

June 30, 2014

The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Antonio Boykin vs. The State
Appellate Case No : 2014-001295

Dear Clerk :

Enclosed, please find for filing the original Petition
for Rehearing.

With best regards, I remain

Sincerely,

Antonio Boykin

Antonio Boykin # 332153

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

RECEIVED

JUL 02 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Clarendon County
The Honorable George C. James, Jr., Circuit Judge

Appellate Case No : 2014 - 001295

Antonio Boykin Petitioner,

vs.

The State Respondent.

PETITION FOR REHEARING

Antonio Boykin #332153
Lieber Corr. Inst.
P. O. Box 205
Ridgeville, SC 29472

RECEIVED

JUL 02 2014

S.C. SUPREME COURT

ARGUMENTS

I. The Court misapprehended Petitioner's time - frame in which to file and serve a notice of appeal.

Rule 203 (b)(1), SCACR, states :

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment . . .

In its order dismissing Petitioner's notice of appeal, the Court wrote that because Petitioner failed to provide a proof of service showing that a copy of the notice of appeal has been served on opposing counsel the notice of appeal is dismissed. Moreover, the Court acknowledged that since Petitioner asserts that he has never received a copy of the final order, a copy of the final order is enclosed.

Petitioner submits that the Court misapprehended the time - frame in which Petitioner had to file and serve a timely notice of appeal. Based on the fact that the Court acknowledged that Petitioner did not receive notice of the final order dismissing his PCR action and therefore, provided him with a copy of the written notice, Petitioner's thirty (30) days time - frame in which to file and serve his notice of appeal

did not begin to run until he received the notice from the Court.

Therefore, the Court should conduct a rehearing on Petitioner's notice of appeal.

II. The Court overlooked the record in Petitioner's case.

The Court dismissed Petitioner's notice of appeal because it says Petitioner failed to file a response to the conditional order of dismissal and therefore, Petitioner cannot appeal. Edith v. State, 369 S.C. 408, 632 S.E. 2d 844 (2006)

Petitioner submits that the Court overlooked the record in his case. Petitioner did in fact, filed a timely response to the conditional order of dismissal. See, Exhibit (A).

Therefore, the Court should conduct a rehearing on Petitioner's notice of appeal.

CONCLUSION

Based upon the foregoing reasons, Petitioner

respectfully asks the Court to conduct a rehearing on his notice of appeal with the ultimate relief of granting certiorari review.

Respectfully Submitted,
Antonio Boykin

Antonio Boykin # 332153
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

June 30, 2014

CERTIFICATE OF SERVICE

I, Antonio Boykin, do hereby certify that on this 30th day of June, 2014, I served the foregoing Petition for Rehearing upon counsel of record in this matter by depositing a true copy of the same in the U.S. mail, addressed to :

Daniel Gourley
Assistant Attorney General
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

EXHIBIT (A)

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS

2013-CP-14-302

Antonio Boykin, #332153,
Plaintiff,

RESPONSE IN OPPOSITION
TO CONDITIONAL ORDER
OF DISMISSAL AND MOTION
TO DISMISS

vs.

State of South Carolina,
Defendant.

In response to the Conditional Order of Dismissal and Respondent's Motion to Dismiss filed in this case, Applicant would respectfully show this Court:

I.

In its Motion to Dismiss, Respondent requests that the action be summarily dismissed on the grounds that the application for post-conviction relief is time barred, successive, and barred under the doctrine of res judicata.

Applicant submits that the application for PCR is not time barred because he filed the application within one year of the discovery rule.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 3/28/2014

Brenda M. Roberts

S.C. Code Ann. § 17-27-45 (c) states :

" If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of conviction or sentence, the application must be filed under this chapter within one year of the date of the actual discovery of the facts by the applicant or the date when the facts could have been ascertained by the exercise of reasonable diligence ."

Therefore, Applicant contends that he has stated a sufficient reason as to why the application for PCR should not be summarily dismissed on the grounds of failure to file within the statute of limitations .

Applicant submits that the application for post - conviction relief is not successive because the allegations of ineffective assistance of trial counsel and involuntary guilty plea raised in the current application was not and could not have been raised in his previous application for PCR because he did not have his trial transcript to discover these claims he now raises and the Respondent refused to provide

him with a copy of the transcript although he's indigent.¹

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

" When considering the state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.

Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80).

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. Delaney v. State

¹ At the first PCR hearing, Applicant motioned the court for a continuance in order to get the transcript from his trial from the state. The court denied his motion. (PCR Tr. p. 3-6).

269 S.C. 555, 556, 238 S.E.2d 679, 679
(1977) "

In the present case, Applicant contends that he has established an exception to the statute of limitations and the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court ; therefore, he's entitled to a hearing to resolve these matters and the application for PCR should not be summarily dismissed on the grounds of successive or time barred .

Lastly, Applicant submits that the application for post - conviction relief is not barred under the doctrine *res judicata* because the issues raised in Applicant's present application is not the same issues raised in his previous application . As stated above, the issues that Applicant now raises were not and could not have been raised in his previous application because he did not have the transcript from his trial to ascertain the new issues he now raises .

Therefore, Applicant contends that the application for PCR should not be summarily dismissed on the grounds of it's barred under the doctrine of *res judicata* because these

are not the same issues raised in his first PCR application.

CONCLUSION

Based on the foregoing reasons, Applicant respectfully asks this Court to deny Respondent's Motion to Dismiss and withdraw its Conditional Order of Dismissal and grant an evidentiary hearing into the matter.

Respectfully Submitted,
Antonio Boykin

Antonio Boykin # 332153
Lieber Correctional Inst.
Post Office Box 205
Ridgeville, SC 29472

December 12, 2013
Ridgeville, SC

Antonio Boykin # 332153
Lieber Corr. Inst. WC - 254
P.O. Box 205
Ridgeville, SC 29472

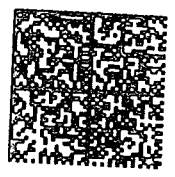
RECEIVED

JUN 30 2014

MAILROOM
LIEBER CI

The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

FIRST CLASS



UNITED STATES POSTAGE
PRIMEY BOWES
\$ 01.40
02 1M
0004238017
JUN 30 2014
MAILED FROM ZIP CODE 294