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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-001256

Robert Lamont Bryant, ...Appellant,

v.

State of South Carolina, ...Respondent.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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IN REPLY

Robert Bryant replies to the State's Return to his Petition for a Writ of Certiorari for this Court to review the dismissal of his Application for Post-Conviction Relief (hereinafter "Petition," "Return" or "PCR").

Question I

Should this Court require post-conviction relief judges to draft the final orders in PCR cases in order to ensure the findings of fact and conclusions of law, required by S.C. Code Ann. § 17-27-80, are those of the court, rather than an advocate, and to preserve the separation of powers between the judicial branch and executive branch as required by S.C. Const. Art. I, § 8?

Robert Bryant argues S.C. Code Ann. §17-27-80 (1976) requires circuit court judges to draft the final orders in post-conviction relief cases and allowing the Attorney General's Office to draft these orders violates the constitutional separation of powers. Petition, pp. 6-9. The State acknowledges it drafted the order of dismissal but argues the practice of a party drafting proposed orders is done "for the sake of efficiency" and a party "should be meticulous in doing so." Return, p. 6 (citing *Fishburn v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) and *Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992)). The procedure followed in this case was neither "efficient" nor "meticulous" because the order of dismissal ruled on the wrong version of Mr. Bryant's PCR application.

The State argues "the PCR court ruled on every allegation in Petitioner's amended allegation." Return, p. 7. It is not clear whether this statement refers to the testimony presented at the PCR hearing or the amended PCR application. *Compare* A. 77 (initial PCR application raising two grounds of ineffective assistance of counsel) *with* A. 145 (order of dismissal recounting same two grounds of ineffective assistance of counsel) *and* A. 96-97 (amended PCR application asserting three grounds of ineffective assistance of counsel).

Because the final order decided the wrong PCR application, there is no evidence "the PCR court carefully review[ed] the order before signing it." *Lindsey v. State*, No. 2019-001271, 2025 WL 3085693, at *14 (S.C. Nov. 5, 2025).

Mr. Bryant also argued "the reasoning in the proposed order is entirely that of an advocate and not an independent judicial officer." The State's Return never addressed how an advocate could step out of the role of an advocate and fulfill a judicial function. The bench and bar would benefit from his Court's additional guidance regarding the proper procedure for preparing final orders in PCR cases. This Court, accordingly, should grant the writ and consider the issue. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80.

Question II

Is Robert Bryant entitled to belated review, pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), of his 1998 and 2004 uncounseled guilty pleas?

Robert Bryant argues *White v. State* allows him belated review of the 1998 and 2004 convictions. Petition, p. 9-10. The State argues the failure to note the PCR court's laches ruling is determinative of this issue on appeal. Return, pp. 7-8. However, Mr. Bryant's request for belated review under White subsumes the laches defense. The order of dismissal largely relied on *McElrath v. State*, 276 S.C. 282, 277 S.E.2d 890 (1981). *McElrath* turned on the applicant's failure to explain the delay in seeking review and his failure to assert prejudice resulting from the conviction. Here, Mr. Bryant's delay in seeking relief was the absence of legal counsel until his trial lawyers—who filed these PCR applications—advised him of his rights. Mr. Bryant alleged prejudice because these prior uncounseled convictions were used as the basis of noticing him for life without the

possibility of parole. This Cour should grant the writ and consider the question. Alternatively, this Court should allow Mr. Bryant to amend his Petition.

Question III

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to object when the Solicitor changed the offense to a violent offense and for not moving to withdraw the plea.

Responding to this allegation, the State relies on the guilty plea transcript of May 14, 2019 and the subsequent record created on May 15, 2019. Return, pp. 10-11 (citing A. 10, 31-32. The State characterizes the issue as "the Solicitor's clerical error in failing to check the boxes on the sentencing sheet indicating the offense was violent and serious." Return, p. 10. But this error was more than a clerical error. On May 15th, the Solicitor stated:

> I failed to check the boxes of this offense being a violent and serious offense. Just so everything is clear on the record and before SCDC gets the paperwork, I just wanted to make sure everybody was aware of this and we just got this correct. And that was -- that's my fault on not having the boxes checked, but I'm passing that to Mr. McCants now so he can show it to Mr. Bryant.

A. 31. Plea counsel corrected the Solicitor a stated the "box marked 'nonviolent'" was the box check on the sentencing sheet—a point Mr. Bryant stressed to the trial judge at the time. A. 32-33. A fair reading of the subsequent discussion between Mr. Bryant and the trial judge is that the unchecking the "nonviolent" box and checking the "violent" box changed the length of time Mr. Bryant would have to serve to be eligible for parole. The trial judge stated:

> This is a parole eligible offense. It's just on a nonviolent offense, you're eligible for parole sooner than you would be for a violent offense. There is such a thing as a "no parole offense," but this is not a no parole offense.

A. 36. Mr. Bryant responded, "Okay." *Id*. Mr. Bryant's conviction is a no parole offense, a point that was, at best, unartfully communicated to Mr. Bryant. Regardless, the record shows Mr. Bryant learned this fact the dafter pleading guilty.

The State tries to excuse this error as a "collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea." Return, p. 11. Although correctly stating the law, this statement overlooks counsel's obligation to provide correct advice about the collateral consequences of a guilty plea once counsel undertakes to provide that advice. *See, e.g., Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989), *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991), and *Ray v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991). The May 15th discuss illustrates Mr. Bryant's understanding that correcting the so-called "clerical error" changed the amount of time he would have to serve before any change at release. This Court should grant the petition and consider the question.

Question IV

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to meaningly advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received.

The State acknowledges "the PCR court incorrectly stated that this allegation was not raised in Petitioner's application." Return, p. 12. To be more accurate, the Attorney-General-drafted order incorrectly stated that this allegation was not raised in Mr. Bryant's application. This Court should not place any confidence in the way this order was drafted. *See* Question I, *supra*.

The State argues there is some evidence that the offer was communicated to Mr. Bryant. Mr. Bryant's Petition, however, points to the breakdown in communication from

the Public Defender's Office and argues, "the offer was not communicated to Mr. Bryant in a timely manner and that Mr. Bryant did not have a meaningful opportunity to consider the offer." Petition, p. 15-16 (citing A. 160). Had the public defender office timely communicated the plea offer to Mr. Bryant, then he would have accepted it. This Court, accordingly, should grant the writ and consider the issue.

CONCLUSION

For the reasons stated in Mr. Bryant's Petition and this reply, this Court should grant the writ and consider the issues. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80.

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May 11, 2026
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