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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Steven Collins, #141257Petitioner

v.,

State of South CarolinaRespondent

EXPLANATION PURSUANT TO RULE 243 (c), SCACR

The Petitioner was incompetent and was on a mind alteration drug called "Depacote" at 500 milligrams, twice a day, and it continued until October 13, 2013. The claim before this Court has been presented in prior post conviction relief hearing on May 12, 2011 at the Greenville County Courthouse. The attached reflects that hearing on May 12, 2011, but neither that Court ordered a competency examine to measure Petitioner's competency. See Counsel v. Catoe, 597 S.E.2d 782 (S.C. 2004) "A PCR Judge could not deny the Petitioner's right to a State funded competency evaluation prior to his PCR hearing." A split authority as to whether the statute of limitations to file a PCR actions is tolled by mental incompetency. Fergsin v. State 677 S.E.2d 6000 (S.C. 2009), it has been held while an ongoing mental incompetency may warrant equitable tolling. The critical inquiry remains whether the circumstances preventing a petitioner from

making a timely filing were both beyond the Petitioner's control and unavoidable despite due diligence. There there is a question for the PCR Court.

The petitioner, objects to the respondent finding of facts that this Court finds this matter should be summarily dismissed because the Applicant has failed to comply with filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code §§ 17-27-10 et. Seq. (2003). Moreover, he further objects, the applicant was therefore required to file his application before October 14, 2010. First, there are two exceptions to the general one-years statute of limitations, when the South Carolina Supreme Court or a Court whose decisions are binding upon the South Carolina Supreme Court announces a new substantive standard or right that is intended to be applied retroactively. aPCR applicant has one year from the date on which the new standard or right was determined to commence a PCR application. Second, if a PCR Applicant has newly discovered evidence she may benefit from a more lenient statute of limitations.

Specially. 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 applicant must 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.

This exception is commonly known as "discovery rule."

Although, this matter was heard in a prior Post Conviction hearing, the claim was "enhancement of my sentence." Appx. p. 467, lines 24 to end, p. 468, lines 1. Through this did the answers to whether the Petitioner was offered a plea and if counsel did all he can in convincing the Petitioner to plea guilty. This discovery came in November 2012, and he filed by April 2013, the statute of limitations can be equitably tolled. The South Carolina Supreme Court recently held as a matter of first impression, that if an applicant demonstrate his mental incompetence prevented a timely filing, then tolling of the PCR limitation period is warranted. Ferguson v. State, 675 S.E.2d 600 (S.C. 2006). This is a case where mental incompetence prevented me from discovering Lafler v Cooper anytime earlier.

Under this statute, successive post-conviction application are forbidden unless application can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous application. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). The Petitioner objects, because he have shown his mental incompetence and the fact that Lafler v Cooper was decided March 21, 2012, which makes it impossible to put this claim in a December 10, 2009 (2009-CP-23-10469) application. Finally, a successive application may be permitted where the Court's refusal to hear the claim would constitute a "gross miscarriage of justice" since Cooper was unavailable, and


the Petitioner medication made him mental incompetent, it would be a miscarriage of justice not to hear this claim. Based on the foregoing this claim is not successive,

CONCLUSION

Wherefore, Petitioner prays this Court will grant an evidentiary hearing.

Dated

December 23 2012



Steven Collins

