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Mr. Patrick Strozier # 119519

DEC 12 2013

McCormick Correctional Inst.

336 REDEMPTION WAY

S.C. SUPREME COURT

McCormick, S.C. 29899

DATE: 12.5.13

THE SUPREME COURT OF SOUTH CAROLINA

ATTN: DANIEL E. SHEAROUSE, CLERK OF COURT

POST OFFICE BOX 11330

COLUMBIA, S.C. 29211

RE: STROZIER V. STATE

APPELLATE CASE No. 2013-002357

DEAR HONORABLE SHEAROUSE,

I AM RESPECTFULLY SUBMITTING MY ARGUMENTS  
UPON THE ORDER OF THE CIRCUIT COURT UPON  
THE DETERMINATION THAT MY CURRENT POST-CONVIC-  
TION ACTION IS BARRED AS BEING SUCCESSIVE  
AND/OR AS BEING UNTIMELY UNDER THE STATUTE  
OF LIMITATIONS.

THEREFORE I'M REQUESTING A STAMP IN CLOCK  
COPY RETURNED TO ME IN THE ENCLOSED SELF  
ADDRESSED ENVELOPE.

THANKING YOU FOR YOUR ASSISTANCE IN THIS

MISCARRIAGE OF JUSTICE

31 Patuk Street  
PATRICK STROVER

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ROGER L. COUCH, COMMON PLEAS

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DEC 12 2013

S.C. SUPREME COURT

PATRICK STROZIER # 119519, . . . . . APPELLANT

V.

STATE OF SOUTH CAROLINA, . . . . . RESPONDENT.

2011 - CP - 42 - 3923

## QUESTIONS PRESENTED

- (1) ARE APPELLATE CURRENT POST CONVICTION RELIEF APPLICATION TIME BARRED?
- (2) ARE APPELLATE CURRENT POST CONVICTION RELIEF APPLICATION SUCCESSIVE UNTIMELY UNDER THE STATUTE OF LIMITATIONS?
- (3) ARE APPELLATE CURRENT POST CONVICTION RELIEF APPLICATION BARRED BY THE DOCTRINE OF LACHES?

## ARGUMENT

1. THE LEGISLATURE DID NOT INTEND THE STATUTE OF LIMITATIONS FOR POST-CONVICTION RELIEF ACTIONS, AS SET FORTH IN SECTION 17-27-45 (A), S.C. CODE ANN. (SUPP. 1996), TO BAR APPELLANT CLAIMS.

APPELLANT MR. STROZIER FILED AN APPLICATION FOR POST CONVICTION RELIEF DATED \_\_\_\_\_ CHALLENGING MY FUNDAMENTAL RIGHTS, CONVICTIONS AND SENTENCES ENTERED ON FEB. 4, 1983, THE UNIFORM POST CONVICTION PROCEDURE ACT, S.C. CODE ANN. §§ 17-27-10 TO 120 (1975 AND SUPP. 1996) ACT, GOVERNS COLLATERAL CHALLENGES TO CRIMINAL CONVICTIONS IN SOUTH CAROLINA. AT ISSUE IS THE RETROACTIVE APPLICATION OF AN AMENDMENT TO THE ACT, CODIFIED AS SECTION 17-27-45 PROVIDES IN PERTINENT PART:

(A) AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL, WHICH EVER IS LATER.

SECTION 17-27-45 WENT INTO EFFECT ON JULY 1, 1995, ACT NO. 7 PART II § 40, PART V § 77, 1995 S.C. ACTS 77, 102 PREVIOUSLY, THE DOCTRINE OF LACHES POSED THE ONLY TIME RESTRICTION ON APPLICATION FOR POST CONVICTION RELIEF. SEE MCELRAITH V. STATE 276, S.C. 282, 277 S.E. 2d. 890 (1981).

IN THIS CASE, BOTH THE APPLICABLE GENERAL PRINCIPLE OF STATUTORY CONSTRUCTION AND THE EXPRESSED LEGISLATIVE INTENT CONTRADICT THE CIRCUIT COURT'S RETROACTIVE APPLICATION OF SECTION 17-27-45(A). IN THE LEGISLATION IN QUESTION, AS IN MEARS, THE GENERAL ASSEMBLY HAS MANIFESTED IT'S INTENT THAT THE ENTIRE LAW ENACTING THE STATUTE IN QUESTION, WITH TWO EXCEPTIONS EXPRESSLY STATED, BE APPLIED PROSPECTIVELY:

SAVINGS CLAUSE:

SECTION 19. ALL PROCEEDINGS PENDING AND ALL RIGHTS AND LIABILITIES EXISTING, ACQUIRED, OR INCURRED AT THE TIME THIS ACT TAKES EFFECT ARE SAVED. THE PROVISIONS OF THE ACT APPLY PROSPECTIVELY TO CRIMES AND OFFENSES COMMITTED AFTER THE EFFECTIVE DATE OF THIS ACT. THE PROVISIONS OF THIS ACT APPLY PROSPECTIVELY TO ALL SENTENCES PRONOUNCED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT, EXCEPT WHERE A PENALTY GREATER THAN THE ONE IN EFFECT ON THE DATE THE OFFENSE WAS COMMITTED WOULD BE REQUIRED. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, SECTION 16-1-60 APPLIES RETROACTIVELY AND PROSPECTIVELY. ACT NO. 7, 1995 S.C. ACTS 2

1. THE GLOVER RULE OF STATUTORY CONSTRUCTION APPLIES TO LEGISLATION THAT ESTABLISHES A SHORTER LIMITATIONS PERIOD THAN PREVIOUSLY EXISTED. IN SUCH A CASE, THE STATUTE AFFECTS A SUBSTANTIVE RIGHT IF THE CAUSE HAD ACCRUED AS OF THE EFFECTIVE DATE OF THE LEGISLATION. SEE McMAHON, 45 S.E. 2d AT 336-37. BY CONTRAST, A STATUTE THAT BROADENS THE LIMITATIONS PERIOD IS DEEMED PROCEDURAL IN NATURE AND PRESUMED TO APPLY RETROACTIVELY. SEE GOFF V. MORGAN MILLS, 279 S.C. 382, 308 S.E. 2d. 778 (1983).

THE FIRST SENTENCE OF THE SAVINGS CLAUSE BLOCKS THE APPLICATION OF SECTION 17-27-45(A) TO APPELLANT CLAIMS TO THE EXTENT THAT THE CLAIMS WERE IN EXISTENCE ON THE EFFECTIVE DATE OF THE AMENDMENT, THE LEGISLATURE INCLUDED NO LANGUAGE IN SECTION 17-27-45 TO CONTRADICT OR OVERRIDE SAVINGS CLAUSE PROVISION.

2. APPELLANT RESPECTFULLY NOTES THAT THE LEGISLATIVE INTENT AS SPECIFIED IN THE SAVINGS CLAUSE, WAS NOT ADDRESSED IN PELOQUIN.

3. APPELLANT HAS PRESENTED HIS PETITION UPON THE FOLLOWING CLAIMS:

- "DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL,"
- "FAILURE OF PROSECUTION TO DISCLOSE FAVORABLE EVIDENCE,"
- "CONVICTION OBTAINED BY COERCED PLEA."

THE CLAIMS SET FORTH IN THE APPLICATION FOR POST CONVICTION RELIEF DO RELY ON AFTER DISCOVERED EVIDENCE / NEWLY DECIDED LAW. CF. S.C. CODE ANN. § 17-27-45(B), (C) (SUPP. 1995) BECAUSE THE ALL THESE CLAIMS MAY RELY ON NEWLY DISCOVERED EVIDENCE, FURTHER PROCEEDINGS MAY BE NECESSARY TO DETERMINE WHETHER THESE CLAIMS ARE TIME BARRED.

THEREFORE, THE CLAIMS ARE NOT BARRED BY SECTION 17-27-45(A).

SEE MEARS, 394 S.E.2d AT 319; CF, McMANIS, 45 S.E.2d AT 337-38  
(SHORTER LIMITATIONS PERIOD DID NOT BAR ANY EXISTING CAUSE  
OF ACTION BECAUSE CLAIM ASSERTED HAD NOT ACCRUED WHEN LAW  
WENT INTO EFFECT)

THE SECOND AND THIRD SENTENCES OF THE SAVINGS CLAUSE LIKEWISE  
ARTICULATE THE LEGISLATIVE INTENT THAT THE STATUTE OF LIMITATIONS  
EMBODIED IN SECTION 17-27-45 SHOULD APPLY PROSPECTIVELY ONLY.  
NO PROVISION OF ACT NO. 7 IS TO BE RETROACTIVELY APPLIED TO ANY  
OFFENSE COMMITTED OR SENTENCE IMPOSED BEFORE THE EFFECTIVE  
DATE OF THE ACT, WITH TWO EXPRESSLY STATED EXCEPTIONS; THE  
SINGLE SECTION THAT AMENDED SECTION 16-1-60, S.C. CODE OF LAWS  
(SUPP. 1996). IN BOTH RETROACTIVE AND PROSPECTIVE, AND A  
DEFENDANT MUST BE GIVEN THE BENEFIT OF ANY LESSER  
SENTENCE AUTHORIZED BY ACT NO. 7. INDEED, THE INCLUSION  
OF THESE SPECIFIC EXCEPTIONS CREATES AN INFERENCE THAT  
THE LEGISLATURE INTENDED NO OTHER EXCEPTION, SEE PENNSYLVANIA  
NAT. MUT. CAS. INS. CO. V. PARKER, 282, 92, 546, 320 S.E.2d. 458 (CT. APP. 1984).

THE SAVINGS CLAUSE "LEAVES [NO ROOM FOR DOUBT]" THAT SECTION 17-27-45  
APPLIES PROSPECTIVELY ONLY. SOUTH CAROLINA NAT'L BANK V. SOUTH CAROLINA  
TAX COMM'N, 376 S.E. 2d AT 513. FOR THIS REASON, APPELLATE APPLICATION  
FOR POST CONVICTION RELIEF IS NOT TIME-BARRER UNDER SECTION 17-27-45  
(A) ACCORDINGLY, THE ORDER OF DISMISSAL SHOULD BE REVERSED

AND THE MATTER REMANDED FOR FURTHER PROCEEDINGS. ACT NO. 7,  
PART 133, 1995 S.C. ACTS 50.

2. APPELLANT CLAIM CONCERNING FAILURE TO DISCLOSE EVIDENCE IS GOVERNED  
BY SUBSECTION (B) OF SUBSECTION 17-27-45.

IN SUPPORT OF HIS CLAIMS THAT HE'S BEING HELD IN CUSTODY UNLAWFULLY,  
APPELLANT HAS ALLEGED "FAILURE OF PROSECUTION TO DISCLOSE FAVORABLE  
EVIDENCE." THIS ALLEGATION SUGGESTS CONCEALMENT AND LATER DISCOVERY,  
SO THAT IT IS NOT CLEAR THAT APPELLANT COULD HAVE BROUGHT THIS  
CLAIM EARLIER.

SECTION 17-27-45 PROVIDES IN PERTINENT PART:

(C) IF THE 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 FILE UNDER  
THIS CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY  
OF THE FACTS BY THE APPELLANT OR AFTER THE DATE WHEN THE  
FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE  
DILIGENCE.

THUS, ASSUMING WITHOUT CONCEDED THAT SECTION 17-27-45 APPLIES TO APPELLANT  
CLAIMS, THE LOWER COURT ERRED IN SUMMARILY DISMISSING THE APPLICATION  
ON THE SECOND GROUND WITHOUT AT LEAST A LIMITED FACT FINDING HEARING  
CONCERNING THE DATE OF DISCOVERY OR THE DATE DISCOVERY WOULD HAVE  
BEEN POSSIBLE BY THE EXERCISE OF DUE DILIGENCE.

THEREFORE, WRIT OF HABEAS CORPUS SHOULD BE GRANTED TO ALLOW A  
FACTFINDING HEARING TO EXAMINE WHETHER APPELLANT IS BEING  
HELD IN CUSTODY UNLAWFULLY FOR THE CONSTITUTIONAL VIOLATIONS  
THAT ARE MENTIONED HEREIN.

31 Patrick Stroz  
PATRICK STROZIER  
APPELLANT

STATE OF SOUTH CAROLINA )  
COUNTY OF MCCORMICK )

CERTIFICATE OF SERVICE

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I PATRICK STROZIER, STATED THAT I HAVE SERVED MY S.C. SUPREME COURT PETITION UPON THE SOUTH CAROLINA SUPREME COURT BY DEPOSITING A COPY WITHIN THE U.S. MAIL POSTAGE PRE-PAID ADDRESSED AS FOLLOWS;

THE SUPREME COURT OF SOUTH CAROLINA  
ATTN: DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, SC 29211

Patrick Strozier  
PATRICK STROZIER

SWORN AND SUBSCRIBED BEFORE ME  
THIS 09 DAY OF DEC 2013

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES 12-16-2019

MR. PATRICK STROZIER #119519  
McCORMICK CORRECTIONAL INST.  
386 REDEMPTION WAY  
McCORMICK, S.C. 29899

THE SUPREME COURT OF SOUTH CAROLINA  
DANIEL SHEAROUSE CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, S.C. 29211

