5: Miranda Violation

This court put Marlar's petition for relief in abeyance until it reached a decision in *Bostick v. Stevenson* 589 F.3d 160.

In *Bostick* the 4th Circuit Court of Appeals found South Carolina courts were not consistently applying the Rule 59(e) motion. The court of Appeals for the 4th Circuit even pointed to Marlar's petition as an example in which they gave Marlar and Bostick a certificate of appealability. Marlar's certificate of appealability was for one issue, Actual innocence. Did the trial Counsel render ineffective assistance of counsel for not calling SLED agent Barron to testify regarding exculpatory crime scene pubic hair evidence. In the 4th Circuit Court's opinion they found the district court did not reach the merits of the petition, instead the district court concluded that Marlar's Claims was not reviewable in a Federal Habeas Corpus petition, because the South Carolina Supreme court had held that Marlar failed to preserve The argument for appellate review. See *Marlar V. Warden, Tyger River Correctional Institution*, No. 2:08 CV-1874, 2008 WL5111878 AT 2 (D.S.C. Dec. 4th, 2008).

Based on the 4th Circuit Court's holding in *Bostick v. Stevenson* 589 F.3d 160 (4th Cir. 2009) which was issued after the district court dismissed Marlar's petition alleging ineffective assistance of counsel was not Procedurally barred. The court also affirmed the District court's award of summary judgement in favor of the State on a different ground than cited by the district court, namely that Marlar did not suffer prejudice In Marlar's actual innocence claim of ineffective assistance counsel. The 4th Circuit Of Appeals also noted that Marlar raised several other issues in his petition for habeas corpus, none of which was addressed here!!

Marlar learned on June 6th 2016 from his case worker in the S.C Department of Corrections that his sentence was changed to 85% wouldn't be eligible for certain credits as a result of the 85% provision and would have to register as a sex offender.

Marlar next filed a PCR with the 10th Judicial Circuit of Anderson County on June 7th, 2016. On April 6th, 2017 the state filed a motion to dismiss.

On March 2nd, 2022 the court held a hearing to determine the state's motion to dismiss in front of the Honorable Judge William P. Keesley.

Here Marlar learned the S.C States Attorney's office was not submitting to the 4th Circuit Court of Appeals Ruling that Marlar's issues were not procedurally barred. Marlar's counsel Mr. Don A. Thompson presented the exculpable pubic hair evidence Not presented by trial counsel as Marlar's issue. Marlar immediately relieved counsel Thompson of his duties and proceeded pro se. Marlar explained to the court that the 4th Circuit of Appeals has already ruled on that issue and the lower courts could not over rule

the higher court. Marlar stated the procedural history of his case with the 4th Circuit Court of Appeals over ruling the S.C Supreme Court that Marlar's issues were procedurally barred. The state's Attorney General said he was not prepared to answer Marlar's arguments. The court did not rule on the State Motion. He handed it back to the Honorable R. Lawton McIntosh, Chief Administrative Judge for the 10th Judicial Circuit. Marlar next amended to his issues for relief to include:

- 1: Due process
- 2: Ineffective counsel
- 3: Miranda Violation
- 4: Brady Violation

In addition filed for summary judgment on March 17th, 2025 Marlar contends the South Carolina Court Of Appeals vacating and remanding his cas back to the lower Court and the Fourth Circuit Court Of Appeals over ruling the S.C Supreme court barring Marlar's issues for failing to file a rule 56(e) motion, the state failed in its duty as an officer and servant of the court for not following the 4th Circuit Court of Appeals findings.

On October 29th 2025 the Honorable R. Lawton McIntosh held a hearing at the Walhalla County Courthouse. Here Judge McIntosh proceeded as if it was a PCR hearing, demanding Marlar to present witnesses and evidence to support his issues on the appeal. Marlar told Judge McIntosh that this was a motion hearing and he was there to see if the court was going to adhere to the 4th Circuit court of Appeals ruling. Judge McIntosh said it doesn't work that way, that was his court room. Only after Marlar said he had emails from the Attorney General that stated it was a motion hearing did Judge McIntosh scold Attorney General Kawalski, stating that it was not his court room and he doesn't make the decisions there. Then the motion hearing proceeded.

On November 7th and 29th Marlar received an order form Judge McIntosh both signed on the 7th and 29th of November barring Marlar's issues.

Argument

Marlar would like to assert that Mona Manley's transcript of Record is not accurate or complete. Marlar asked Mona Manley through email The S.C Court reporter for the audio and written Transcripts of record. Ms. Manley responded that the Audio tapes were unavailable.

Why would Marlar re-leave his counsel, Mr. Thompson of his duties for arguing actual innocence of the ineffective assistance of counsel to later bring it back up since the 4th Circuit Court of Appeals already ruled on this issue. Marlar contends he was only

arguing that was the only issue the Fourth Circuit ruled on and there were eleven more issues still preserved since the fourth circuit ruled they were not procedurally barred Judge McIntosh said the 4th circuit already ruled on the ineffectiveness of assistance

Marlar only tried to explain that it was only on the Actual Innocence issue

Secondly Judge McIntosh was in error. Marlar presented his issues in every court he applied for relief in.

Next, Judge McIntosh said he did not believe he was required to honor the 4th circuits decision and if he was wrong then i could appeal.

Conclusion

With the 4th circuit courts ruling: that this Honorable Court's finding that Marlar's issues were procedurally barred was inconsistently applied and that The issues were not procedurally barred

The S.C Attorney General had an obligation to follow the South Carolina Court of Appeals directions to remand for rehearing with instructions from the Court of Appeals. Thus, Judge McIntosh order barring as successive and/or as being untimely Under The Statute of Limitations is not correct

If this court is bound by Bostick then it is bound to reach the merits of Marlar's issues. Marlar also contends he can not get a fair and impartial hearing or ruling from the 10th Judicial Circuit and ask this court to rule on the merits of record or move to another Circuit. Marlar also asks for appointment of counsel.

December 17th, 2025

Sincerely, *Anthony Marlar*

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