The Supreme Court of South Carolina

Jason A. Brown, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001670

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

_____ C.J.
FOR THE COURT

Columbia, South Carolina

September 24, 2014

cc:
Daniel Francis Gourley, II, Esquire
Jason A. Brown, #325561

PLEASE TAKE NOTICE THAT ALL EXHIBIT'S ARE FILED WITHIN THE CLERK OF COURT UNTO APPLICANT'S APPLICATION. WHICH IS STATE V. BROWN, 2013-CP-14-0019.

Exhibit #1: No Notice of Appeal was filed on behalf of the Petitioner.

Exhibit #2: Letter from Charles T. Brooks stating that he was still my attorney of record.

Exhibit #3: Objection to the Conditional Order of Dismissal.

Exhibit #4: Objection to the Conditional Order of Dismissal.

Exhibit #5: Amended **" Issue D "** to the orginal application.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Petition For Rehearing

Jason A. Brown,
Petitioner

v.

State of South Carolina,
Respondent

Appellate Case No. 2014-001670

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for Rehearing and a copy of the appendix in this case have been served on Daniel Francis Gourley, II, Esquire at The Supreme Court of South Carolina, Post Office Box 11330 Columbia, South Carolina 29211.

Jason Arnold Brown, #325561
Lee Correctional Institution
Florence North 2107
990 Wisacky Highway
Bishopville, South Carolina 29010

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CLARENDON COUNTY

COURT OF COMMON PLEAS

APPELLATE CASE NO. 2014-001670

Jason Arnold Brown, #325561,.....Petitioner.

v.

State of South Carolina,.....Respondents.

Petitioner, Jason Arnold Brown, filed an Application for Post-Conviction Relief (PCR) on January 16, 2013. The Respondents made it's Return on April 11, 2013, by way of a Motion for Dismissal requesting the application be summarily dismissed based upon the Statute of Limitations, Successiveness, and for failing to State a Cognizable Claim for Post-Conviction Relief

Accordingly, the Honorable Judge George C. James, Jr., issued a Conditional Order of Dismissal dated April 17, 2013, and filed January 8, 2014, provisionally denying and dismissing the action. However, because of an grievous error the Lower Court

overlooked the applicant's claim. Therefore, petitioner will now again direct this Honorable Court unto the issue which is Newly Discovered and timely.

ISSUE

The PCR court's finding that Petitioner's case should be summarily dismissed under 17-27-45 (A) of the South Carolina Code was erroneous.

The PCR court's finding that Petitioner's claim "should be summarily dismissed because [Petitioner] has failed to comply with the filing procedures of the Uniform Post-Conviction Procedures Act" was in error. The PCR court specifically cited 17-27-45 (A) of the South Carolina Code in support of this finding. Yet, the timeliness requirements of 17-27-45 (A) apply generally to a first PCR application, not later PCR applications on the basis of newly - discovered evidence. And also, the charge alleged of (ABHAN) was dismissed for lack of prosecutorial evidence. Thus making the Appellate Case No. 2014-001670 timely within the year time span that is required by 17-27-45 (C). The timeliness requirements for filing a successive PCR application pursuant to newly - discovered evidence are specifically governed by17-27-45 (C) of the South Carolina Code, see, e.g.State v. McCoy, 737 S.E. 2d 623, (2013). Thus, the PCR court erred as a matter of law by finding17-27-45 (A) applied to Petitioner's present PCR action. The PCR court's finding that Petitioner could have raised the grounds in the present PCR application in his first PCR action was erroneous. As such, this evidence was discovered well after Petitioner's first PCR action was filed, heard, and dismissed.

Accordingly, the PCR court's finding that Petitioner could have raised the new grounds for relief in the prior PCR application was erroneous, as it is not supported by the record. See: Terry v. State, 714 S.E. 2d 326, 328 (2011) (citing Cherry v. State, 386 S.E. 2d 624 (1989).

Moreover, even assuming without conceding that an argument may be made by the State that the new grounds indeed could have been raised in his first PCR action, such a position would represent a "genuine issue of fact" as to whether Petitioner's claim is successive under 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted were not asserted previously. See: State v. McCoy, Op. No. 27214 (SC S.Ct. filed February 6, 2013) (Shearhouse Adv. Sh.No. 6 at 18) Under such circumstances, summary dismissal is erroneous, Id.

The PCR court's finding that the information of the voluntary signing of the initial warrant of the ABAHN charge which one Timothy S. McCray signed who is not an employee of the Clarendon County Sheriff Office was valid. When it specifically states in Mack N. Keel, 2014 WL 1398590, (2014) that this cannot be done only someone who is in duel office and sworn before an Magistrate an notary then this action may take place. Looking at the date of all the warrants that was signed. They were all signed by the same person using the same (blue pen), on the same date also providing the same type of handwriting (signature). Which you can plainly see on the face of the

warrants that they were totally defected. Thus the lower court still found that the information was validly given.

The PCR court still said that this does not amount to sufficient newly-discovered evidence therefore overlooking the time when the applicant discovered this information in 2013 under the [FOIA]. Bypassing the ruling and statue of 17-27-45 (C).17-27-45 (C) provides that an application may be filed based on newly discovered evidence under the following circumstances:

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

SC Code 17-27-45 (C) (West, Westlaw current through end of 2010 Reg. Sess.). Thus, Petitioner is entitled to the benefit of the discovery rule and it is not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner's claim. See: State v. Brown 2013-CP-14-0019. The grievous error is with the court. The fault is with the Respondent's relying on the wrong statue. In which they should have relied on 17-27-45 (C) instead of upon17-27-45 (A). According unto Arnold v. Carolina Power & Light Co., 167 S.E. 234 (1933). The purpose of such a petition for rehearing is to aid the court in deciding correctly a case heard by it. The

petition must show, according to the Rule, "the points supposed to have been overlooked or misapprehended by the Court". This is not a mere delay tactic to get the case tried in this court for a second time. But this is a rare occasion that the lower court made an error ruling unaccording to there well established case law followed by their own statues.

Therefore, Petitioner's claim of the illegal search and seizure was purposefully overlooked and the lower court was in error for doing so. So thereby, this Motion for Rehearing pursuant to SCACR Rule 221 (A) is proper and the Honorable court should Remand this case back for a new trial.

Thanks in Regards of this matter.

This the 8 day of October, 2014

Respectfully Submitted,

Jason Arnold Brown, #325561
Lee Correctional Institution
Florence North 2107
990 Wisacky Highway
Bishopville, South Carolina 29010

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

_____, Circuit Court Judge

Case No. 20 13 -CP- 14 - 0019

Jason Arnold Brown, #325561, ... Petitioner,

v.

State of South Carolina, ... Respondents.

EXPLANATION PURSUANT TO RULE 243

Petitioner, Jason Arnold Brown, filed an Application for Post-Conviction Relief (PCR) on January 16, 2013. The Respondents made its Return on April 11, 2013, by way of a Motion for Dismissal requesting the application be summarily dismissed based upon the Statute of Limitations, Successiveness, and for Failing to State a Cognizable Claim for Post-Conviction Relief.

Accordingly, the Honorable Judge George C. James, Jr., issued a Conditional Order of Dismissal dated April 17, 2013,

and filed January 8, 2014, provisionally denying and dismissing the action. The Petitioner was given twenty (20) days from the date of service of the Conditional Order of Dismissal in which to show why the dismissal should not become final.

Shortly thereafter, by reference of an Affidavit of Service dated March 20, 2014, Petitioner was served with the Conditional Order of Dismissal by the Respondent's Responsible Authority. The Petitioner filed a document captioned "Applicant's Objection to the Conditional Order of Dismissal" dated April 4, 2014, of which was served upon the Respondents.

Soon thereafter, the action was dismissed by the Honorable Judge James on July 11, 2014. The Petitioner filed a timely Notice of Appeal to the Order of Dismissal.

Now this Court has given the Petitioner twenty (20) days to respond as to why the above determination was improper. The Petitioner received this Order from the Institutional Mail Room on July 11, 2014.

PROCEDURAL HISTORY

The Petitioner is presently confined within the South Carolina Department of Corrections pursuant to Orders of Commitment by the Clarendon County Clerk of Court. The Petitioner was indicted by he Clarendon County Grand Jury during the March 2007 Term of the Clarendon County Court of General Sessions for Murder, Arson, and Grand Larceny (2007-GS-14-00056), a Multi-Count Indictment. The Petitioner appeared before the Honorable Judge John M. Milling, entering a Plea of Guilty as indicted

to the charges of Murder, Arson, and Grand Larceny. The Petitioner was represented by Scott L. Robinson, Esquire. On December 6, 2007, the Honorable Judge Milling sentenced the Petitioner to a negotiated sentence of thirty (30) years imprisonment for Murder, ten (10) years imprisonment for Arson, and five (5) years imprisonment for Grand Larceny (<$5,000.00). The Honorable Judge Milling ordered that the sentences were to be served concurrently. The Petitioner did not file a Notice of Intent to Appeal his Convictions and Sentences.

The Petitioner's Indictment reads:

COUNT ONE - MURDER

That JASON ARNOLD BROWN did in Clarendon County on or about October 14, 2006 or October 15, 2006, feloniously, willfully, and with Malice Aforethought, either expressed or implied, kill one: John Murray by means of shooting, and that the said John Murray did die as a proximate result thereof.

COUNT TWO - ARSON

That JASON ARNOLD BROWN did in Clarendon County on or about October 14, 2006 and October 15, 2006, violate Section 16-11-110 of the Code of Law of South Carolina (1976), as amended, in that he did willfully and maliciously set free to or burn or caused to be burned a 1998 Toyota Camry belonging to John Murray.

COUNT THREE - GRAND LARCENY

That JASON ARNOLD BROWN did in Clarendon County on or about October 14, 2006 and October 15, 2006, feloniously take and carry away the personal property of John Murray, to wit: Jason Arnold Brown stole a 1998 Toyota Camry belonging to John Murray with intent to deprive the owner thereof permanently of such property being valued at over $1,000.

The Petitioner then challenged his Convictions and Sentences by way of a Application for Post-Conviction Relief filed August 05, 2008. Petitioner thereafter then withdrew the Application at the Evidentiary Hearing where PCR

Counsel never appealed the Petitioner's Convictions and Sentences. **See Exhibit #1. No Notice of Appeal was filed on the behalf of the Petitioner.** the Petitioner was represented by Charles Thomas Brooks, III, Esquire. The Post-Conviction Relief hearing was held at the Sumter County Courthouse on October 28, 2009. the Petitioner's Counsel never appealed his PCR withdrawal, of which denied the Petitioner his 'One Bite at the Apple', as the Petitioner did not understand the difference between **with prejudice** or **without prejudice**. The Petitioner would also provide this Honorable Court with a letter from the Petitioner's PCR Counsel, stating that he was still the Petitioner's Attorney of Record three (3) years after the decision was executed. **See Exhibit #2.**

DISCUSSION

Petitioner filed a Post-Conviction Relief Application raising an **Austin** claim from the denial of the Petitioner's PCR Counsel's failure to file a Notice of Appeal, of which the Honorable Judge Ralph Ferrell Cothran, Jr., presided over. The Petitioner raised the following claims to which is being held in custody unlawfully:

1. Ineffective Assistance of PCR Counsel.
   A. PCR Counsel, Charles Thomas Brooks, III, was ineffective for failing to amend to my PCR Application of 2009.

   B. PCR Counsel was ineffective for failing to amend to my PCR Application of 2009. That Applicant was denied the right to a Direct Appeal. **See Roe v. Flores Ortega**, 120 S.Ct. 129 (2000). Such deprivations constituted a violation of the Sixth (6th) and Fourteenth (14th) Amendment of the United States Constitution.

AMENDED ISSUES LABELED 'C & D'

C. PCR Counsel, Charles Thomas Brooks, III, was ineffective for failing to challenge Applicant's Guilty Plea.

D. Did the Trial Court err in admitting evidence emanating from Applicant's arrest because the police officers did not have Probable Cause to arrest him?

The Conditional Order of Dismissal was drafted by the Respondent's Attorney of Record, Assistant Attorney General, Daniel Gourley, of the South Carolina Attorney General's Office. Furthermore, the Conditional Order of Dismissal was then signed by the Honorable Judge William Jeffery Young. However, the Conditional Order of Dismissal never refuted the Petitioner's claim that the Petitioner was pursuing an **Austin** Review, pursuant to **Austin v. State**, ____ S.C. ____, 409 S.E.2d 395 (1991). After the Conditional Order of Dismissal was signed by the Honorable Judge Young, the Petitioner subsequently filed an objection to the Conditional Order of Dismissal. **See Exhibit #3.**

Whereas, this case was tainted from the beginning when the Respondent's took the Petitioner's **Austin** Review claim and turned it into an issue that the Petitioner was alleging all new claims, of which the Petitioner points out that he has a Newly Discovered Evidence claim under 17-27-45(C). However, Section 17-27-45(C) provides that if a PCR applicant discovers "material facts not previously presented and heard that require vacation of his conviction or sentence", he may file a PCR application " within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise

of reasonable diligence". 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. **See Delaney v. State**, 269 S.C. 555, 238 S.E.2d 679 (1977). In reviewing of **State v. McCoy**, ____ S.C. ____, 737 S.E.2d 623 (2013), the PCR Court was in err for adopting a 'Proposed Conditional Order' that was pretty much incomprehensive, following the Original PCR Application.

Following the signed Conditional Order of Dismissal, the Petitioner filed an objection to convince the Lower Court that an egregious mistake has been made into the record. Meaning, the Petitioner's **Austin** claim has been construed into a claim that fell upon the error of Petitioner's Initial Collateral Counsel's ineffectiveness. **See Exhibit #4.** Nevertheless, a proposed Final Order of Dismissal was drafted by Mr. Gourley. The Honorable Judge Young signed the "Final Order of Dismissal" on July 11, 2014. Therefore, this **explanation** is proper as to why the Lower Court's determination was improper.

Petitioner's position at this point shows that the Lower Court deemed the Petitioner's **Austin** claim as successive. The Lower Court should have heard the Petitioner's **Austin** claim based upon the 'Fundamental Miscarriage of Justice exception'. Furthermore, the Lower Court should have looked at the Petitioner's Amended Issues, of which would strictly fall under the provisions of 17-27-45(C) and not 17-27-45(A) and the Lower

Court construed and also deemed as successive.

ARGUMENT

Petitioner's position is that he filed a Post-Conviction Relief Application raising an **Austin** Review claim and later through discovery, found out that he also had a Newly Discovered Evidence claim of which was amended into the Petitioner's Application as claim 'D'. **See Exhibit #5.** The Respondents construed the Petitioner's claim as if the Petitioner was raising a claim that was previously heard. The Respondents relied on the supporting case of **Martinez v. Ryan**, 132 S.Ct. 1309 (2012) and **Land v. State**, ____ S.C. ____, 262 S.E.2d 735 (1980). However, the Respondents first response to the Petitioner's application was "1. The Applicant contends he is able to file a successive State Post-Conviction Relief alleging Ineffective Assistance of previous Collateral Counsel."

The Respondents asserts that this contention is without merit as the ruling in **Martinez** has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent successive State Post-Conviction Relief Application, of which totally leaves out any ruling upon Claim "D". Petitioner also argues that he never waived the opportunity to seek Appellate Review of the withdrawal of his PCR Application and argues that he should be permitted to appeal the withdrawal of that Application pursuant to **Austin**.

The Respondent argues that the Application in question here must be summarily dismissed because it is successive to his prior

Application for Post-Conviction Relief, pursuant to S.C. Code Ann. § 17-27-90(A) (Supp. 2003). The Respondent's also points to the case of **Martinez** to support its argument. The Respondent's points to **Martinez** and **Land**. However, in the **Austin** Court, a Petitioner may challenge his Counsel's ineffectiveness if the error is based on the failure to file an appeal. PCR Counsel Brooks was clearly ineffective for failing to file an appeal after the initial Post-Conviction Relief Hearing was held in the Sumter County Courthouse on October 28, 2009.

The Petitioner's objection is that the Lower Court erred by not addressing the issue, pursuant to 17-27-45(C).

The Petitioner's position here is raising an **Austin** Review claim following the withdrawal of his Post-Conviction Relief Application. Petitioner's **Austin** Review claim is attacking the Post-Conviction Relief procedures used in this case, not merely the merits of his sentence, so that the one-year Statute of Limitations of S.C. Code Ann. § 17-27-45(A) is not applicable. Additionally, successive PCR applications are permitted in rare procedural circumstances. See **Case v. State**, ____ S.C. ____, 289 S.E.2d 413 (1982).

The Petitioner next argues that if this Honorable Court indeed find Petitioner's **Austin** Review claim to be successive, then this Court should allow the Petitioner's **Austin** Review claim issues to be heard, based upon the '**Fundamental Miscarriage of Justice exception**', and an Evidentiary Hearing be held.

Furthermore, being that the Petitioner was represented by Scott L. Robinson, of the Clarendon County Public Defender's

Office, at his Preliminary Hearing and Plea Hearing, the Petitioner accepted a negotiated Guilty Plea of all charges for thirty (30) years. The Petitioner was coerced into pleading guilty, which makes the guilty plea unintelligently, unknowingly, and unwillingly entered.

Once Petitioner received his sentences, Petitioner immediately filed for Post-Conviction Relief in the year 2008, approximately one (1) month after his sentence was rendered to him.

Petitioner was represented by Charles Thomas Brooks, III, Esquire. The record would reflect that once the Honorable Judge Ralph Ferrell Cothran, Jr., issued its Order of Dismissal, PCR Counsel Brooks never filed a Notice of Appeal on the Petitioner's behalf.

Based on the unconstitutional deficiencies of Trial Counsel and Post-Conviction Relief Counsel, there should be without question that it is a **factual dispute**, and a hearing is necessary to resolve this critical issue. Also, the Petitioner has showed that there is a genuine issue of material facts that exists an the Application was not successive or untimely.

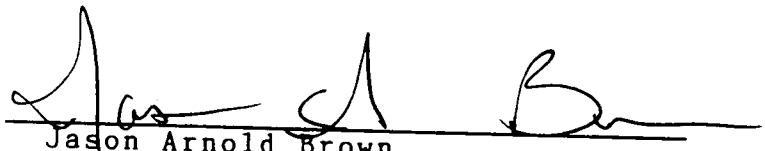
THEREFORE, for all five (5) prongs being met to prove that Claim "D" is a factual dispute, Petitioner Brown should be able to obtain a New Trial based on the After-Discovered Evidence that he has displayed.

CONCLUSION

Based on the foregoing, the Petitioner has argued that his

Second Post-Conviction Relief Application should not have been summarily dismissed and this Court should **REVERSE** and **REMAND** this matter for an Evidentiary Hearing.

Respectfully Submitted,



Jason Arnold Brown
PETITIONER

S.C.D.C. No. 325561
Lee Correctional Institution
Richland Unit, B-269
990 Wisacky Highway
Bishopville, South Carolina 29010

Jason A. Brown, #325561
Lee Corr. Inst. Flo N 2107
990 Wisacky Highway
Bishopville, SC 29010

The Supreme Court of South Carolina
Daniel E. Shearhouse, Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211