

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 07 2014

Appeal from Horry County
The Hon. George C. James, Circuit Court Judge

S.C. SUPREME COURT

JEFFERY HORAN,

PETITIONER,

V.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2014-001453

Rule 243(c) Explanation

Petitioner, through his undersigned counsel, asserts that his PCR was improperly summarily dismissed by the circuit court. To support this assertion Counsel will show the following:

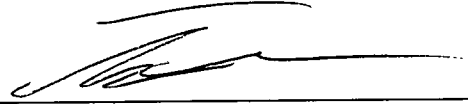
1. Petitioner pled guilty to voluntary manslaughter on October 15, 2009.
2. Despite his history of mental illness, Petitioner pled guilty without being evaluated.
3. On May 18, 2010, Petitioner filed his first application for post-conviction relief (PCR). Petitioner was appointed Paul Archer to represent him.
4. Petitioner was not evaluated for competence or criminal responsibility for his first PCR hearing.
5. At the hearing, Petitioner withdrew his first PCR Application.
6. On April 17, 2012, Petitioner filed a second PCR application. In his second PCR application and the subsequent *pro se* filings, Petitioner alleged that he did not

knowingly, voluntarily, and intelligently withdraw his first PCR application. Petitioner claimed that he had mental illness and withdrew his first PCR application because he was intimidated by the victim's family in the courtroom.

7. The State moved to summarily dismiss Petitioner's second PCR application.
8. During a hearing to determine whether to summarily dismiss the second PCR application, Counsel argued that there is at least some evidence from the filings that would justify a hearing on the merits.
9. Petitioner alleges that his first PCR application was involuntarily withdrawn. Additionally, Petitioner's mental illness may have made it more likely that Petitioner was easily influenced into withdrawing his first PCR application. Moreover, Petitioner argued that his mental illness may have contributed to the delay in filing the second PCR application.
10. Petitioner now seeks remand for a hearing on the merits of his second PCR application.
11. Petitioner's *pro se* filings raise disputed issues of fact which should have been decided at a hearing on the merits. *See State v. McCoy*, 491 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) ("Where an application 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.").
12. Therefore, the Circuit Court erred in finding that he was not entitled to a hearing on the merits.

Based on the above referenced facts, arguments and cases, Counsel respectfully requests that this Court consider Petitioner's appeal from his second PCR application.

Respectfully submitted,



Tristan M. Shaffer
AXELROD & ASSOCIATES
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Phone: (843) 916-9300
SC Bar #: 77565

August 6, 2014

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CERTIFICATE OF MAILING

I, Deborah Evans, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Rule 243(c) Explanation upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Josh Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211



Deborah Evans
Paralegal to Tristan M. Shaffer

August 6, 2014
Myrtle Beach, South Carolina

AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

Stuart Mark Axelrod
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Carlton E. Elliott
Grant Smaldone
Tristan M. Shaffer

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* Currently on Active Military Duty

AUG 07 2014

S.C. SUPREME COURT

August 6, 2014

Ms. Janet Johnson
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: Jeffrey Horan v. The State of South Carolina
Case No. 2014-001453

Dear Janet:

Enclosed please find an original and one copy of a Rule 243(c) Explanation in the above referenced matter. If you would, please file the Explanation and return a clocked copy to me in the envelope provided.

Thank you for your assistance with this matter.

Sincerely,



Tristan M. Shaffer

TMS/dke

Encl.

cc: Joshua L. Thomas, Esquire

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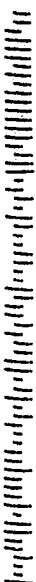
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