THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Dale Van Slambrook, Circuit Court Judge

MICHAEL J. WALTON , *pro se*.....Petitioner

V.

STATE OF SOUTH CAROLINA, ...RESPONDENT.

APPELLATE CASE NO. 2025-001516

APPELLATE BRIEF FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

1. **Did the PCR court err in finding that the statute of limitations required dismissal of petitioner's PCR application?**

2. **Did the PCR court err in failing to address each claim individually in the PCR application with conclusions of law and findings of fact, as required by §17-27-80 and Rule 52(a) SCRCP?**

STATEMENT

(Statement of the case is incorporate by reference herein)

ARGUMENTS

1. The PCR court erred in finding that the statute of limitations required dismissal of petitioner's PCR application.

The PCR court found that the statute of limitations applied to petitioner's PCR action and the equitable tolling did not apply. Because of this finding, the PCR judge did not address any of petitioner's substantive claims individually except for whether petitioner was entitled to a belated appeal. This court should reverse the PCR court and remand for consideration of petitioner's substantive issues.

Petitioner objects to the PCR court's finding that petitioner failed to meet the statute of limitations. Petitioner contends §§17-27-45(c) provides opportunity whereby the filing date and circumstances of the filing of his PCR do in fact meet the necessary benchmark. In the PCR hearing petitioner argued the reasoning of his decision not to appeal and to file a PCR no sooner than he did. App. 116-118. Petitioner's central objection focuses on the trust given to plea counsel owing to petitioner's lack of "common knowledge and experience" in law and legal matters. Petitioner maintains it was a reasonable exercise of due diligence to rely on plea counsel's advice.

Within the body of §§ 17-27-45(c) is the tolling statement: "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." Petitioner maintains he met this tolling requirement. In *Dorman v. Campbell* 331 S.C. 179 (Ct. App. 1998), the S.C. Appellate Court discussed the interplay between reasonable diligence and the commencement of the statute of limitations stating:

> The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and

experience on notice that some right of his has been invaded or that some claim against another party might exist.

Petitioner contends the exercise of reasonable diligence can only be prompted when one has sufficient knowledge to determine when one should or needs to exercise this reasonable diligence. One cannot know what he does not know until he knows what he does not know. This situation may not even arise until there is an event that stirs a level of distrust in advice given by a seasoned career lawyer – such as petitioner's plea counsel – and a need to gain knowledge for the sake of correcting an error of law. In *True v. Monteith* 327 S.C 116 (1997), the Supreme Court noted:

> The client should be able to rely on the attorney's advice and should be able to follow this advice without fear the attorney is not acting in the client's best interest. We find True stands for the proposition that a client is protected by the discovery rule when relying on the advice of counsel, 'absent other facts' that would put the client on notice that the advice is erroneous.

Petitioner ensampled this type of trust within his statements in PCR court. App. 116-18; 120-121. The connection of the phrases "exercise of reasonable diligence" and "common knowledge and experience" used in *Dorman v. Campbell* should be subjected to – and is overdue for – further delineation and understanding by the courts for the sake of clarification especially as they relate to §§17-27-45(c). What is "common knowledge and experience" to some is evidentially not to others.

In petitioner's case what may be "common knowledge and experience" in the field of manufactured trusses contrasted with the field of law and legal matters are going to be vastly different. It is safe to state that one should never call a lawyer to design the structural truss

system for their house. Likewise, one does not contact a truss manufacturer for help in legal matters. This same logic follows when a legal team calls in an expert witness such as petitioner considered himself. App. 117. The need for an expert witness is solely due to the fact an expert witness has knowledge the legal team needs and does not personally possess. It is with this perspective in mind petitioner feels the court should approach the phrase "common knowledge and experience." "Reasonable diligence" as stated in §§17-27-45(c) cannot reasonably be expected of an individual who by lack of "common knowledge and experience" in law or legal matters could not know how or when to exercise such let alone that the statute even exists.

The ordinary citizen does not possess the "common knowledge and experience" of the law or legal matters simply because they are very complex and, without education or experience, incomprehensible to the common citizen. In point of fact, the need for four (4) years of college plus three (3) years of law school and passing a bar exam in order to be a licensed lawyer is substantiation enough that law and legal matters are in fact not "common knowledge and experience." The courts may reason that any common citizen should be familiar with the law – a vastly complex field – and should therefore be familiar with it all. However, would they reasonably expect a common citizen to design the structural system for their personal home? This process requires a vastly different and complex field of expertise. That they would do so is highly unlikely at best and the worst outcome could be predicted by any expert in manufactured truss design who has the trade specific and necessary "common knowledge and experience."

An individual who has not had the education required to obtain a law degree and the necessary license to practice law should not be called upon to possess the "common knowledge and experience" a lawyer would have. Just as well, any individual who has not had the education

or "common knowledge and experience" to design structural systems utilizing trusses should never, in any case whatsoever, be called upon or expected to design such systems.

Petitioner testified he is an expert in manufactured trusses having (30) thirty years' experience in design, manufacturing, and marketing of manufactured trusses. App. 116-118. Petitioner noted that he would be in a position to be called upon as an expert witness in any case concerning manufactured trusses which is his field of expertise – the trade specific "common knowledge and experience" of manufactured trusses. App. 117. In PCR court petitioner compared the trust any individual could have in petitioner within petitioner's field of expertise – manufactured trusses – to the trust petitioner had in plea counsel's field of expertise – "common knowledge and experience" in the arena of law and legal matters. Petitioner's trust held true and unwavering until petitioner enrolled in an inmate led legal dialogue class in 2022. App. 116-118, 121, 131. Only then, through discussions with other inmates, did information come to light that exposed petitioner's trust in plea counsel as blind and unwarranted.

Petitioner firmly holds the position that it was a "exercise of reasonable diligence" to rely on plea counsel's advice until such time that petitioner was informed the advice was erroneous. *Strader v. Garrison* 611F. 2d 61 (4th Cir. 1979) states:

> When he is grossly misinformed by his lawyer and relies on such information he is deprived of his constitutional right to Counsel and when the erroneous advice induces a guilty plea, permitting him to start over again is the imperative.

This reliance on plea counsel was directly connected to the timing of petitioner's filing of his PCR and his decision not to appeal. Petitioner avers there was no reason to question plea counsel's words or advice any sooner than he did. In point of fact, petitioner defended plea counsel in discussions with other inmates up until the time of his filing of a PCR. App. 121, 131.

2. <u>The PCR court erred in failing to address each claim individually in the PCR application with conclusions of law and findings of fact, as required by §17-27-80 and Rule 52(a) SCRCP.</u>

The PCR judge erred when he did not address any of petitioner's substantive claims individually. During the PCR hearing petitioner defended each individual claim within his PCR application with credibility, case law, and statutes of law. The PCR Court, in their order as well as their response to petitioner's 59(e) filing, failed to address each of petitioner's claims in his PCR application individually with conclusions of law and findings of fact. App. 232. This procedural requirement is stipulated by §17-27-80 and Rule 52(a) SCRCP. When a court fails to follow the requirement it draws a riposte such as in *Fishburne v. State* 427 S.C. 505 where Justice Hearn states; "...it is necessary once again to remind the State, opposing counsel, and the circuit court of the need for orders that contain specific findings of fact and conclusions of law."

<u>CONCLUSION</u>

For the foregoing reasons, accompanied by and with the reasons stated in the **AMENDED <u>JOHNSON</u> PETITION FOR WRIT OF CERTIORARI** submitted by David Alexander, Attorney for petitioner, the judgment of the PCR court should be reversed and this case remanded for further consideration of petitioner's PCR claims and substantive issues.

Respectfully submitted,

February 24, 2026

S/ _____

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