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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dillon County

Honorable Carmen T. Mullen, Circuit Court Judge

DANIEL M. HAMER, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001484

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court abuse its discretion in dismissing the application with prejudice pursuant to Rule 41, SCRCP, for failure to prosecute since the evidentiary hearing had been continued once and PCR counsel made a phone call at an unknown point to alert petitioner about the time and place of the hearing?

STATEMENT

During the August 2021 term, the Dillon County Grand Jury indicted petitioner for Domestic Violence of a High and Aggravated Nature (2021-GS-17-0708) and Resisting Arrest (2021-GS-17-0709). App. 246-253. On December 6-8, 2021, Applicant proceeded to a jury trial before the Honorable H. Steven DeBerry, IV. Petitioner was represented by Kyle M. Hobbs and solicitor Mary T. Johnson-Lee prosecuted the case. App. 1. On December 8, 2021, petitioner entered a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the lesser-included offense of Domestic Violence 1st Degree and Resisting Arrest. App. 227, ll. 9 – 17. Judge DeBerry sentenced Applicant to six-years imprisonment for Domestic Violence 1st Degree and one-year imprisonment for Resisting Arrest. App. 241, l. 22 – 242, l. 16.

Petitioner did not appeal. The present action for post-conviction relief was timely filed by application dated August 16, 2022. App. 254. The State appeared by its return dated February 12, 2024, asserting no prejudice resulted from the delay. App. 259. An evidentiary hearing was held on May 26, 2026, before the Honorable Carmen T. Mullen. App. 270. Kindle Johnson appeared on behalf of petitioner and O. McConnel Harrison appeared on behalf of the State. App. 270. Petitioner was not present for the hearing and the PCR court dismissed the application with prejudice under the provisions of Rule 41, SCRPC. App. 277-278.

This petition for certiorari follows.

ARGUMENT

The PCR court abused its discretion in dismissing the application with prejudice pursuant to Rule 41, SCRCP, for failure to prosecute since the evidentiary hearing had been continued once and PCR counsel made a phone call at an unknown point to alert petitioner about the time and place of the hearing.

Under South Carolina law, an applicant for post-conviction relief is entitled to "one bite at the apple." *See Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple as it were.'"). This concept is embedded in the statutory scheme adopted by our Legislature:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (1976 as amended).

This creates a significant burden when the proceedings before the PCR court are truncated. An applicant's "one bite at the apple" must present "a full and fair opportunity to present claims in one PCR application." *Odom*, 337 S.C. 256 at 261, 523 S.E.2d at 755. This requires the orders resolving an application "include findings of fact and conclusions of law as to all issues raised by an applicant." *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019).

Here, the lower court dismissed with prejudice petitioner's "one bite at the apple" on the basis of a representation that counsel had attempted to call petitioner and since the matter had been continued once before the scheduled hearing. In response to petitioner's absence, the PCR court inquired about the issue with PCR counsel:

My client -- I did call for my client. He has not answered. I have spoken with my client a few times before. He did indicate to me that he wanted to proceed with his PCR, that he actually wanted to move forward.

So I am going to ask for the record today that my client be given a continuance in this matter.

App. 273, ll. 20 – 25.

Rather than inquire about the nature of PCR counsel's alleged efforts to contact petitioner, the trial court was told the matter had been continued once before and dismissed the application.

THE COURT: Okay. And I see this was a case where Mr. Hobbs went to trial for two days on a DVHAN and resisting arrest. On the third day, the applicant pled guilty to domestic violence, first degree, and resisting arrest. He got a 6-year sentence on it.

And I'm going to go ahead and say this. Mr. Hobbs, your mitigation was excellent. In reading your guilty plea, I went through the entire thing. I thought Judge DeBerry was very kind, but on top of it, it was probably one of the best mitigations I've ever heard on a guilty plea, certainly more than reasonable, given his background.

This case has already been continued one time. I am going to go ahead and deny your motion, respectfully, and we will dismiss for failure to prosecute.

App. 274, ll. 7 – 22.

Certainly, there are cases in which the applicant will ignore notice and justify summary dismissal of a PCR application. However, such dismissal, in light of its impact on an applicant's

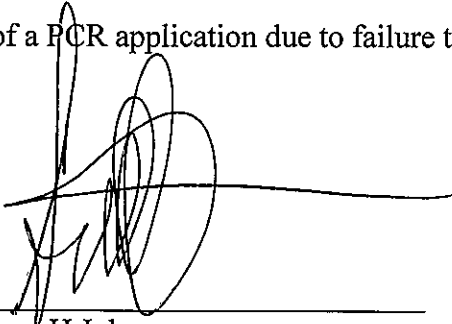
"one bite at the apple", should require some proof of actual notice of the hearing date provided either by the State or by the applicant's counsel. A claim of a phone call, without more, should not be sufficient effort at notice justifying dismissal of the application. "In those cases where our supreme court has affirmed dismissal of actions based on a failure to prosecute, *the dismissals were imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect.*" McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006) (emphasis added). Ross was cited by the PCR court as supporting its decision to dismiss the present action with prejudice under the provisions of Rule 41, SCRCP. Importantly, in Ross the Court of Appeals reversed the decision to dismiss an action for failure to appear as an abuse of discretion. " Under the facts of this case, dismissal of McComas' case was too harsh a sanction for her conduct or the conduct of her counsel." Ross, 368 S.C. at 64, 626 S.E.2d at 905. With the less drastic remedy of dismissal without prejudice available, combined with the limited inquiry into counsel's effort to provide notice to petitioner, the PCR court abused its discretion in dismissing the action with prejudice on the limited showing by counsel of effort to notify petitioner of the date and time of his hearing. Even in cases of apparent neglect in failing to appear, dismissal with prejudice would be drastic. *See Small v. Mungo*, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970) (noting unreasonable neglect was inferable from conduct of counsel but that dismissal with prejudice was improper.).

In light of the summary dismissal with prejudice on the limited record before the PCR Court, this Court should provide guidance to such dismissals by requiring sufficient showing of notice to an applicant due to the significant impact such dismissal has on the PCR process. As noted in Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019), the failure to address all

matters raised during a PCR hearing would serve as a waiver of potentially meritorious issues requiring the need for remand. "However, because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80." Fishburne, 427 S.C. at 516, 832 S.E.2d at 589. For the same reason, this Court should not sanction summary dismissal with prejudice on the assertion of a phone call as the sole basis for alerting an applicant regarding the date and time of this evidentiary hearing.

CONCLUSION

This Court should grant certiorari, reverse the summary dismissal with prejudice of petitioner's post-conviction relief application, and provide appropriate guidance to PCR courts and the bar in instances indicating an abandonment of a PCR application due to failure to appear.



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This 27th day of October, 2026.