


Appellate case:2014-000737

Cover Letter

Dear Mr, Shearouse,

Please find amendment to case above for writ for certiorari. with exhibit to be filed, and thank you!

Signature,

January, 5-2015

Richard K. Poe #259297
Evans Corr
610 Hwy 9 West
Bennettsville Sc, 29512

RECEIVED

JAN 08 2015

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Richard Keith Poe,
Petitioner

Appellate No:2014-000737

v.

Amendment with Exhibit

State of South Carolina
Respondent

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JAN 08 2015

STATEMENT OF FACTS AND MEMORANDUM OF LAW **S.C. SUPREME COURT**

Now Comes, Richard Keith Poe filing amendment to appellate case above.

(1) Petitioner could not raise issues in original Post Conviction Relief Application. Claims arose during (PCR) hearing, January, 22-2014 in front of the Honorable Judge Baxley presiding over the Sixteenth Circuit at time hearing was conducted.

MEMORANDUM

According to, Rule (71.1). Appellate Counsel, Robert m. Dudek failed to brief issue of Judge Baxley failure to address claims put before him during Post Conviction hearing, as the "INDICTMENT" and Arrest Warrant". See App, 123-124(24-25)(2-10). also App, 130(17-24) See App, 149(2-19) See App, 155(1-17), App, 156(2-10). Counsel on appeal from denial of Post Conviction relief is "required" to brief arguable issues despite counsel's belief that appeal is frivolous, to safe-guard the right to the appeal.

"The Honorable Judge Baxley, failed to address the issue of counsel Sean F. Cronin failing to perfect direct appeal and failing to submit the "necessary" documents to the court of appeals as requested he do so by the court. (issue) was in (PCR) application See, Application, 2013-CP-46-2033 on file.

STATUTE AND LAWS

Here, in Marlar V. State, 373.S.C..275.644.S.E 2nd 769.S.C.app, 2007 states specifically a "PCR" Court shall make specific findings of facts, and state expressly its conclusions of law relating to each issue presented S.C Code Ann, §17-27-80(2003).

Garner V. State, 371 S.C.1.1, 636.S.E 2nd.860., 860(2006). Emphasizing language in §17-27-80, that specific finding of facts and conclusion of law regarding each issue presented "must" be made by the (PCR) Court.

"Pruitt V. State, 423.S.E.2nd.127," OUR SUPREME COURT, held that order denying Post Conviction relief improperly failed to address allegations raised in application for (PCR) relief. Applicant claims that he was denied his right to a direct appeal, Code 1976, §17-27-80, U.S.C.A Const Amend (6). "Remanded for rehearing was necessary where order denying (PCR) relief failed to address applicant claims.

In McCray V. State, 408.S.E.2nd.241 S.C.(1991) "Remand was required on appeal from denial of Post Conviction relief, where court dismissed movants ineffective assistance of counsel allegations without making finding of facts on specific issues raised, violating statute and precluding appellate review." failing to address issues does nothing to alleviate these problems but rather exacerbates them..

SEE EXHIBIT, CONDITIONAL ORDER OF DISMISSAL "2014-CP-46-2656, page, (4) J. Rutledge Johnson's STATEMENT the Applicant claims Judge Baxley, the original PCR Judge, was Prejudice and bias toward applicant. "This claim is (ONE) that (MUST) be raised on PCR appeal!

(PCR) Courts have been repeatedly admonished regarding the, failure to specifically rule on the issues presented in a Post Conviction relief application. Bryson V. State, 328.S.C.236, 236.37, 493.S.E 2nd.500, 500(1997).

Here, for the foregoing reasons and laws, Petitioners sentence should be vacated.

Respectfully Submitted,


January, 5-2015.

Exhibit

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Richard Keith Poe, #259297,)

2014-CP-46-2656

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

_____)

This matter comes before this Court by way of an application for post-conviction relief filed August 13, 2014. The Respondent made its return and motion to dismiss on

December 30, 2014.

Procedural History

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2012 term of the York County Grand Jury for Burglary, 1st degree (2012-GS-46-3771), Petit Larceny (2012-CP-46-3769) and Criminal Conspiracy (2012-CP-46-3772). The Applicant was represented by Sean Cronin, Esquire. On June 4, 2013, the Applicant pled guilty to Burglary, 2nd degree as a lesser included offense, and Petit Larceny and Criminal Conspiracy as indicted. The Honorable John C. Hayes, III sentenced the Applicant, pursuant to recommendations from the State, to confinement for thirteen (13) years for Burglary, 2nd degree, ten (10) years, concurrent, for Petit Larceny and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction or sentence.

2013-CP-46-2033

The Applicant filed his first application for post-conviction relief on July 3, 2013. The Applicant raised the following issues in his first application:

1. "Ineffective Assistance of Counsel"
2. "Prejudice by 16th Circuit Solicitor also by Judge Hayes and Judge Alford"

Respondent made its Return on September 10, 2013. An evidentiary hearing was convened on January 22, 2014. The Applicant was represented by W. Michael Hemlepp, Jr., Esquire. The Honorable J. Michael Baxley, denied and dismissed the Applicant's application with prejudice by Order dated March 6, 2014.

A timely Notice of Appeal was filed and an appeal was perfected. This appeal is currently pending.

2014-CP-46-2424

The Applicant filed a second application for PCR on July 28, 2014. The Respondent filed its Return and Motion to Dismiss on September 26, 2014. This Court issued a Conditional Order of Dismissal on September 29, 2014. The Applicant responded to the Conditional Order of Dismissal on October 14, 2014 and filed amendments on October 23, 2014 and October 29, 2014. This action is currently pending.

In his third application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Prejudice and Bias by Judge Baxley"
3. "Lack of jurisdiction to except(sic) plea"
4. "insufficient indictments"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 . S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on June 4, 2013. Therefore, the Applicant was required to file his application by June 5, 2014. This Application was filed on August 13, 2014, which was well after the statutory filing period had expired.

Further, the Applicant contends he received Ineffective Assistance of PCR Counsel, thus initiating a claim under Martinez v. Ryan, 132 S.Ct. 1309 (2012). However, this Court finds the finds that pursuant to Kelly v. State, 745 S.E.2d 377 (2013), the South Carolina Supreme Court held “Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Therefore, this allegation must be summarily dismissed.

* Moreover, the Applicant claims Judge Baxley, the original PCR judge, was prejudice and bias towards Applicant. This claim is one that must be raised on PCR appeal and not in a successive, untimely PCR action. Therefore, this allegation must be summarily dismissed. *

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by

either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

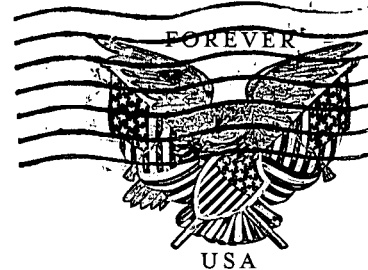
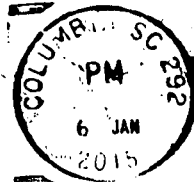
AND IT IS SO ORDERED this ____ day of _____, 20 ____.

LEE S. ALFORD
Chief Administrative Judge
Sixteenth Judicial Circuit

_____, South Carolina

Richard K. Poe, 259297
610 Hwy 9 West
Bennettsville SC, 29512

Clerks of Court
Mr, Shearouse
PO, BOX #11330
Columbia SC, 29211



JAN 06 2015

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