

STATE OF SOUTH CAROLINA
In the Supreme Court

Raqib Abdul Alemin, # 264465

Appellant,

MEMORANDUM IN
SUPPORT RULE 227

v.

State of South Carolina

Case No. 2012-CP-400-7884

Respondent,

COME NOW the above-named Appellant who hereby files, pursuant to Rule 227(c) of South Carolina Appellate Court Rule (SCACR), his Explanation as to why the lower court erred by summarily denying and dismissing the underlying Post-conviction Relief.

This matter came before the court by way of an Application for Post-Conviction Relief (PCR) filed November 28, 2012 and Supplement January 24, 2013. The Respondent made its Return on March 3, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable L. Casey Manning issued a Conditional Order of Dismissal signed and filed on March 7, 2013, provisionally denying and dismissing this action, while giving the Appellant thirty (30) days from the day of service of said Order in

which to show why the dismissal should not become final, Attached to this Order was a Affidavit of Service date April 2, 2013, serving the above-mentioned Conditional Order at Dismissal on the Appellant.

In a document captioned 'Applicant's Traverse / Objection To Respondent Return and Motion to Dismissal and Conditional Order / Why It Should Not Become Final and dated March 26, 2013, The Applicant states the Court Conditional Order should not become final because (1) the one year statute of limitations does not apply to the present application and (2) the said application is not successive. Moreover, the submitted an affidavit in support of the pertinent application along in accordance with § 17-27-50 of the S.C. Code Ann. (Supp. 2006). The Circuit Court determination was improper,

The Appellant has set forth a cognizable reason to circumvent the general one (1) year statute of limitations for filing PCR applications, to wit: Appellant discovery and affidavit of a physical eye witness, Daniel Brown, on May 17, 2011, and within a month he filed a post-conviction relief application, and, thus, cause of action was timely filed under section 17-27-45(c). See S.C. Code Ann. § 17-27-45(c). Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) (We find respondent, claims concerning parole eligibility are not successive, Respondent learned he was ineligible for parole on October 26, 1995, and within a month he filed the current PCR application. He could not have raised this claim in a previous PCR application because he did not know of the claim until October 26, 1995). See also State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979).

On October 17, 2012, Appellant submitted, "Notice and Motion [for] Inordinate Delay [of] Final Order." This created a dilemma for Appellate to correct the process until a final ruling; Appellant received the final affidavit. Moreover, constitutes unfair prejudice and undue tendency for the Court to make a decision on an improper basis. (The Supreme Court has never held a pro-se prisoner to the standards of counseled litigants). See e.g., Haines v. Kerner, 404 U.S. 519 (1972). The Circuit Court did not recognize that, without tolling, Appellant's application was time barred. The Appellant was entitled to both statutory and equitable tolling for the time during which his PCR application was pending — June 7, 2011 to November 8, 2012. Cf. Pace v. DiGiuglielmo, 541 U.S. 408, 125 S.Ct. 1807 (2005).

State more clearly, on June 19, 2012, Appellant was able to receive a sworn affidavit from his wife and daughter: when and how this physical witness came to light. See Perkins v. McQuiggin, 670 F.3d 665 (2012) and McQuiggin v. Perkins, 133 S.Ct. 1924 (2013) (These affidavits were signed on January 30, 1997, March 16, 1999 and July 16, 2002, respectively. AEDPA's "new evidence" statute of limitations expired on July 16, 2003, one year after the last affidavit was signed); § 17-27-45(c).

Furthermore, the Appellant has set forth as sufficient reason why the present ground for relief could not have been raised in his initial PCR application, to wit: Appellant did not know of the present claim until June 19, 2012. See, Shabazz v. State, 338 S.C. at 364 (2000) ("when considering the state's motion for Summary Dismissal of an post-

conviction relief application, a Judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant"); See also Tilley v. State, supra., ("[Tilley] learn [of claim] on October 26, 1995. . . . He could not have raised this claim in a previous PCR application because he did not know of the claim until October 26, 1995").

ACCORDINGLY, based upon the foregoing, It is therefore respectfully requested that the final Order of Dismissal should not become final and that an evidentiary hearing be convened upon the application expeditiously hereafter with the issue being limited to whether or not the Appellant received ineffective assistance of counsel when counsel failed to raised alibi claim.



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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable h. Casey Manning, Circuit Court Judge

CASE NO. 2012-CR-400-7884

Ragib Abdul Alamin _____ Appellant,

v.

State of South Carolina _____ Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Attorney General Office, Megan E. Harrigan, Esq., P.O. Box 11549 / 1000 Assembly St. Rm. 519, Columbia, S.C. 29211, including memoranda and Initial Brief of Appellant by depositing a copy of it the United States Mail, postage prepaid on May 22, 2014, 2014, addressed to the Supreme Court, Post Office Box 11330, Columbia, S.C. 29211.



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