

State of South Carolina ) Court of Common Pleas  
County of Pickens ) #2013-CP-39-1440

Larry E. Hall #117241  
Applicant

vs.

State of South Carolina  
Respondent

} Applicant's  
Rule 243(c)  
Explanation

The applicant has attempted to present reasons why his reasons were not argued in his first PCR application.

Allegations in applicant's PCR application for Post-Conviction relief must be deemed true until those allegations are controverted by the State, until allegations contained in verified application for post-conviction relief are controverted by state, they are deemed to be true for purpose of determining whether a evidentiary hearing should be held.

The applicant was denied due process of law when the trial court committed a manifest abuse of discretion which amounted to an error of law when he was denied a evidentiary hearing.

Allegations of prose complaints are suppose to be held to less stringent standards than formal pleadings drafted by lawyers. Applicant should be allowed to present evidence of his claims.

The applicant can show that the evidence of material facts not previously presented and heard that requires vacation of the conviction and sentence. Applicant's PCR application was filed under this chapter within one-year after the date of actual discovery of the facts could have been ascertained by the exercise of reasonable diligence.

The uniform post-conviction act provides for the making of a record which fully and carefully records the proceedings so that the evidentiary basis for findings of fact will be available on review.

The applicant's allegations for PCR is premised on fundamental and statutory rights. The PCR Court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. *Wilson v. State*, 559 S.E.2d 581.

The critical inquiry remains whether the circumstances preventing a petitioner from making a timely filing were both beyond the applicant's control and unavoidable despite due diligence. *Com. v. Corneal* 274 S.W.3d 420 (Ky. 2008); *Klora v. Frank* 264 F.3d 310 (3rd Cir. 2001). *Carey v. Saffold*, 536 U.S. 214, 122 S.Ct. 2134,

153 1. Ed 2d 260 (2002) mental incompetence may warrant equitable tolling where alleged mental incompetence has affected applicant's ability to file; State v. Nix, 40 S.W. 3d 459 (Tenn. 2001) (Due Process requires tolling of PCR statute of limitations only if applicant is unable to manage his affairs or understand his legal rights and liabilities; Seals v. Tennessee, 23 S.W. 3d 272, 277 (Tenn. 2000) due process considerations may toll statute of limitations and successiveness if mentally incompetent applicant was denied the opportunity to bring a claim in a meaningful time and manner

In the context of mentally incompetent PCR applicants, case law warrants a holding that in circumstances in which an applicant demonstrate in this case that the failure to timely file for PCR was due to mental incompetency, the statute should be tolled.

where there is no dispute as to the evidence possible relevant to applicant's mental conditions that was before the court prior to trial and thereafter, and where rather the dispute raised in state

post-conviction motion concerned inferences that were to be drawn from the undisputed evidence and whether, in light of what was then known, the failure to make further inquiry into applicant's competence to stand trial deprived him a fair trial. It is incumbent upon the Supreme Court under those circumstances to analyze the facts in order that the appropriate enforcement of the federal right may be assured.

In *Pate v. Robinson*, 383 U.S. 375 the court held the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. Failure of the state courts to invoke the statutory procedures deprived the applicant of the inquiry into the issue of his competence to stand trial to which on the facts of the case, applicant was constitutionally entitled.

The applicant contended that his PCR application should not be summarily dismissed based on his failure to file within the applicable statute of limitation as set forth in S.C. Code Ann. §17-27-45 (A)

Applicant claim that he had a constitutional right to an effective attorney in the collateral proceeding because it was the first place to raise his claim of ineffective assistance of counsel.

The applicant may establish cause for a procedural default where appointed counsel in the initial review collateral (PCR) proceeding where that claim should have been raised, was ineffective under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 5052. Applicant can show that the underlying ineffective assistance at trial claim is substantial.

Formulation is whether the S. Ct. Supreme Court may excuse a procedural default of an effective assistance claim when the claim was not properly presented in state court due to an attorney's errors in an initial-review collateral proceeding.

Applicant can overcome this successive hurdle because his first PCR counsel was ineffective in failing to raise any claims in the first notice of PCR and for failing to notify applicant of his actions.

It is within the context of this state procedural framework that counsel's ineffectiveness in an initial review collateral proceeding qualifies as cause for a procedural default.

The PCR rules contemplate an adjudication of merits of the original petition, one bite at the apple as it were. *Camble v. State*, 379 S.E.2d 118, 119 (1989). This phrase aptly delineates the distinction between the Austin and ~~Adice~~ cases. Austin never received a full bite at the apple as he was prevented from seeking any review of the denial of his PCR, just as the applicant in this case. Applicant cite Rule 50(6) to support his claim. Applicant request a remedy to effectuate the purposes of the uniform act and PCR rules. See *Scott v. State*, 2003 WL 23274796.

Applicant should be granted a PCR hearing out of the interest of justice.

• Appellate for Appeal •

Submitted Respectfully,

I Am: s/ Larry E. Hall SCDC.  
LARRY E. HALL #112241

this 09<sup>th</sup> day of OCT. 2014.

State of South Carolina) Court of Common Pleas  
County of Pickens ) #2013-CP-39-1440

Larry E. Hall #112241  
Applicant,  
vs  
State of South Carolina  
Respondent

} "Sworn Affidavit"

The applicant depose and state that:

1. Applicant is a resident of Pelzer, S.C., Perry Corr. Institution
2. Applicant was tried before a jury on Jan 28, 1992 in the Pickens Co. General Sessions Court.
3. Applicant was convicted and sentenced to death by Judge C. Victor Pyle
4. Applicant's sentence was vacated, then resentenced on or about August 7, 2007.
5. Applicant have filed this cause of action under the discovery rule #2013-CP-39-1440; which would allow him to proceed with a successive PCR application and hearing.
6. Applicant is a layman of the law whom have been diagnosed with fragile X.
7. Applicant also request appointment of counsel to aid in preparation of his case.
8. Applicant have successfully tried for the past year to file his claims in the Pickens County

clerk of Court's office, but to no avail. The clerk failed to allow the applicant the opportunity to respond to the state's Conditional Order of Dismissal - see attached letters and documents.

9. The applicant have also filed a rule 243(c) Explanation with his Notice of Appeal. See attached 243(c) Explanation

10. The applicant have shown by the preponderance of the evidence and documents that he should get a PCR hearing on his Due Process claims.

I, Larry E. Hall #112241 certify and verify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C.A. §1746

I AM S/ Larry E. Hall  
(LARRY E. HALL) #112241

• Appellate for Appeal •

this 09th day of Oct., 2014.