Hopkins, Debbie

From: Nicholson, J. C. Law Clerk (Charles Patrick)
Sent: Thursday, April 16, 2015 4:30 PM
To: Hopkins, Debbie
Subject: State v. Sigmon Order
Attachments: SigmonOrder.pdf; SigmonOrder.docx

Debbie,

Per our phone conversation, attached please find the Order on Brad Sigmon's Motion for a Stay and the State's Motion to Dismiss. I ended up finding my scanned copy of the signed Order, so I have attached both versions.

Sincerely,

Charlie

Charlie Patrick
Law Clerk to The Honorable J.C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street
Charleston, South Carolina 29401
Tel: (843) 958-5047
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S.C. Supreme Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

BRAD K. SIGMON, #6008,

Applicant,

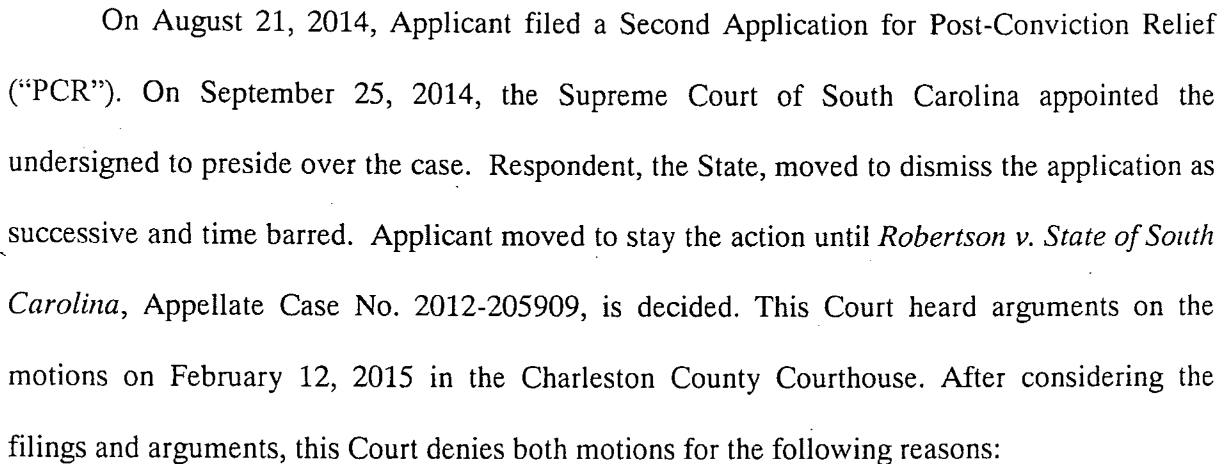
vs.

STATE OF SOUTH CAROLINA,

Respondent.

C/A No. 2014-CP-23-04632

ORDER DENYING MOTION TO STAY AND MOTION TO DISMISS



On August 21, 2014, Applicant filed a Second Application for Post-Conviction Relief ("PCR"). On September 25, 2014, the Supreme Court of South Carolina appointed the undersigned to preside over the case. Respondent, the State, moved to dismiss the application as successive and time barred. Applicant moved to stay the action until *Robertson v. State of South Carolina*, Appellate Case No. 2012-205909, is decided. This Court heard arguments on the motions on February 12, 2015 in the Charleston County Courthouse. After considering the filings and arguments, this Court denies both motions for the following reasons:

Motion to Stay

Applicant offers several arguments in support of his motion to stay the state proceedings; however, the arguments generally return to whether the Supreme Court case of *Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309 (2012), compels state courts to provide a second round of state PCR proceedings on allegations of ineffective assistance of PCR counsel. By its plain terms, *Martinez* addresses procedural default in federal habeas corpus actions. 132 S.Ct. at 1320 ("Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, *a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial* if, in the initial-review

collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.")(emphasis added). *See also Kelly v. State*, 404 S.C. 365, 745 S.E.2d 377 (2013) (collecting cases holding "*Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions"). Applicant, though, urges this Court to stay his action until the Supreme Court of South Carolina decides the following issue in *Robertson*:

> Whether, in light of *Martinez v. Ryan,* ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), and the past treatment of similarly situated South Carolina prisoners, Robertson should be permitted to proceed with a second-in-time application for post-conviction relief asserting colorable claims of ineffective assistance of trial counsel that prior PCR counsel ineffectively failed to investigate or present?

(Motion for Stay and Memorandum, p. 3).

There are several reasons why the stay is not warranted to wait on a decision in *Robertson.*

First, the parties agree that there are rare exceptions to the rule against successive applications already recognized in this state's jurisprudence. The reference to "past treatment" in the issue above specifically speaks to that exception. Thus, a decision in *Robertson* may not "clarify the existence and scope of an available state remedy," as Applicant argues. (Motion for Stay and Memorandum, p. 3). In fact, while Applicant argued the importance of a ruling in *Robertson,* Applicant through his counsel argued at the February 12, 2015 hearing that a ruling in *Robertson* may not be dispositive.

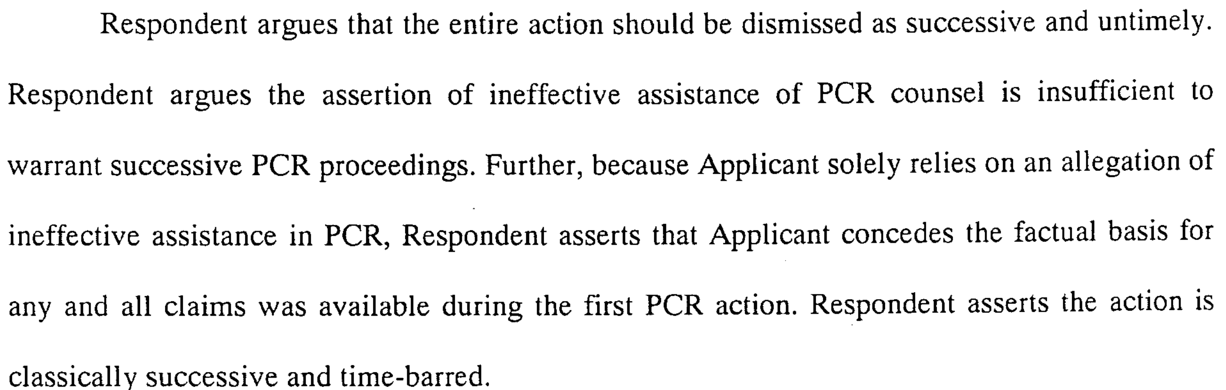
Second, the basis for the successive application in *Robertson* differs factually, so a ruling ruling in *Robertson* may not be dispositive of the instant matter.

Third, a stay would be inconsistent with the Supreme Court of South Carolina's Order of September 25, 2014, which includes directions to issue a scheduling order "including the date of

the hearing on the merits," and imposes strict status updates every sixty (60) days by counsel, and one-hundred and twenty (120) days by this Court.

Fourth, Applicant has suspended his federal habeas action in order to return to state court to seek another round of PCR remedies. In short, all litigation is at a stand-still until this Court rules on whether any allegations in his second action may go forward on the merits. It is not lost on this Court that Applicant brutally murdered David and Gladys Larke in their home nearly fourteen (14) years ago, and was sentenced to death nearly thirteen (13) years ago.[1] He has had both a direct appeal and a full round of PCR remedies. He has had the assistance of counsel at trial, on appeal, and in PCR. This Court is not inclined to issue a stay in this state litigation to determine whether the allegations in the present action should be dismissed as successive and untimely, or heard on the merits.

Motion to Dismiss

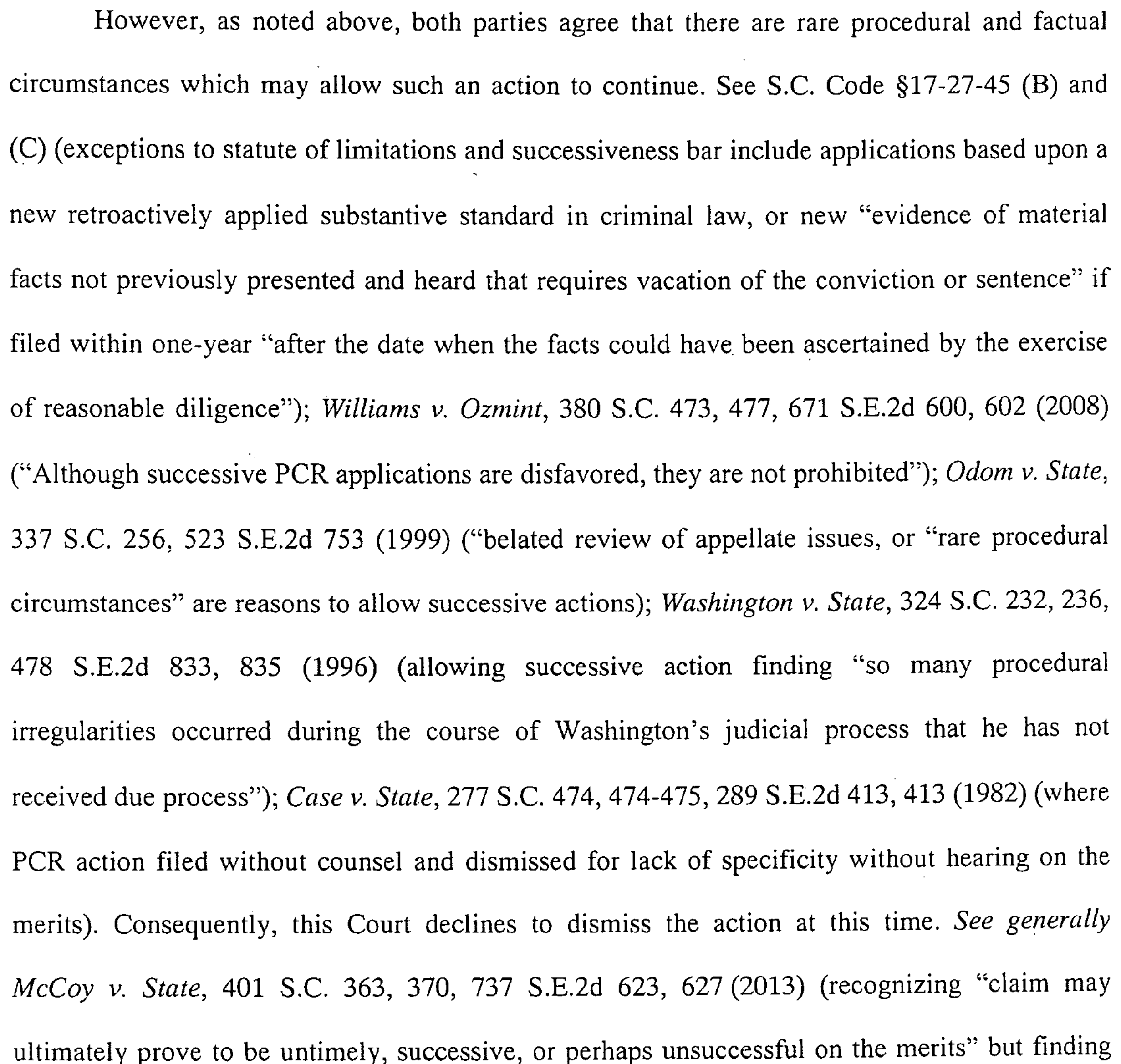


Respondent argues that the entire action should be dismissed as successive and untimely. Respondent argues the assertion of ineffective assistance of PCR counsel is insufficient to warrant successive PCR proceedings. Further, because Applicant solely relies on an allegation of ineffective assistance in PCR, Respondent asserts that Applicant concedes the factual basis for any and all claims was available during the first PCR action. Respondent asserts the action is classically successive and time-barred.

Respondent is correct that this jurisdiction has long recognized that an allegation of ineffective assistance of PCR counsel is not *per se* cause to allow such an action. *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("we hold the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application").

[1] The Larkes were murdered on April 27, 2001. The trial was held July 15-21, 2002.

See also Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980) ("While a second application is not absolutely barred, we would point out for the guidance of the bar and of potential applicants that successive applications will not be looked upon with favor unless there is ample reason for permitting a person under sentence to litigate again. This is particularly true where this court has reviewed the action of the lower court by way of a direct appeal and found the appeal to be without merit.").



However, as noted above, both parties agree that there are rare procedural and factual circumstances which may allow such an action to continue. See S.C. Code §17-27-45 (B) and (C) (exceptions to statute of limitations and successiveness bar include applications based upon a new retroactively applied substantive standard in criminal law, or new "evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence" if filed within one-year "after the date when the facts could have been ascertained by the exercise of reasonable diligence"); *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008) ("Although successive PCR applications are disfavored, they are not prohibited"); *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999) ("belated review of appellate issues, or "rare procedural circumstances" are reasons to allow successive actions); *Washington v. State*, 324 S.C. 232, 236, 478 S.E.2d 833, 835 (1996) (allowing successive action finding "so many procedural irregularities occurred during the course of Washington's judicial process that he has not received due process"); *Case v. State*, 277 S.C. 474, 474-475, 289 S.E.2d 413, 413 (1982) (where PCR action filed without counsel and dismissed for lack of specificity without hearing on the merits). Consequently, this Court declines to dismiss the action at this time. *See generally McCoy v. State*, 401 S.C. 363, 370, 737 S.E.2d 623, 627 (2013) (recognizing "claim may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits" but finding

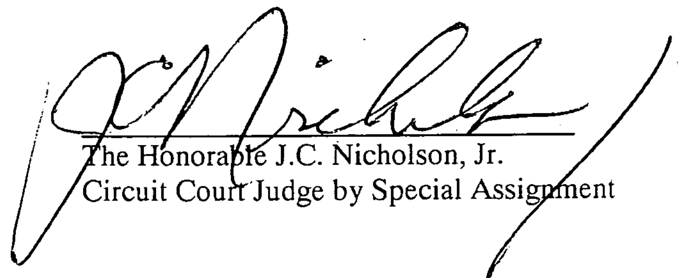
action should not have been summarily dismissed). This Court, though, remains cognizant of the admonition of our Supreme Court that finality must adhere at some point for justice to be effectively served. *Aice, supra. Williams v. Ozmint, supra.*

Thus, Respondent will be allowed to file a motion for summary judgment and further address whether the individual allegations should be barred as successive and untimely, or are otherwise without merit. See S.C. Code § 17-27-70 (b) and (c) (where not dismissed, the court may grant summary judgment where the records before the court, including affidavits submitted, demonstrate the moving party is entitled to judgment as a matter of law). This Court may also address the merits if Applicant meets his burden under S.C.Code §17-27-45 (B) and (C), and S.C.Code § 17-27-90 to show (1) the existence of "material facts not previously presented and heard that requires vacation of the conviction or sentence," and (2) "sufficient" reason to excuse the procedural bars and allow the issue to be heard. This Court intends to hold a hearing on these matters as soon as reasonably possible. A scheduling order for same will issue shortly.

THEREFORE, based on the foregoing, this Court DENIES the motion for stay, and DENIES the motion to dismiss.

IT IS SO ORDERED.

April 13, 2015.
Charleston, South Carolina.



The Honorable J.C. Nicholson, Jr.
Circuit Court Judge by Special Assignment