

THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

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Appeal From Eugene C. Griffith, Jr.  
CHIEF Administrative Judge, Eight  
Judicial Circuit  
Case NO: 2013-CP-30-0380

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STATE OF SOUTH CAROLINA.....Respondent

v.

Dwight Sullivan.....Appellant

NOTICE OF INTENT TO APPEAL

RECEIVED

NOV 22 2013

SC Court of Appeals

I Dwight Sullivan, #309653, hereby appeals the Final Order of Dismissal dated October 3, 2013 and received by me on November 7, 2013, from Chief Administrative Judge, Eugene C. Griffith, Jr. to the South Carolina Court of Appeals.



Dwight Sullivan  
M.C.I.  
386 Redemption Way  
McCormick, S.C.  
29399

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PROOF OF SERVICE

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**SC Court of Appeals**

I certify that I served a copy of the Notice of Intent To Appeal on South Carolina Court of Appeals, PO BOX 11629, Columbia, S.C. 29211; J. Rutledge Johnson, Assistant Attorney General, P O BOX 11549, Columbia, SC 29211 and Lynn W. Lancaster, Clerk of Court Laurens County PO BOX 287, Laurens, SC 29360 by depositing the same in the U.S. mail at McCormick mail-room.

Sworn To and Subscribe Before me

This <sup>18<sup>th</sup></sup> day of November 2013

*Stephane Marshall*  
Notary Public of South Carolina

My Commission Expires May 12, 2021

*Dwight Sullivan*  
Dwight Sullivan

THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

STATE OF SOUTH CAROLINA	)	
	)	
Respondent,	)	EXPLANATION PURSUANT TO
v,	)	243 (c), SCACR
Dwight Sullivan	)	
	)	
Appellant	)	

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The Respondent alleged that, the Applicant was required to file his application by November 16, 2008, based on the Remittitur after the Applicant's unsuccessful appeal was issued on November 15, 2007. This Application was filed on May 13, 2013. The Applicant object, because section 17-25-45(c) provides, that if a PCR applicant discovers "material facts not previously presented and heard that requires vacation of his conviction or sentence, he may file PCR application, within one year after the date of actual discovery ... or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The question before this Court is whether Applicant's PCR is subject to discovery rule. See McCoy v. State 401 S.C. 363, 737 S.E.2d 623 (S.C. 2013) where the Court said, "the PCR judge apparently overlooked the discovery rule in section 17-27-45 (c), which allows one year after the discovery of "material facts not

previously presented and heard that require vacation of the conviction or sentence" to file a PCR application. In that case, the Petitioner argued he did not discover the juror's misconduct until November 2009 and he promptly filed his second PCR after making that discovery. The Court held, "because Petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR Judge erred by summarily dismissing the claim.

The Applicant discovered his claim, in November 2012, and he filed his second PCR within one year of that discovery. Boan v State 388 S.C. 272, 695 S.E.2d 830 (S.C. 2010) became available on computer, because the South Eastern Reporter only extended to 579 S.E.2d. The Lafter v Cooper 132 S.Ct. 1376 (2012) case was also discovered in November 2013 and was the basis of his second PCR application.

Here applicant received consecutive sentence for murder and was offered thirty years for those crimes. If applicant is entitled to the "discovery rule" and this "discovery rule" is not refuted by the record, his statute of limitation may be excused.

The McCoy Court also, found a genuine issue of fact exist as to whether Petitioner's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrate a sufficient reason why the claim asserted were not asserted previously. Applicant alleged

that Lafter v Cooper came available in 2012 and Boan in 2010, long after filing his first PCR application. The McCoy Court said, "based on the factual disputed, a hearing is necessary to resolve this issue." The Applicant expects the same.

CONCLUSION

Applicany prays that this case is remanded for an evidentiary hearing.

Dated  
November 16<sup>th</sup> 2013

  
Dwight Sullivan

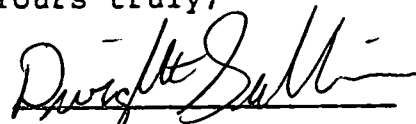
Jenny A. Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. BOX 11629  
Columbia, S.C. 29211

RE: Dwight Sullivan, # 309653 v State of South Carolina  
2013-CP-30-0380  
Notice of Intent To Appeal

Dear Ms Kitchings:

Enclosed would you please find Notice of Intent to Appeal from the Final Order of Dismissal from Chief Administrative Judge Eugene C. Griffith, Jr. that is served upon you.

Yours truly,



Dwight Sullivan

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