

Daniel E. Shearouse Clerk of Court
South Carolina Supreme Court

Mr. Shearouse.

Please find enclosed one original copy of appellant's notice of appeal. Please sit mail me one clocked stamped copy back, i have enclosed one self addressed envelope.

December 18, 2013

Pete Bryant

Pete S. Bryant 242370

F3B-119 MCCJ

386 Redemption Way

McCormick, S.C. 29599

RECEIVED

DEC 23 2013

S.C. Supreme Court

IN The State of South Carolina
In The Supreme Court

RECEIVED

DEC 29 2013

Appeal From Orangeburg County S.C. Supreme Court
Court of Common Pleas

Honorable Edgar W. Dickson, Circuit Court Judge

CASE NO: 2012-CP-38-0856

The State of South Carolina Respondent

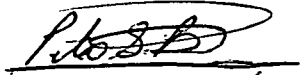
v.

Pete S. Bryant Appellant

Pete S. Bryant, appeals the order [judgment] of Honorable Edgar W. Dickson dated Oct. 31, 2013. Appellant recieved written notice of entry of this order [judgment] on November 18, 2013

Petition For Writ of Certiorari

South Carolina
Assistant Attorney General
Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, S.C. 29211-1549


Pete S. Bryant #242370
F3B-119 MCCI
386 Redemption Way
McCormick, S.C. 29899

State of South Carolina
County of Orangeburg

State of South Carolina
Respondent

v.

Pete S. Bryant #242376

Appellant

In The Court of Common Pleas
For The First Judicial Circuit

CA NO. 2012-CP-38-0856

PROOF OF SERVICE

RECEIVED
DEC 23 2013
S.C. Supreme Court

I Pete S. Bryant # hereby certify that I have served upon Respondent one original copy of Notice of Appeal on this 18, Day of December 2013 By way of U.S. Postal Service.

Sworn to and Subscribed before me

This 18 Day of December 2013

Franklin

Notary Public of South Carolina

my commission expires: 12-16-2019

Pete S. Bryant #242376
Pete S. Bryant #242376
F3B-119 MCCJ
386 Redemption Way
McCormick, S.C. 29899

Table of Contents

Index - - - - -

Authorities, - - - - -

Questioned Presented - - - - -

Statement of the Case - - - - -

Standard of Review - - - - -

Argument - - - - -

Conclusion

Table of Authorities

Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007)

Ex Parte Strom, 539 S.E.2d 699 (2000)

Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009)

McCray v. State, 305 S.C. 329, 408 S.E.2d 241 ()

Question Presented

- I. Did the Post-Conviction Relief (PCR) Court err in dismissing Appellant's Post-Conviction Relief Application, without Findings of Fact and Conclusion of Law of Appellant's issue of Newly discovered Evidence of Counsel Abandonment?
- II. Did the Post-Conviction Relief (PCR) Court err in issuing Conditional Order without addressing Appellant's issue of Counsel Abandonment without Findings of Fact and Conclusion of Law?
- III. Did Attorney Eric Ericson Abandonment of Appellant's case violate Appellant's 6th and 14th U.S. Constitutional Amendment Right to Representation, which resulted in Appellant being sentenced to Life without parole pursuant to S.C. Code ANN. 17-25-45 (F)?

Argument

Appellant contends, that the PCR Court has erred in determining that appellant's PCR application is barred as successive, specifically without the Findings of Fact and Conclusion of Law solely based upon Appellant's motion to Amend PCR Application to include newly discovered evidence of Counsel Abandonment, which Appellant Filed with the PCR Court and served upon the Respondent on May 20, 2013 pursuant to SCRCP Rule 15(A) and S.C. Code ANN. 17-27-45(C) (2012).

Appellant contends that the PCR Court Failed to dismiss Appellant's PCR Application based upon the Findings of Fact and the Conclusion of Law. Neither does the PCR Court Conditional Order of Dismissal nor Final Order of Dismissal has Findings of Fact and Conclusion of Law specifically relating to Appellant's motion to Amend PCR Application to include newly discovered evidence.

Whereas, Appellant contends that he provided the PCR Court and Respondent with material Facts and evidence of Counsel's Abandonment of Appellant's case at a critical stage in Appellant case that resulted in Appellant being sentenced to life without parole pursuant to S.C. Code ANN. 17-25-45(F) (1995).

This Court has repeatedly held that, in denying a PCR Application, the PCR Court "must" base its denial of the Application on the Findings of Fact and Conclusion Law.

See Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (07), Pursuant to S.C. Code ANN. section 17-23-80 (2003), the PCR Judge must make specific Findings of Fact and state expressly the conclusion of Law relating to each issue presented. The Failure to specifically rule on issues precludes Appellate review on the issues.
Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992)

Appellant further contend, that the PCR Court erred in determining that Appellant's PCR application is successive. Whereas, Appellant ~~is~~ specifically moved to have the application amended to include, newly discovered evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence of Counsel's abandonment pursuant to S.C. Code Ann. 17-27-45(c) (2012), and SCRCP Rule 15 (a) (2012).

Appellant presented material facts and evidence of attorney Eric Ericson's abandonment of Appellant at a critical stage in Appellant's case, as a result of attorney Eric Ericson's abandonment, Appellant's multiple armed robberies was adjudicated separately, therefore Appellant being sentenced to life without parole pursuant to S.C. Code Ann. 17-25-45(f) (1995).

Appellant specifically moved to have the PCR Court grant an evidentiary hearing or to rule upon this issue of Counsel's abandonment, and the PCR Court failed to grant an evidentiary hearing or rule upon this issue, so that it can be preserved for appellate review.

See McCoy v. State, 401 S.C. 363, 737 S.E.2d 628 (2013), where post-conviction relief applicant alleges facts that would establish an exception to either the statute of limitations or the prohibitions against successive applications and those facts are not conclusively refuted by the record before the trial court. A question of fact is raised which can only be resolved by a hearing.

See Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Pursuant to S.C. Code Ann. section 17-27-80 (2003), the PCR Judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on issues precludes appellate review on the issue. Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992)

Furthermore Appellant did not become factually aware of Attorney Eric Ericson's Abandonment of Appellant until March 26, 2013 when Appellant received a response letter from the Clerk of Court for Orangeburg County stating that there is no "court order in the record relieving Attorney Ericson as Attorney of Record pursuant SCRCP Rule 11(b) (2012)".

Twenty-Five (25) days after receiving this letter from the Clerk of Court Appellant moved to have PCR Application Amend to include newly discovered evidence, well within section 17-27-45(c) one year statute of Limitations.

Section 17-27-45(c) (2012) specifically states: IF the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of 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 facts could have been ascertained by the exercise of reasonable diligence.

Appellant did not become actually aware of Attorney Eric Ericson's abandonment until after present PCR application was already filed with the court, which was filed on June 4, 2012. Instead of wasting valuable resources and saving judicial economy, Appellant moved to Amend current PCR application to include newly discovered evidence of Counsel Abandonment.

This issue is important on several fronts, the first of which being
1. This Court has specifically held that Counsel of record must receive a court order pursuant to SCRCP Rule 11(b) to be relieved as Attorney of record.

See *Ex Parte*, 539 S.E.2d 699 (2000) The Court held:

Statement of The Case

Pete S. Bryant (Appellant) is presently confined in the South Carolina Department of Corrections. At the May 1997 term of General Sessions, the Orangeburg County Grand Jury indicted Appellant for armed robbery (97-65-38-0204). Michael Meerte, Esquire, and Charles Grose, Esquire, represented Appellant. On December 10-11, 1997, a jury trial was held before the Honorable Luke N. Brown and Appellant was found guilty as indicted. Judge Brown sentenced Appellant to life without parole pursuant S.C. Code 17-25-45(F) (1995).

A timely notice of appeal was filed on Appellant's behalf, and appeal was perfected by Wanda Haile of the South Carolina Office of Appellate Defense. On December 21, 1999, the South Carolina Court of Appeals affirmed Appellant's conviction and sentence. *State v. Bryant*, Op. No. 99-UP-654.

On November 3, 2000, Appellant filed a post-conviction relief application (00-CP-38-1213). In that application, Appellant argued that he was being held unlawfully for the following issues:

1. Ineffective Assistance of Counsel;
2. Violation of due process of law;
3. Sentence to cruel and unusual punishment; and
4. Sentence violates State Constitution.

The State (Respondent) made its return dated July 7, 2001. A evidentiary hearing was held on March 11, 2002. Appellant was present and represented by Willette Waring, Esquire. In a written order of dismissal dated June 24, 2002, and filed July 5, 2002 the Honorable Diane S. Goodstein denied and dismissed the application.

A timely notice of appeal was filed on Appellant's behalf, and the PCR

Appeal was perfected by Robert M. Pachak, Esquire. On December 16, 2003 This Court denied the petition For writ of certiorari. Appellant's subsequent pro'se petition For rehearing was denied without prejudice to Appellant's right to file successive post-conviction relief application on January 28, 2004. The remittitur was issued on that date as well.

Appellant Filed successive PCR Application (2004-CA-38-317) on March 12, 2004. Appellant argued that he was being held in custody unlawfully For the following reason: "Retractions Change in Law State v. Gordon." Respondent made its motion and return to dismiss. On April 25, 2006 a hearing was convened. Appellant was present and represented by Clarissa Joyner, Esquire. By written order signed July 12, 2006 the Honorable James C. Williams, Jr., granted post-conviction relief and ordered that Appellant's sentence of life without parole be vacated and this matter be remanded For resentencing.

Respondent Filed a timely notice of appeal, and This Court granted certiorari. On September 14, 2009 this Court reversed the P.C.R. Court order granting Appellant's PCR application. The remittitur was sent October 1, 2013.

Appellant Filed Federal Habeas Corpus on December 3, 2009. Appellant's Federal Habeas Corpus was denied on October 18, 2010 by the Honorable Joseph R. McCrorey United States Magistrate Judge. Appellant Filed his objections on November 2, 2010 and the Honorable Cameron McGowan Currie United States District Judge denied Appellant's petition on January 8, 2011. Appellant petitioned the Fourth Circuit United States Court of Appeals For an appeal on March 1, 2011 which was also denied.

On January 6, 2012 Appellant Filed a petition For writ of Habeas Corpus in The Original Jurisdiction of This Court. Petition was denied by this Court on January 26, 2012. Appellant petitioned the Court For rehearing on February 2, 2012. The Court denied Appellant's petition For rehearing February 23, 2012.

Appellant, then Filed current PCR application on [REDACTED] June 1, 2012. Respondent made its motion to dismiss on March 20, 2013. The Honorable Edgar W. Dickson PCR Court issued its Conditional Order of dismissal, signed April 15, 2013 Filed on May 7, 2013 and "Actually served upon Appellant July 11, 2013."

Appellant Filed motion to Amend PCR Application based upon newly discovered evidence on May 20, 2013. Appellant, then Filed a motion to Alter or Amend judgment pursuant to Rule 59(e) SCRPC (2012) on July 18, 2013. Respondent never responded to either of Appellant's motions. The PCR Court issued its Final order of Dismissal on October 31, 2013 and "Actually received by Appellant November 18, 2013. Appellant Filed Rule 59(e) on November 22, 2013, and this Appell Follows

In all actions it is of vital importance not only to the parties involved and the Court as well, that the ~~list~~ correct attorneys are listed as attorneys of record. The best way to achieve this is by strict adherence to rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the Court.

This Court further held: It is irrelevant whether the attorney is discharged or seeks to withdraw for his own reasons. A client has the absolute right to trust and rely upon attorney whom he believes to be his counsel of record, id.,

This Court further held: Strong policy considerations dictate that a client and the Court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the Court must by order approve a client's discharge of an attorney of record in a court proceeding id.,

This Court further held: We hold that in order to be removed as counsel of record, an attorney must receive a court order pursuant to Rule 11(b) SCRCP.

2. Appellant contends, that attorney Eric Ericson did not receive a court order to be relieved as appellant's attorney of record, therefore effectively abandoning the appellant at a critical stage in appellant case.

Whereas, Appellant, had multiple armed robberies in several counties including Orangeburg, Jasper, Colleton County. In each county appellant was giving a court appointed attorney. Mr. Ericson was appointed to represent Appellant in Orangeburg County.

The Attorneys in Jasper and Colleton County were attempting to consolidate all of Appellant's armed robberies for purposes of one adjudication of guilt to avoid the application of section 17-25-45 (F).

However, during this time attorney Eric Ericson had abandoned the Appellant therefore leaving the Appellant with no legal representation to

negotiate on his behalf in Orangeburg County to have his charges consolidate with those of Jasper and Colleton County. As a result of Attorney Eric Ericson's abandonment, Appellant's multiple armed robberies was adjudicated separately, and making Appellant's conviction in Orangeburg County his second most serious offense conviction and the following life without parole sentence pursuant to S.C. Code section 17-25-45 (F) (1995).

This Court specifically held in Bryant v. State, 384 S.C. 625, 683 S.E.2d 280 (2009) Appellant's previous PCR application action: "Assuming a defendant is adjudicated guilty, disposing of all charges at the same time will avoid the application of section 17-25-45 (F) as it relates to those charges and preclude a life without parole sentence"....

Appellant contends, that this Court makes it clear in precise language that a Criminal defendant charged with multiple offenses must have all charges adjudicated at the same time to avoid the application of section 17-25-45 (F) as it relates to those charges and preclude a life sentence.

This Court further held: "This is so even if the offenses, if adjudicated separately would otherwise require a life without parole sentence. Conversely disposing of the charges at different times would result in a life without parole sentence" id. Bryant v. State.

Appellant contends, had Attorney Eric Ericson followed the proper procedure to be relieved as counsel of record, the Court would have immediately appointed Appellant another Attorney who could have negotiated on behalf of Appellant to have his Orangeburg County armed robbery consolidated with those armed robberies in Jasper and Colleton for one adjudication.

However because Attorney Eric Ericson did not follow the proper procedure to be relieved as counsel, Appellant was deprived legal representation during key plea negotiations between Jasper and Colleton County to have Appellant's armed robberies consolidated for one adjudication of guilt to avoid the application of section 17-25-45 (F) (1995).

3. Furthermore, Appellant contends that Attorney Michael A. Meetee and Attorney Charles Grose was not legally appointed by the Court to represent Appellant at trial, whereas, Attorney Eric Ericson was still Appellant's Attorney of Record. Therefore the whole process of Appellant's trial and sentence was obtained illegally because Attorney Michael A. Meetee and Attorney Charles Grose was not appointed by the Court through an order to represent the Appellant.

This entails that Appellant's conviction was obtained illegally because Attorney Michael A. Meetee and Attorney Charles Grose had no legal authority to represent Appellant at trial.

Appellant contends that an evidentiary hearing is needed to address the issue of Counsel Abandonment and the PCR Court erred in dismissing Appellant's PCR application as being successive, whereas Appellant specifically moved to amend application to include newly discovered evidence of Counsel Abandonment, without Findings of Fact and Conclusion of Law as it relates specifically to issue of Counsel Abandonment.

In conclusion Appellant contends that this Court grant Certiorari
and remand Appellant's case back to the per court for a evidentiary
hearing

Respectively submitted

Pat S. Buz

December 18, 2013

Ryle S. Bryant #242378

F3B-119 MCCI

386 Redemption Way

McLernick, S.C. 29599

RECEIVED

DEC 18 2013

MCCI
MAIL ROOM

Daniel C. Sheavouse
Clerk of Court South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

WARDEN
MCCORMICK CORRECTIONAL INSTITUTION
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECEIVED
SENSORED THIS ITEM. THEREFORE THE
DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS.

17