

The State of South Carolina
In the South Carolina Supreme Court

Appeal From Dillon County, South Carolina
Common Pleas Court

Docket Number: 2013-CP-17-054

The Honorable Paul M. Burch, Circuit Court Judge

Mary Steven Scott #282106 _____ Appellant

Versus

The State of South Carolina _____ Respondent

Explanation Requirement for Appeal
Pursuant to Rule 243(c) S.C.A.C.P.

An appellant is required pursuant to rule 243(c) S.C.A.C.P. to provide an explanation to support the Appeal as the lower court has determined that the P.C.P. action is barred as successive or being untimely under the statute of limitations the Petitioner must at the time the Notice of Appeal is filed provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the Petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

The Petitioner / Appellant asserts that he can provide an explanation to support the Appeal; that the lower court has made

a determination that the Appellants PCR was barred as successive and untimely under the statute of limitations. The Appellant sets forth the following reasons as proof that the lower Courts determination was improper.

At this juncture the Appellant would like to incorporate the arguments of Mr. Tristan M. Shaffer (who was appointed to represent the Appellant but was later taken off the case) into this explanation pursuant to rule 243(c) S.C.A.C.R. to show that the lower Courts decision was improper.

In Mr. Shaffer's motion and request for a hearing he indicates that the Appellant is entitled to an Austin review of his case pursuant to Austin v. State 409 S.E. 2d. 395 and the Plaintiff takes the same position. He stated that although successive PCR applications are disallowed they are not prohibited. Williams v. O'Zmint 671 S.E. 2d. 600. The Supreme Court in South Carolina has allowed successive PCR applications where the applicant has been denied complete access to the Appellate Process. Adams v. State 523 S.E. 2d. 753 (Citing Austin v. State 409 S.E. 2d. 395) The Appellant takes this same position.

Mr. Shaffer stated and Appellant takes the same position that when issues are raised but not called on by the PCR Court, PCR Counsel should file a 59(c). Failure to file a 59(c) acts as a procedural bar to preclude the appellate Court from reviewing the issue. See Burgess v. State 738 S.E. 2d. 264. To properly preserve an issue for appellate review, it is incumbent upon a party in a PCR action to

file a rule 59(e) motion in the event the PCH Court fails to make specific findings of fact and conclusions of law regarding an issue. Marlar v. State 653 S.E. 2d. 266. A 59(e) was required after the Appellants first PCH's dismissal not only because the order lacked specific findings of fact and conclusions of law, but because the order denying relief contained the exact same Paragraph the S.C. Supreme Court stated in Marlar and Business. That Paragraph stated "As to all allegations raised in the application or at the hearing not specifically addressed by this order, this Court binds the Applicant to present any evidence regarding such allegations. Accordingly, this Court binds that the Applicant failed to meet his burden of proof regarding them. Therefore any and all allegations not specifically addressed in this order are hereby denied and dismissed."

The S.C. Supreme Court held that this Paragraph did not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law, thus the need for the 59(e) to have been filed.

The lower court's decision in denying the Appellants PCH as successive and untimely under the statute of limitations was improper in that the cases they rely on to deny the Appellant relief are out of sync with the circumstances of the current case. The lower court cited Rice v. State 409 S.E. 2d. 392 and Braw v. State 620 S.E. 2d. 743 as the authority in denying the Appellants PCH as successive or untimely under the statute of limitations. Here's how the Appellant intends to show

to this Court that these two cases are inapplicable to the current case and that Austin does apply.

In Rice the Supreme Court held that an Appellant may not maintain a successive P.C.R. application on ground that the first "complete" P.C.R. application was insufficient due to ineffectiveness assistance of P.C.R. Counsel. The factual basis of Rice's case simply does not apply to the current case, because in the case at bar the Appellant is alleging that his first P.C.R. was incomplete because his right to appeal was compromised, denied even, due to Counsel's deficient performance in failing to file the much needed 59ces to preserve the Appellant's issues for review. Had it not been for Counsel's deficient performance the result of the appeal would've been different.

In Bray the Court dealt with the doctrine of "Laches" which is the neglect for an unreasonable and unexplained length of time, under circumstances abounding opportunities for diligence to do what in law should be done. The reliance on this case was inapplicable too because the Appellant pursued current issue as diligently as possible and the doctrine of Austin states that the one year statute of limitations does not apply to applications for P.C.R. filed pursuant to Austin. Under Austin a defendant can appeal the denial of a P.C.R. application after the statute of limitations has expired if the defendant either requested

and was denied an opportunity to seek appellate review or did not knowingly and intelligently waive the right to appeal. In this action the Appellant is alleging that he requested and was denied an opportunity to seek appellate review in that Counsel at first P.C.R. failed to file the much needed 59cs.

Further, pursuant to 17-27-80 and 17-27-90 it states that a P.C.R. Court shall make specific findings of fact and state expressly its conclusions of law relating to each issue presented. This order is a final judgment. All grounds for relief available to an applicant must be raised in his original, supplemental or amended application.

17-27-90 states that any ground finally adjudicated or not so raised or knowingly, voluntarily and intelligently waived in the proceedings that resulted in conviction or sentence or any other proceedings the applicant has taken to secure relief may not be taken or the basis for a subsequent application unless this Court finds a ground for relief asserted, which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application. A final judgment entered under the Uniform Post Conviction Relief Act may be reviewed by Writ of Certiorari.

An Order in a P.C.R. matter which does not include specific findings of fact and conclusions of law relating to each issue presented, but instead dismisses some of the issues without prejudice to them being raised in a future proceeding does not constitute a final order or judgment under the U.P.C.R.A. and therefore is not reviewable by Writ of Cert.

The Applicant contends that he has not obtained a complete adjudication on the merits or a final judgment in accordance with the statute of his original application because the order denying him relief did not comply with 17-27-30 thus the requiring of the 59er to be filed.

The Applicant also contends that pursuant to rule 71.1(C) of the S.C. Rules of Civil Procedure that he is entitled to a full adjudication on the merits of the original petition or one bite at the apple; this bite includes an applicants right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal. The Applicants Appeal from his first PCR was compromised.

The Applicant would like to reiterate the fact that he'd like to incorporate the attached motion submitted to the Court by Mr. Justin Shaber into this explanation for the Appeal where the Appointment of Counsel occurred in the lower Court and was later Rescinded simply because the state sought to summarily dismiss the case. Applicants have a statutory right to Counsel pursuant to title 17-27-60 of the S.C. Code of laws. Mr. Shaber stated and the Appellant takes the same position that "while there is constitutional obligation to appoint counsel in a PCR matter in South Carolina, if a PCR application presents a question of law or fact requiring a hearing and applicant is indigent, state law provides counsel must be appointed or a knowing, intelligent waiver of the right to counsel must be obtained." 659 S.E.2d 493
The Appellant ~~at~~ maintains that Counsel should not have been stripped from the case be-
*Richardson v. State 659 S.E.2d 493

cause an officer of the Court stated in the motion he made to the Court on behalf of the Plaintiffs that there are issues of fact and law to be determined that required a hearing and the appointment of Counsel.

This concludes the Appellants explanation pursuant to rule 243(c) as to why the Appellant feels as though the determination of the lower Court was improper. The petition for Writ of Certiorari follows.

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