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APR 30 2015

S.C. Supreme Court

The PCR Courts Order of Dismissal is in err and denies the appellant an opportunity to appellate review, being that it does not comply with S.C. Code Ann §17-27-80(1985) and Rule 52(a) SCRCR.

On March 3, 2014 Judge James R. Barber III entered and Order of Dismissal to Appellate application for post-conviction relief, denying the Appellate application for relief, dismissing it with prejudice, App. 315. This final Judgement (Order of Dismissal) eluded to make specific findings of facts and state expressly the conclusion of law to the pertinent issues the appellant raised in his application, and presented evidence of, at the evidentiary hearing. Evidence of the eluded issues in the order of dismissal were properly preserved and presented to the PCR Court. App.82 – App.83 Instituting allegations of not only ineffective assistance of counsel, but also Due Process Violations, Brady Violations and an Involuntary Guilty Plea. App. III, II. 9-17. The Court acknowledged the issues were part of the record. App.112, 11.4-13. Also, instituted the appellants PCR application and attached Memorandum of Law App 53 – Ap. 70.

The Order of Dismissal specifically arrogate the eluded issues were not addressed. App. 312 – App. 315 Nor, does the record indicate that appellant waived by the court ~~addressed~~ abandon issues. The appellant furtherly testified to the existence of these issues.

App.87, 11.13-23 App.247, 11.13 – App.251, 11.5 App.89, 11.2 – App.92, 11.19

App.96, 11.23 – App.97, 11.19

The Order states the appellant only moved forward on (5) five claims of Ineffective Assistance of counsel, App. 304. This is disputed by the Appellant testimony. App. 11, 11. 7-17 and evidence presented at the evidentiary hearing, App. 153 – App. 160, App. 297 – 300, and testimony from counsel. The record does not support the Order of Dismissal, that the appellant only moved forward with (5) five claims of I.A.C. Bright v. State, 618 S.E.2d 296, 298 (2005). Furtherly, the Courts acknowledged he knew such issues were a part of his record. App. 112, 11.2 -10.

Although, the Court acknowledged the appellant's allegations were a part of the record, the courts still failed to address the issues or the merit. The appellant fairly raised these issues at

the evidentiary hearing wherefore the Courts failed to state expressly a finding of facts and conclusion at law, eluding properly preserved issues precluding appellate review.

Pursuant to S.C. Code Ann. § 17-27-80 (1985) the PCR Judge must make a specific findings of facts and state expressly the conclusion at the law relating to "each" issue presented, and SCRPC Rule 52(a). The failure to adequately and specifically rule on issues precludes appellate review of the issues, *Pruitt v. State*, 423 S.E.2d 127 (1990), *Bryson v. State* 493 S.E.2d 500(1997). The Order of Dismissal of the PCR Judge in this matter does not comply with the Rules of Civil Procedures, Statutes, more so eludes to properly and adequately address the allegations presented by the appellant, which the record verifies the appellant did not waiver.

The Order of Dismissal completely abandons the appellant's allegations of Due Process Violations, Brady Violations and an Involuntary Guilty Plea. The failure to state a finding of facts and state expressly a conclusion of law precludes appellate review. These issues have a different standard of review that must be critically analyzed in determining the appellant sought for judicial relief. Therefore they must be ruled upon for the appellant to seek appellate relief, also, to ensure the appellant due process of law under the U.S. Constitution and S.C. Constitution. More so this Order is inadequate, insufficient and fails to meet standards set forth by statute and in such instances are consistently vacated and remanded to PCR Courts. *Marlar v. State*, 653 SE2d 266(SC 2007), *McCray v. State*, 408 SE2d 241(1991).

Wherefore, the Appellant prays and requests that the PCR Courts Order of Dismissal be vacated and remanded to the PCR Judge upon the fact that the Order dismissing the appellants post-conviction relief application does not comply with S.C. Code Ann §17-27-80(1985) and Rule 52(a) SCRPC, because it does not contain specific findings of facts and conclusions of laws with regards to the Due Process Violations, Brady Violations and Involuntary guilty plea pursued by the appellant. Where such issues have a different standard for review than that for evaluating claims of ineffective assistance of counsel, because this failure to address the appellants issues as by rules and statutes deprives the appellant of Due Process under the Fourteenth Amendment making review by the appellate courts more difficult and ultimately increases the work of all involved, Citing *Pruitt v. State*, 423 SE2d 127(1992). It has long ago been decided in *Pearson v. Harrison* 9Fed App.84, 4th Cir. 2001 that S.C.S. Ct. has consistently vacated and remanded PCR Court judgments that do not contain findings on issues presented to the court rather than require the applicant to move to alter or amend in order to obtain appellate review. And has done so notwithstanding a PCR petitioners failure to preserve on issues by filing on Rule 59(e), as in the case the appellant introduced ample evidence of claims of violations other than Ineffective A.C.

which have a different standards of review in which the PCR Courts Order of Dismissal eludes,
which must be ruled upon by statute for appellate review.

This ___ day of ___ 2015 Respectfully Submitted,

Alvin S. Samuels II

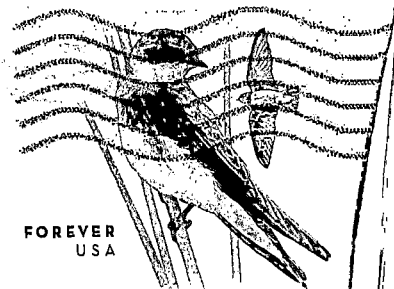
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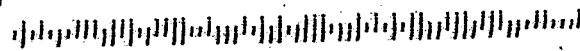


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