

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Donald B. Hocker, Circuit Court Judge

Case No. 2013-CP-24-0017

Hillary Jean Rexrode Petitioner

vs.

State of South Carolina Respondent

Explanation of Appeal

Pursuant to Rule 243 © of the South Carolina Rules of Appellate Procedure, Hillary Jean Rexrode, the Petitioner above named, hereby contends that the dismissal of her Post Conviction Relief Petition can be appealed based upon the following:

1. Hillary Jen Rexrode has alleged that Richard Breibart, her counsel, was ineffective because he improperly advised her that she was required to enter a guilty plea to a felony to avoid a federal prosecution for the same offense. She entered her plea on January 26, 2011.

2. In September of 2012 Hillary Rexrode read a newspaper article about the arrest of her former attorney Richard Breibart. The article made reference to the same type of allegations as she was told in order to induce her to plead guilty to the charges. At that point she realized that the threat of federal charges was probably not true and she had been misled by her attorney. A copy of her affidavit submitted to the lower court is attached hereto.

3. Under the authority of *Coats v. State*, 575 S.E.2d 557 (2003) and *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623(2013) an applicant has one year from the time of the discovery of the facts giving rise to the Post Conviction Relief Petition to file the post conviction relief petition. The application in this case was filed on January 7, 2013, well within the one year from when she learned of the false statements from her attorney. *See, also, United State v. Fisher*, 711 F.3d 460 (4th Cir. 2013)(holding: federal habeas is timely when filed within one year of the time applicant learned of false statement of the officer in support the affidavit for a search warrant)

4. As Hillary Rexrode filed her Post Convection Relief petition within one year of the time she learned of the deception of the attorney representing her at the time of her plea, her application for Post Conviction Relief should not have been dismissed as untimely.

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