STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Post-Conviction Relief Case No. 2021-CP-18-1217
Appellate Case No. 2023-001231

Trevee Gethers, ... Petitioner,

v.

State of South Carolina, ... Respondent.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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Whether the post-conviction relief (PCR) court properly dismissed Petitioner's PCR application as barred by the one-year statute of limitations set forth in section 17-27-45 of the South Carolina Code where the application was filed beyond the one-year limitation period and where Petitioner failed to establish sufficient facts to justify equitable tolling under the circumstances of his case?

STATEMENT OF THE CASE

Trevee Gethers (Petitioner) was indicted at the December 3, 2007 term of the Dorchester County Grand Jury for murder (2007-GS-18-1755). (App.p.714-p.715). On November 15-16, 2010, Petitioner proceeded to trial before the Honorable Diane Schafer Goodstein and a jury, pursuant to which he was found guilty as indicted. He was represented by Assistant Public Defender Sara Jayne Rogers of the First Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Russell D. Hilton and Harrison Bell, Jr., of the First Circuit Solicitor's Office. At the conclusion of trial, Judge Goodstein sentenced Petitioner to forty-five (45) years' imprisonment. (App.p.3-p.16; p.513-p.525).

Petitioner timely filed a notice of intent to appeal with the South Carolina Court of Appeals and an appeal was perfected by Appellate Defender Elizabeth A. Franklin-Best of the Commission on Indigent Defense. Petitioner raised one issue on appeal, arguing the trial court erred in failing to grant a directed verdict. (App.p.529-p.541). The State filed a brief in response (App.p.542-p.570). In an unpublished opinion filed October 4, 2012, the Court of Appeals affirmed Petitioner's conviction and sentence. *State v. Gethers*, Op. No. 2012-UP-576 (S.C. Ct. App. filed October 24, 2012). (App.p.571-p.572). Petitioner filed a petition for rehearing (App.p.573-p.577) and in an Order filed February 22, 2013, the Court of Appeals denied that petition and returned the Remittitur. (App.p.578). On May 15, 2013, Petitioner petitioned this Court for a writ of certiorari (App.p.579-p.591) and on July 12, 2013, the State filed a return. (App.p.592-p.620). In an order dated May 7, 2014, this Court denied the petition. (App.p.621).

First PCR (2014-CP-18-1287)

On June 18, 2014, Petitioner filed a pro se application for post-conviction relief (PCR) alleging he was being held in custody unlawfully for a variety of reasons. (App.p.622-p.646).

On February 24, 2015, the State filed a return asking that an evidentiary hearing be held. (App.p.647-p.651). An evidentiary hearing into the matter was held on October 28, 2015, at the Dorchester County Courthouse before the Honorable Frank R. Addy, Jr. Petitioner was present and represented by Rodney D. Davis, Esquire. The State was represented by Assistant Attorney General J. Clayton Mitchell of the Office of the Attorney General. During the hearing, Petitioner testified on his own behalf. He also called trial counsel, Sara J. McClellan (formerly Rogers), to the stand. The State did not call witnesses in reply, relying instead on cross-examination of Petitioner's witnesses and arguments from Mr. Mitchell. (App.p.652-p.705). On January 8, 2016, Judge Addy issued a written order finding Petitioner had not established any constitutional violations or deprivations that would require granting the PCR application and, therefore, denied relief. (App.p.706-p.713).

Petitioner timely filed a notice of intent to appeal the PCR court's denial of his application for PCR and June 9, 2016, a Petition for a Writ of Certiorari was filed on Petitioner's behalf by Appellate Defender Lara M. Caudy of the Commission on Indigent Defense. (App.p.716-p.740). The State filed a return (App.p.741-p.755) and Petitioner filed a reply (App.p.756-p.767). In an order filed April 24, 2018, the Court of Appeals denied the petition and on May 15, 2018, the Remittitur was sent to the lower court. (App.p.768-p.769).

Federal Habeas Corpus Action (1:19-cv-01088-SAL)

On April 15, 2019, a "Petition for Writ of Habeas Corpus" pursuant to 28 U.S.C. § 2254 was filed in the United States District Court for the District of South Carolina on Petitioner's behalf, by Elizabeth A. Franklin-Best, then of Blume Franklin-Best & Young, LLC. (App.p.812-p.839). Petitioner set forth several grounds for relief including the claim that: "Trial Counsel rendered ineffective assistance of counsel when she did not secure the attendance of a witness

[Dante Hubbart] who gave a statement to the Dorchester County Sheriff's Office shortly after the murder informing them that he witnessed someone else shoot the decedent." (App.p.820). On July 1, 2019, Respondent filed a Return and Motion for Summary Judgment and on July 11, 2019, Petitioner moved for an evidentiary hearing. (App.p.840).

On October 17, 2019, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a Report and Recommendation, recommending that Respondent's motion for summary judgment be granted, Petitioner's motion for an evidentiary hearing be denied, and the petition be dismissed with prejudice. Petitioner timely objected and Respondent replied. (App.p.840). In an Opinion and Order dated June 5, 2020, U.S. District Judge Sherri A. Lydon accepted the report and recommendation, granted Respondents' motion for summary judgment, and dismissed the petition with prejudice. (App.p.840-p.853; p.856).

Petitioner submitted a notice of appeal to the Fourth Circuit Court of Appeals and by unpublished opinion dated March 22, 2021, the Fourth Circuit dismissed the appeal. *Gethers v. Stirling*, Op. No. 20-6850 (4th Cir. Filed March 22, 2021). (App.p.854-p.855). The formal mandate of the Court was issued on April 13, 2021.

Second (Current) PCR (2021-CP-18-1217)

On July 1, 2021, Petitioner filed a second pro se application for PCR, this time alleging he was entitled to relief based on "newly discovered evidence" under S.C. Code Ann. § 17-27-45(C). (App.p.771-p.785). On October 14, 2021, the State filed a return and motion to dismiss the application as untimely and successive under the relevant statutes, and as barred by the doctrine of *res judicata*. (App.p.786-p.798). On October 25, 2021, Petitioner filed an objection to the motion to dismiss and requested a hearing. (App.p.799-p.811). On June 29, 2022, the Honorable Edgar W. Dickson ordered that an evidentiary hearing be scheduled. (App.p.858).

An evidentiary hearing into the matter was held on January 24, 2023, at the Dorchester County Courthouse before the Honorable Heath P. Taylor. Petitioner was present and represented by Dayne C. Phillips, Esquire of Price Benowitz, LLC. The State was represented by Assistant Attorney General Chelsey F. Marto of the Office of the Attorney General. During the hearing, Petitioner called his direct appeal and federal habeas counsel, Elizabeth Franklin-Best, and his trial counsel, Sara J. Rogers McClellan, to the stand. He also called his brother, Jamaal A. Gethers as a witness and he testified on his own behalf. The State called trial solicitor Russell D. Hilton in reply. (App.p.861-p.910). On July 3, 2023, Judge Taylor issued an Order of Dismissal finding that although "the interests of justice suggest [Petitioner] should receive a new trial," the PCR court "has neither the constitutional nor statutory authority to ignore the one-year statute of limitations" and therefore denied and dismissed the application with prejudice. (App.p.942-p.954).

On July 17, 2023, Petitioner filed a motion to alter or amend pursuant to Rule 59(e), SCRCP, arguing in part, for the first time, that the PCR court should have applied the equitable tolling doctrine to the statute of limitations based on attorney Franklin-Best's decision to file a federal petition for habeas corpus in the U.S. District Court rather than filing a PCR application in Dorchester County raising the same issues. (App.p.955-p.960). On August 1, 2023, the PCR court denied the motion. (App.p.961-p.963).

Petitioner timely filed a notice of intent to appeal the PCR court's denial of his second application for PCR and on March 18, 2024, a Petition for a Writ of Certiorari was filed in the Supreme Court on Petitioner's behalf by Mr. Phillips. On July 17, 2024, a Return to Petition for Writ of Certiorari was filed on behalf of the State. In an Order dated August 15, 2024, the Supreme Court transferred the matter to the Court of Appeals. Subsequently, in an order filed

September 11, 2025, the Court of Appeals granted the petition. On October 13, 2025, a Brief of Petitioner was filed on Petitioner's behalf by Mr. Phillips. This Brief of Respondent on behalf of the State follows.

STATEMENT OF RELEVANT FACTS

In his PCR application, which was filed July 1, 2021, Petitioner alleged Dante Hubbart (Hubbart) was a witness to the crime for which Petitioner was convicted. He said Hubbart gave a statement to police during the investigation claiming Hubbart observed the murder and Petitioner was not the person who committed the crime. Petitioner alleged this statement was withheld from trial counsel by the Solicitor's office and was not discoverable at the time of trial. He claimed this statement was first discovered by federal habeas counsel, Elizabeth A. Franklin-Best and argued he was entitled to post-conviction relief based on this newly-discovered evidence. (App.p.771-p.786). Essentially the same allegations were made by Franklin-Best in the prior federal habeas action, which was filed on April 15, 2019. (App.p.812-p.839). Indeed, in the memorandum in support of the habeas petition she argued:

> "Trial counsel rendered ineffective assistance of counsel when she did not secure the attendance of a witness who gave a statement to the Dorchester County Sheriff's Office shortly after the murder informing them that he witnessed someone else shoot the decedent."

(App.p.820).

STANDARD OF REVIEW

The appellate court gives great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Questions of law are reviewed *de novo*, and the

appellate court will reverse the PCR court's decision when it is controlled by an error of law. *Id.* Where the relevant facts are undisputed and the lower court denied equitable tolling as a matter of law, the appellate court should review the lower court's decision *de novo*. *See Rouse v. Lee*, 339 F.3d 238, 247 (4th Cir. 2003). In all other circumstances, the appellate court should review the denial of equitable tolling for an abuse of discretion. *Id.*

ARGUMENT

The post-conviction relief (PCR) court properly dismissed Petitioner's PCR application as barred by the one-year statute of limitations set forth in section 17-27-45 of the South Carolina Code because the application was filed well beyond the one-year limitation period and because Petitioner failed to establish sufficient facts to justify equitable tolling under the circumstances of his case.

Petitioner filed his current application for PCR (his second) on July 1, 2021, alleging newly-discovered evidence. After a hearing, where Petitioner was represented by counsel, the PCR court granted the State's motion to dismiss on the ground the application was barred by the statute of limitations. The PCR court declined Petitioner's request to apply equitable tolling to suspend the one year limitation period. Petitioner now seeks review of the PCR court's decisions.

Petitioner argues the PCR court erred in "failing to apply the equitable tolling doctrine in the interests of justice" to suspend or extend the one-year statute of limitations for filing his PCR application under section 17-27-45(C) of the South Carolina Code. (Brief of Petitioner p.16). The State disagrees and submits the PCR properly denied and dismissed the PCR application with prejudice as barred by the statute of limitations. The PCR court also properly refused to invoke the equitable tolling doctrine to excuse Petitioner's failure to meet the statutory filing

deadline because Petitioner did not carry his burden of establishing sufficient facts to justify its use.

The South Carolina Code provides that an application for PCR based on the discovery of material facts not previously presented and heard **must** be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C) (2021). Here, habeas counsel undisputedly discovered the "facts" concerning Hubbart's statement on or before April 15, 2019, the date she filed the federal habeas claim on Petitioner's behalf. The PCR application was filed on July 1, 2021, more than two years later and well beyond the one-year statute of limitations. The statute itself does not provide any exception for tolling the statute of limitations where an applicant seeks federal habeas relief prior to exhausting his state remedies. Thus, the PCR judge properly dismissed the application on the ground the statute of limitations had run. *Green v. State*, 353 S.C. 29, 30-31, 576 S.E.2d 182, 183 (2003).

Petitioner argues that despite the absence of any statutory tolling, the PCR court erred in failing to apply the equitable tolling doctrine to suspend or extend the one-year statute of limitations because the relevant facts present sufficiently rare and exceptional circumstances that warrant application of the doctrine. He initially attempts to support this argument by citing the PCR court's finding that: "trial counsel and initial PCR counsel provided ineffective assistance of counsel," as well as the court's invitation for reversal on appeal. Petitioner asks: "If the doctrine of equitable tolling does not apply where there is evidence of innocence, recantation from the key witness who was a juvenile at the time of the incident, ineffective assistance of Trial Counsel, and Petitioner's reliance on Habeas Counsel to preserve all of his potential remedies, *when does it apply*?" (Brief of Petitioner p.16-p.18). Yet, the claims of ineffective

assistance were raised in the federal habeas case and, as with the claim about Hubbart's statement, could have been used in support of a **timely** filed PCR alleging newly-discovered evidence. Just as with Hubbart's statement, these "facts" were discovered by habeas counsel at least two years before Petitioner filed his second PCR and do not support equitably tolling his current PCR.

Petitioner also argues he is entitled to equitable tolling because he was "at the mercy of his federal habeas attorney who did not simultaneously file a successive PCR action in state court." But under the doctrine of equitable tolling, this argument also fails. Equitable tolling is a non-statutory tolling theory which suspends a limitations period. *Hooper v. Ebenezer Sr. Services and Rehabilitation Center*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). It is judicially created and stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Id.* "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.'" *Id.* (*quoting Rodriguez v. Superior Court*, 176 Cal.App.4th 1461 (2009)); *see also Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2003) (holding the federal one year statute of limitations can be subject to equitable tolling).

The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Hooper* at 115, 687 S.E.2d at 32; *Warren v. Garvin*, 219 F.3d 111, 113 (2nd Cir. 2000). 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 (2008). It is reserved for extraordinary circumstances. *Id.*; *Harris* at 330 ("But any 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."). Indeed, courts have generally been less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. *Id.* at 520-21, 662 S.E.2d at 620. Notably, this 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. *Mose v. State*, 420 S.C. 500, 508, 803 S.E.2d 718, 722 (2017); *see also Harris* at 330 ("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.").

Petitioner maintains "the rare and extraordinary circumstances here are distinguishable from the facts in *Green*." (Brief of Petitioner p.18). But in relevant aspects, the cases are indistinguishable. As described by Petitioner: "the PCR applicant in *Green* had *pled* guilty and *knowingly* waited to file his PCR application 'because he had been pursuing a federal habeas relief prior to filing his application.'" (Brief of Petitioner p. 18). Here, Petitioner and his attorney were aware of his possible PCR claims and knowingly waited to file a second PCR application because he was pursuing federal habeas corpus relief prior to filing his second application. In both instances, the defendant sought federal habeas relief prior to exhausting his state remedies.

In regard to claiming ineffective assistance of collateral-relief-counsel as a basis to support equitable tolling, the U.S. Fourth Circuit Court of Appeals has explained: "A mistake by a party's counsel in interpreting a statute of limitations does not present the extraordinary

circumstance beyond the party's control where equity should step in to give the party the benefit of his erroneous understanding." *Harris* at 331. Thus, a Petitioner's mistaken belief that his petition was filed within the one-year period of limitation did not entitle him to the benefit of equitable tolling. *Pearson v. North Carolina*, 130 F.Supp.2d 742, 744-45 (W.D.N.C. 2001).

In a strikingly similar argument before the Fourth Circuit post-*Harris*, the petitioner argued that the gross negligence and unprofessional conduct of his former habeas counsel in misinterpreting the statutory filing requirements constituted an extraordinary circumstance beyond his control that prevented him from filing on time. *Rouse v. Lee*, 339 F.3d 238, 248 (4th Cir. 2003). The court disagreed, finding: "The errors of Rouse's former counsel . . . were neither extraordinary nor, for purposes of our inquiry, external to [his] own conduct." *Id.* It noted: "The actions of [Petitioner's] attorneys are attributable to [Petitioner], and thus, do not present circumstances 'external to the party's own conduct.'" *Id.* at 249. The Fourth Circuit explained: "Rouse's argument that the errors of his former habeas counsel are external to his conduct because he did not participate in their decisions misses the mark. Former counsel's errors are attributable to Rouse not because he participated in, ratified, or condoned their decisions, but because they were his agents, and their actions were attributable to him under standard principles of agency." *Id.* Petitioner references the Fourth Circuit's acknowledgement in *Harris* that: "as a discretionary doctrine that turns on the facts and circumstances of a particular case, equitable tolling does not lend itself to bright-line rules," and suggests his case is so rare and exceptional it should merit equitable tolling. (Brief of Petitioner p.19). Yet again, the facts do not support Petitioner's suggestion.

Here, Petitioner submitted a memorandum of law accompanying his PCR application contending he did not personally discover the existence of Hubbart's exculpatory statement until

his habeas counsel filed a brief in that matter on July 9, 2020. (App.p.782). However, at the PCR hearing, Petitioner's brother, Jamaal Gethers, seemed to contradict this contention. Jamaal testified he was not the person who provided information about Hubbart's statement to federal habeas counsel. Rather, he went straight to Petitioner with the information after running into Hubbart at a grocery store or gas station "in '19, '20, maybe a couple of years ago." (App.p.880-p.881). Petitioner then testified he had not seen Hubbart's statement before or during trial; however, he offered no testimony as to when he did learn about the statement or when his brother told him about running into Hubbart after trial. (App.p.888-p.892). Ultimately, the PCR court found the assertion from the PCR application was not credible, and that finding must be given great deference. *Frierson v. State*, 423 S.C. 257, 815 S.E.2d 433, 435 (2018); *Goins v. State*, 397 S.C. 568, 726 S.E.2d 1, 3 (2012). Under an abuse of discretion standard of review, the PCR court's decision should be upheld because there is probative evidence in the record to support the court's refusal to apply equitable tolling.

Even if this Court treats the relevant facts as "undisputed" and accepts Petitioner's assertion about when he personally discovered Hubbert's statement as true, the PCR court's ruling nevertheless should be affirmed as a matter of law under the principles set forth in *Rouse*. Federal habeas counsel, Franklin-Best, was Petitioner's agent when she filed the federal habeas petition on his behalf; therefore, her knowledge and actions are attributable to Petitioner. Consequently, Petitioner discovered the "facts" about Hubbart the same date counsel discovered those facts, which was sometime **before** she submitted the federal habeas petition on Petitioner's behalf. Thus, Petitioner failed to establish sufficient facts to justify equitable tolling. He did not show extraordinary circumstances that were both beyond his control and unavoidable despite due diligence. Therefore, under either an abuse of discretion or *de novo* review, the PCR court

properly denied equitable tolling and properly dismissed Petitioner's application. The PCR court's order dismissing Petitioner's second PCR application with prejudice should be affirmed.

CONCLUSION

Based on the foregoing reasons, the State respectfully requests that the judgment of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
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APPEAL FROM DORCHESTER COUNTY
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PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Brief of Respondent*, dated January 14, 2026, on Petitioner by sending an electronic copy via email to Dayne Phillips, counsel of record for Petitioner, at the address listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 14th day of January, 2026.

Susan Spencer
Legal Assistant

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Susan Spencer

From: Susan Spencer
Sent: Wednesday, January 14, 2026 10:29 AM
To: Dayne Phillips
Cc: Ben Aplin
Subject: Trevee Gethers v. State of South Carolina (2023-001231)
Attachments: GETHERS Trevee - Brief of Responsent.pdf

Good morning Mr. Phillips,

Attached please find the Brief of Respondent in Trevee Gethers v. State of South Carolina (2023-001231). This Brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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