

March 7, 2014

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court
P.O. Box 11330
Columbia, SC 29211

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S.C. SUPREME COURT

Re : Darrell L. Goss vs. The State
Appellate Case No. 2014-000355

Dear Mr. Shearouse :

Enclosed please find for filing the original Explanation as required by Rule 243 (c) of the South Carolina Appellate Court Rules. Also, please be advised that SCDC's policy prohibits me from making copies of hand-^{written} generated materials; therefore, I would respectfully ask that you serve the Respondent, The State with a copy of my pleading.

With kindest regards, I am

Sincerely,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Correctional Institution

Post Office Box 205

Ridgeville, SC 29472

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2014 - 000355

DARRELL L. GOSS,

Petitioner,

VS.

STATE OF SOUTH CAROLINA,

Respondent.

EXPLANATION

DARRELL L. GOSS #305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

PETITIONER, PRO SE

STATEMENT OF FACTS

Petitioner, Darrell L. Goss ("Goss") was indicted at the August, 2003, Grand Jury term in Charleston County for Possession of a Stolen Motor Vehicle and Unlawful Operation of a Motor Vehicle Chop Shop. Goss was represented by James W. Smiley, Esquire.

On October 20, 2004, Goss pled guilty as indicted. The Honorable Marc H. Westerbrook sentenced Goss under the Youthful Offender Act to imprisonment for five (5) years for the Possession charge and six (6) years for the Unlawful Operation charge. The sentences were to run concurrently. Goss did not appeal his convictions or sentences.

On May 15, 2012, Goss filed a application for post-conviction relief ("PCR"). The State filed a Return and a Motion to Dismiss. On October 4, 2012, the Honorable Deadra L. Jefferson issued a Conditional Order of Dismissal. On October 15, 2012, Goss filed a Response in Opposition to the Conditional Order of Dismissal. On November 6, 2013, the Honorable Roger M. Young, Sr. issued a Final Order of Dismissal dismissing Goss' application for PCR without an evidentiary hearing. On November 20, 2013, Goss filed a Motion to Alter or Amend Judgment. On February 4, 2014, Judge Young issued an Order Denying Goss Motion to Alter or Amend. On February 13, 2014, Goss served a Notice of Appeal and this appeal follows.

ARGUMENT

The PCR Court Erred in Dismissing Petitioner's PCR Application without an Evidentiary Hearing.

In Mc Coy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), this Court held :

" where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing."

In the PCR court's Conditional Order of Dismissal, the PCR judge informed Goss of her intentions to dismiss his PCR application without a hearing for failing to timely file the application within the statute of limitations. The PCR judge advised Goss that he had twenty (20) days to respond and state a sufficient reason why the application should not be dismissed as time barred.

In Goss' Response in Opposition to the Conditional Order of Dismissal, he argued that his mental incompetency

prevented him from timely filing his PCR application and cited Ferguson. In Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009), this Court held that where an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute of limitations should be tolled. In support of his claim of mental incompetency, Goss provided the PCR court with his medical record showing he was diagnosed with Attention Deficit Disorder (ADD) at the age of ten (10), as well as an affidavit stating Goss was not on his medication at the time of his guilty and that he was incompetent to enter a guilty plea. Goss' version of facts were not conclusively refuted by the record before the PCR court. However, despite Goss' demonstration that his mental incompetency prevented him from timely filing his PCR application, the PCR court dismissed the application without a hearing. The PCR court erred.

As stated in McCoy, once an applicant alleges facts that would establish an exception to the statute of limitations and those facts are not conclusively refuted by the record before the PCR court, then a question of fact is raised that can only be resolved by a hearing. Goss alleged that his mental incompetency prevented him from timely filing his PCR application (which is an exception to the statute of limitations) and those facts were not conclusively refuted by the record before the PCR court. In fact, the PCR court did not have anything in the record to refute Goss' claim of mental incompetency.

In its Final Order of Dismissal, the PCR court found that Goss failed to establish he was mentally incompetent at the time of his guilty plea. Furthermore, the PCR court found that Goss' medical record provided to support his claim of mental incompetency was insufficient because it did not make any references to Goss' mental health status during the time he stated he was incompetent and was prevented from filing his PCR application. Lastly, the PCR court found that an evidentiary hearing on this matter was not warranted.

The PCR court finding is without evidentiary support. In support of his claim of mental incompetency, Goss submitted an affidavit establishing his mental incompetency at the time of his guilty plea. In the affidavit Goss stated "I was incompetent to enter a guilty plea on October 20, 2004". Goss specifically established his incompetency at the time of his 2004 guilty plea. The PCR court erred in finding that an evidentiary hearing on this matter is not warranted.

CONCLUSION

Based upon the foregoing facts and argument and legal authorities, Petitioner believes he's provided an explanation as to why the PCR court determination was improper.

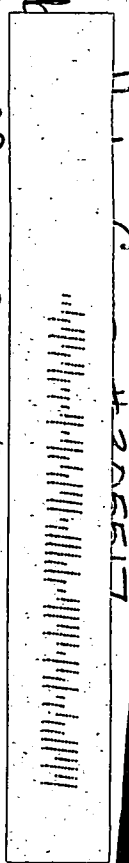
Respectfully Submitted,
Darrell S. Goss

Lieber Correctional Inst.
Post Office Box 205
Ridgeville, SC 29472

PETITIONER, PRO SE

March 7, 2014
Ridgeville, SC

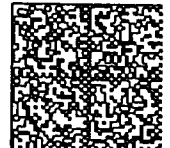
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