

(7)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Court Of Common Pleas
#2024-CP-23-047B

Kevin Lamont Lee #285227,

Applicant

v.

State of South Carolina,

Respondent

Petitioner's
243(c) Explanation

Applicant Kevin L. Lee #285227 filed his PCR application on January 23rd 2024 in the Greenville County Clerk of Court's Office over 2 years ago. Applicant's Reply/Response will show that his PCR application and claim should not be denied and dismissed with prejudice for the foregoing reason.

Applicant Lee was informed by SCDC classification on or about July 2023 that his 30 year sentence was not a 85% sentence and that he was serving a day for day 100% 30 year sentence.

As stated above, applicant filed his PCR application within one year of findings out that his sentence had changed after being notified and informed by SCDC classification that he was receiving good time, work and education credits being applied towards a reduction of his sentence at his classification annual review, thus making his sentence 85%.

Applicant plea sheet and sentencing sheet state 30 years thus proving applicant's 30 year negotiated plea was 30 years at 85%. See attached plea sheet & sentencing sheet.

Applicant filed his PCR application after making the discovery, pursuant to the Discovery Rule in accordance to S.C Code Ann. 17-27-45 (c); McCoy v. State, 401 S.C.363, 737 S.E.2d 623; Coates v. State, 575 S.E.2d 557 (S.C.2003).

The erroneous advice that Applicant received from his attorney violated his 6th Amendment rights of due process and equal protection, S.C. Const. Art I, Sec 2,3.

The applicant is not attacking his conviction directly or collaterally. Applicant is attacking the Structure and Service of the negotiated sentence that was agreed upon by all parties.

Applicant avers that he have demonstrated sufficient reason why his claims was not included and adjudicated earlier. Based upon the factual dispute, a PCR hearing is necessary to resolve this critical issue with the appointment of counsel.

Applicant specifically object to the attorney general's finding of fact and conclusion of law, Failure to state a cognizable claim, Summary Dismissal Based on statute of limitations. Successiveness, Doctrine of Res Judicata and frustration, of finality of convictions for the following reasons:

Although the Attorney General's Proposed order did not address the merits of the issue did not address the merits of the issue raised. The reasoning in the proposed order is entirely that of an advocate and not an independent Judicial officer, which violates the separation of powers. S.C. Const. Art. 1§18. Addressing section 17-27-80, our Supreme Court "strongly encourage PCR judges to draft their own findings of fact and conclusions of law, Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 33 (2004). As a result of the errors in the proposed order, The Order of dismissal reads like an advocate trying to "save" the convictions that a judicial officer safeguarding the rights of applicant State v. Langford, 400 S.C 421 (2012)

The applicant's allegation for PCR is premised on fundamental statutory rights, The PCR court must assume facts presented by the applicant as true and view those facts in the light most favorable to the applicant Wilson v. State 559 S.E.2d 581.

Allegations in applicant's PCR applicant must be deemed true until those allegation are controverted by the state. They are deemed to be true for purpose of determining whether on evidentiary hearing should be held. The fundamental defects alleged in this PCR action are standards that require, establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of a fair procedure. It would be a denial of due process to not give the applicant a evidentiary hearing on the within claims, See § 17-27-20 (A) (4) and § 17-27-45 (C)

Applicant request this Honorable Court to appoint Counsel pursuant to rule 71.1 (D) which provides, if after the state has filed it's return, as in the case at bar, The court shall promptly appoint counsel to assist the applicant. As of date, applicant have not been appointed on attorney to assist in this case.

The applicant respectfully invoke the jurisdiction of Equity in this case because of the misrepresentation of the true and accurate facts of the case by the Attorney General and the fraud on the court that the attorney general have attempted to submit to this Honorable Court.

The applicant would show this Court the following relevant facts and argument:

The petitioner is entitled to have his sentence of 30 years changed to the negotiated plea bargain of 30 years to which petitioner was required to only serve 85% of his sentence. Petitioner's plea counsel was ineffective for giving petitioner erroneous sentencing advice and plea counsel was ineffective for failing to ensure that the State adheres to the original negotiated plea agreement. "A plea agreement rests on contractual principles and each party should receive the benefit of their bargain," Thrift v. State, 440 S.E. 2d 341 (1994) when an accused pleads guilty upon a promise of the prosecutor, the agreement must be fulfilled." State v. Thompson, 292 S.E. 2d 581 (1982)" When the State's Attorney has given his word in the form of a plea bargain and that bargain is accepted by the trial court, it behooves the States Attorney to make every reasonable effort to correct any deviation from the bargain when the deviation is called to his attention. Alston v. State, 38 MD. App. 6113,379 A. 2d 754, 757 (App. 1978)." Once a court accepts a plea agreement, it is bound to honor its promise to fulfil the agreement, insofar as the terms of the agreement are within the power of the court to order. State v. Reinhart, 430 S.E. 2d 536 (ct. App. 1993)". A recognized corollary to the principle that a guilty plea must be shown to have been intelligently and voluntarily entered it is the rule that if the plea is based on a plea bargain which is not fulfilled or is unfulfillable, then the guilty plea cannot stand." State, ex. rel. Morris v. Mohn, 267 S.E. 2d 443,445 (1980)." A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own council, must stand unless induced by threats (or promises to discontinue, improper harassment), misrepresentation, (including unfulfilled or unfulfillable promise), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business. "Brady v. United States 397 U.S. 742,755 (1970)."

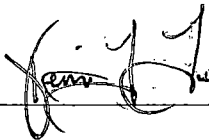
Applicant respectfully requested that this Honorable Court invoke the Jurisdiction of Equity in his objection to the State's Conditional Order Of Dismissal.

The record will show that by the attorney general's purpose find order of Dismissal that they did not object to the Court invoking the Jurisdiction of Equity , Thus conceding to the misrepresentation of the true and accurate fact of the case by the attorney general and the foreseeable fraud on the Court that the attorney general have attempted to present and submit to this Honorable Court.

The attorney general failed to reply/respond to the applicant's objection to the Conditional Order Of Dismissal or make any mention of applicant's claims.

Applicant request the appointment of Counsel pursuant to rule 71.1 (D) and a PCR hearing because facts are in dispute which would warrant a hearing under the Jurisdiction of Equity.

The Due Process clause of the 14th Amendment to the U.S. Constitution protects citizens against state action. When the U.S. Supreme Court enunciates a rule based upon the 14th Amendment, That Rule is binding upon state Courts through the Supremacy clause, Henry v. City of Rock Hill, 376 U.S. 776.



#285227 8/10/26

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