

Richland County Court of Common Pleas
For the Fifth Judicial Circuit

State of South Carolina
County of Richland

2025 OCT 23 AM 10:50

JEANETTE W. McBRIDE
C.O.P., G.S., & F.C.

Case No. 2025-CP-40-01962

Opposition and motion to alter or amend

Michael D. Thomas 229390
Applicant

RECEIVED

JAN 27 2026

State of South Carolina
Respondent

SC Court of Appeals

In response to respondent's "Return and motion to dismiss". Applicant Michael D. Thomas makes the following response and move to deny respondent's ("Return and motion to dismiss") as untimely, barred by the statute of limitations. (1) Respondent return motion was due to be filed within sixty (60) days of PCR see Rule 12(a) SCRPC ("The state of South Carolina shall answer or otherwise respond to an application for Post-conviction relief within (60) sixty days after service of the application, if it arises out of a guilty plea and 90 days if it arises out of a trial.") Applicant filed PCR in March of 2025, Respondent's Return was due by May of 2025, However respondent did not file until Sep, 30, 2025 in which Applicant did not receive until Oct, 7, 2025

Procedural History

Applicant is presently confined in the South Carolina department of Corrections. Applicant was indicted at the July term of the Richland County Grand Jury for Kidnapping (2014-GS-40-4537), First Degree Criminal sexual conduct (2014-GS-40-4538), First Degree Burglary (2014-GS-40-4539), Fifth Circuit Assistant Public defender Robert L. Banks Jr. (Plea Counsel) represented applicant. Fifth Circuit Assistant Solicitor Margaret Friedman prosecuted the case.

On April 26, 2016 Applicant appeared before the Honorable Andrea G. Benjamin and plead guilty to a negotiated Concurrent thirty years sentence on all charge. Judge Benjamin accepted Applicant's guilty plea and sentence him as negotiated.

Mr. Banks told applicant he was going to appeal this plea or sentence but did not.

(1)

First PCR Action: 2017-CP-46-00943

Applicant therefore filed an initial application for post-conviction relief on February 22, 2017, wherein he brought forth the following grounds for relief:

(1) Ineffect assistance of Counsel:

a. Counsel failed to adequately represent applicant under the Six Amendment; and

(2) Involuntary Guilty Plea:

a. Counsel Coerced Applicant into pleading guilty when he wanted a Jury trial.

On June 14, 2019, Applicant through PCR Counsel, amended his application alleging:

(1) Ineffective assistance of Counsel:

(a.) Counsel was ineffective for failing to properly investigate Applicant's mental health and have applicant evaluated for competency and/or criminal responsibility, thus depriving Applicant of potential defenses afforded to those defendants found incompetent or not able to conform their actions to the law of the state of South Carolina.

On June 14, 2019 an evidentiary hearing was convened before the Honorable D. Craig Brown. Applicant was present and represented by Jonathan D. Waller, Assistant Attorney General. Samuel Liley represented the state. On October 26, 2020 Judge Brown filed his order to dismissal dismissing the action without prejudice.

Applicant filed a timely notice of appeal. On August 23, 2022, the South Carolina Court of Appeals denied the petition for writ of Certiorari. The remittitur was returned on September 19, 2022.

Current PCR Action!

On March 26, 2025, Applicant filed his second and current PCR application, stating

(1) Newly found Evidence

(2) Involuntary Guilty Plea

(3) Ineffective assistance of Counsel.

Applicant request relief as follows:

Drop Charges or new trial."

Respondent filed a "Return and motion to dismiss" on September 30, 2025 that's six months and four days later. Respondent's response or motion was due by May 26, 2025, which means they did not comply with the statute of limitation, see Rule 12 (a) SCRPC ("The 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 and 90 days if it arises out of a trial. However Respondent failed to comply with this Rule 12(a) SCRPC and at the same time asking the Court's to dismiss applicant's PCR Application for alleging failed to meet the statute of limitation for doing an PCR???)

Attachments

- (1) Indictment's and arrest warrant
- (2) Police report's and notes
- (3) copy of victim statement
- (4) nurse notes / marked as Exhibit (1)
- (5) Forensic Services laboratory report
- (6) Transcript of Record.

Newly Discovered Evidence

To be entitled to a new trial based on newly discovered evidence, a defendant must satisfy a five-part test by showing that (1) the evidence is newly discovered; (2) the defendant exercised due diligence; (3) the newly discovered evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence would probably result in acquittal at a new trial. U.S. v. Moore.

However Applicant raised the issue of Counsel Mr. Banks not giving him his motion of discovery in applicant PCR which is why Applicant only now discovered the issues he is ~~bring~~^{bring} forth in the argument below

~~my~~ Mr. Banks had my cell phone record that put me in the exact location. I told him I was at around the time of the crime which he never presented in court nor did he give me these records.

Argument

(1) Applicant Counsel Mr. Banks should not have advised him to plead guilty because the indictment's arrest warrant insufficient by stating false pretense. The indictment arrest warrant were jurisdictionally defective, alleging the Applicant

Michael D. Thomas forced the victim to endure vaginal intercourse while she was held against her will. See indictment's arrest warrants for Burglary, Kidnapping, First degree G.S.C. However the victim stated in her statement, (Quote) He tried to put his dick in my vaginal and I yelled because it hurt so much because I am a virgin. And as you read further down she states, (Quote) he tried to put his dick into my vagina again. Then he turned me on my hands and knees again and turned on the lights. He then put his dick into my bottom ~~hole~~ and went back and forth". See page (3) of victim statement so the arrest warrant's Affidavits say's something entirely different the victim statement. The Indictment-arrest-warrant does not entirely consist with what the victim statement say's. (see all ~~the~~ arrest warrants and Page (3) of victim statement.

Statute and Court Rules:

Rule 7. The Indictment and the information:

The indictment and the information must be a plain, concise and definite written statement of the essential facts constituting the offense charge and must be signed by attorney for the government. (Further): Requirement for indictment that no additional information be necessary to provide accused with a clear understanding of the specific charges against him derives from the defendant's Sixth Amendment right to be informed of the nature and cause of the accusation and enables him to adequately prepare a defense to the charges that have been lodged. U.S. v. Andrews, N.D. Ill. 1990, 754 F. Supp. 1189. (2) Furthermore Mr. Bank's should not have advise me to plead guilty when there was reason to challenge or question the victims creditable. Mr. Bank's (Counsel) was ineffective for advising me to plead guilty and failing to call as defense witness triage nurse whose notes indicated that victim stated that her anal was never penetrated. (Pauling v. State 331 S.E. 606 503 S.E. 467 July 13, 1998) see nurse notes marked as (Exhibit (1)) underlined sentence were the victim told nurse she was vaginally rape only, no anal rape. However in the statement that the victim gave to the police she states that the perpetrator tried to put his dick into her vaginal twice and after trying two times turned her over and put his dick into her bottom hole and went back and forth. See page (3) of victim statement so there is a question of whether or not was she vaginal raped or whether or not was she anal raped. The ~~defend~~ Applicant is showing and presenting evidence of the victim telling three (3) different versions of what happened to her in one allege rape. In court ms. Bodman (solicitor) told the courts that I penetrates the victim in her vaginal twice and anally penetrates her as well.

Mr. Banks never objected this being that the victim told something different in her statement to the police, and in the nurse report at the hospital. see (Transcript of Record) (Page 8) sentence 13, 14, 18, 19, 20, 21. He never ~~stopped~~ ^{objected} her for bring-up my Pass Juvenile conviction which had nothing to do with this crime.

Ineffective assistance, Applicant must show his Counsel Performance fell below an objective standard of reasonableness, and but for Counsel errors, there is a reasonable probability the result at trial would have been different. Strickland v. Washington 446 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) A reasonable probability is a probability sufficient to undermine confidence in an outcome of the trial. Johnson v. State supra.

See Investigative notes:

(3) Investigative notes "on 03-15-2014 at 0230 Hrs - CSU ~~meore~~ ^{meore} Call to advise that there was no match in AFIS from the lifted prints from the crime scene. we discussed the possibility that the victim may be the producer of the print. On 03-19-2014 at 1513 Hrs CSU meore called to advise that the recovered print from the crime scene was not that of the victim. However the applicant has been booked and finger printed more then once from other charges which is not related. which means that the applicant prints are in the system, they had no match in AFIS. The person who was in her house that night and left that print behind they never got that person. Mr. Banks never asked investigators if they DNA tested anybody else in that area or in my family since it was a partial hit and a probability it could of been a male in my family. see "sled lab examination" he never question them about finding the owner of them prints.

(4) Page one of Investigative notes states Date of occurrence was on 03-15-2014 at (202300 Hrs) 11:00pm however the victim said in her statement that it happen about 10:00pm see page one of investigative notes and page one of victim statement. It's two different time frames of when this suppose to had happen.

(5) Page (3) of victim statement she claims she did not understand the perpetrator english, but gave a very detailed description of the conversation.

(6) Investigative notes Page (2) Date and time 03-16-2014 1520 Hrs says. Victim is unable to write statement because of the discomfort and stress Cause by remembering the incident. Also on Page (3) Date 03-17-2014 at 1450 Hrs there was still no statement done, so how is it that the victim statement says it was done on 03-16-2014 at 1450?? Mr. Banks failed to Challenge or question the inconsistency of this all.

A party requesting a new trial based on newly discovered evidence must show:

In the Above argument the applicant has showed that the evidence

is (1) is material to the issue of guilt or innocence; and

(2) is not merely cumulative or impeaching; and

(3) is such as would probably change the outcome of a new trial.

he also showed that Counsel was ineffective and if not for Counsel coerced applicant to plead Guilty he would have went through with the trial he wanted and had started.

~~Code 1976~~

Code 1976 § 17-27-45

§ 17-27-45 Filing Procedures for Post-Conviction Relief Application.

(C) If the ~~applicant~~ applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this Chapter 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.

As showed in Transcript, see (Page 26 sentences 10-13) Applicant suffered from mental health issues, such as bipolar disorder, schizophrenia, and a learning disability his entire life. Which is why applicant recently as of this year discovered these things and filed an PER which means the applicant is within the time frame of statute of limitation.

Summary dismissal Based on statute of limitations

Applicant move to summarily dismiss Respondent (Return and motion to dismiss) and (conditional order to dismiss) for the respondent failure to comply with Rule 12 (a) SCRPC ("The state of south Carolina shall answer or otherwise-respond to an application for post-conviction relief within (60) sixty day after service of the application if it arises out of a guilty plea, and 90 days if it arises out of a trial.")

However respondent failed to comply and filed a Return and motion to dismiss (6) six months and four (4) days latter.

Conclusion:

wherefore, the applicant moves to summarily dismiss Respondent's motion to dismiss because it is untimely barred by the statute of limitation. Pursuit to Rule 12 (a) SEREP and ask the court's not to dismiss applicant PCR being applicant only recently discovered the newly evidence and filed a PCR within that time fram of discovery. and asks the
- Court to appoint Counsel for applicant

Respectfully submitted

Michael Thomas 329390
Michael Thomas

October 11, 2025