

The State of South Carolina
In The Supreme Court

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SC SUPREME COURT

Appeal From Barnwell County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No.: 2014-CP-06-00269

Robert L. Mitchell # 140920, petitioner

v.

State of South Carolina, Respondent.

EXPLANATION PURSUANT TO S.C.A.C.R. RULE(C)

Date: May 4, 2015

Robert Mitchell
Robert L. Mitchell, # 140920
BRCI/Monticello dorm 191
4460 Broad River Rd.
Columbia, S.C. 29210

Pro Se

The petitioner, Robert L. Mitchell, offers to this court the following sufficient facts explaining that there is an arguable basis that the determination by Judge Early, III was improper.

1) The Respondent challenges the petitioner's PCR application on the grounds the doctrine of res judicata bars the petitioner from raising the claim of discrimination on his H.I.V. status because it was raised and ruled upon in a previous action on the merits in a final judgement. The Respondent simultaneously challenges the petitioner's PCR application on the grounds that petitioner fails to state a claim cognizable under the uniform post-conviction procedure Act, meaning petitioner's claim of discrimination on his H.I.V. status cannot be reviewed in any PCR application filed under South Carolina's uniform post-conviction procedure Act. The lower court Judge Early, III denied an evidentiary hearing on the PCR application specifically on these two grounds. The error and the inexplicable irrationality in this ruling is that the doctrine of res judicata necessitates a finding that a court issued a ruling on the merits, in this case discrimination based on H.I.V. status, and that this ruling on the merits is clearly and fully legal adjudication; whereas the doctrine of failure to state a claim clearly bars a review court from any judicial review or adjudication on the merits of the underlying issue. Because the said underlying issue is unreviewable in all respect by the court. (Judy v. Judy, 393 S.C. 160, 167, 712 SE2d 408, 412 (2011) (explaining that res judicata bars a second suit where the following elements are proven:

(1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the first suit; also Hambrick v. GMAC Allorts,

Corp, 370 S.C. 118, 634 SE2d 5 (S.C. App. 2006) (The circuit may dismiss a claim when the defendant demonstrates the Plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. These two legal doctrines of res judicata and failure to state a claim are diametrical legal principles and can not as a matter of fact and as a matter of law, govern the same underlying issue. The per court final order states res judicata and failure to state a claim simultaneously govern the Applicant underlying issue of discrimination, this is error of the clearest type and the per court's determination must be overruled. The per court's findings of fact and conclusions of law are legally erroneous and are not supported by any evidence of probative value in the record. This per denial must be reversed and Applicant Mitchell be granted an evidentiary hearing. (See Simuel v. State, 701 SE2d 738, 739 (2010); Lounds v. State, 670 SE2d 646 (S.C. 2008); also Pauling v. State, 565 SE2d 769).

Successiveness

In South Carolina are disfavored but are not entirely prohibited. (See Aice v. State, 305 S.C. 448, 409 SE2d 392 (1991)). The per court ruled "Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief." The per court simultaneously specifically ruled the "Applicant raised the issue of H.I.V. discrimination in his first per hearing on Thursday,

August 5, 1999. That action was dismissed by the PCR ~~hearing~~ court in an order that specifically addressed the H.I.V. discrimination claim. (see Final order pg 7, para. 2). The PCR court's ruling makes a factual finding that Applicant Mitchell did raise and received a ruling on the merits of his H.I.V. discrimination, and simultaneously rules Applicant Mitchell did not raise the H.I.V. discrimination on the first PCR Application when the opportunity availed itself and Applicant Mitchell can not show sufficient reason to overcome this failure. The PCR court contrary rulings cannot sustain a summary dismissal of the PCR application. The PCR courts findings of facts and conclusions of law are legally erroneous and are not supported by any evidence of probative value in the record. The PCR denial must be reversed and Applicant Mitchell be granted an evidentiary hearing. (see Simuel v. State, 701 SE2d 738, 739 (2010))

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STATUTE OF LIMITATIONS

The resolution of the statute of limitation issue will turn heavily on the underlying factual resolution of whether this claim was actually heard and determined on the merit by the pcr Court on the first application or not. The body of law regarding a pcr Applicant's right to procedural due process to "one full bite of the apple" is applicable. (See Case v. State, 277 S.C. 474, 289 S.E2d 413 (S.C. 1982); also Washington v. State, Aice v. State, and Odum v. State.)

Wherefore the Applicant prays this Court reverse the summary dismissal of this case by the pcr Court and remand for an evidentiary hearing.

Date: May 4, 2015

Robert Mitchell
Robert L. Mitchell
BRCI / Manticello Farm
4460 Broad River Rd.
Columbia SC 29210

The State of South Carolina
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Case No: 2014-cp-06-00269
CERTIFICATE OF SERVICE

I, Robert Mitchell, do hereby certify that I have served an answered to Explanation pursuant to S.C.A.C.R. Rule (c) to the clerk of court in the Supreme Court of South Carolina by depositing true copies, postage prepaid in the U.S. mail via Broad River prison mailroom personnel on

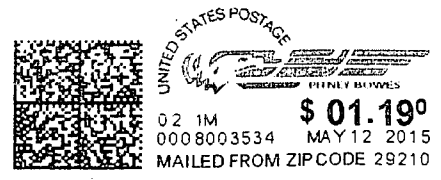
May 4, 2015,
address to the following:

The Supreme Court of South Carolina
Daniel E. Shearouse, clerk of court
Post Office Box 11330
Columbia, S.C. 29211

Robert Mitchell
Robert Mitchell #140920
BRCI/Monticello 191
4460 Broad River Rd.
Columbia, S.C. 29210

Date: May 4, 2015

Robert Mitchell 140920
B.R.C.I. Mont. 191
4460 Broad River Rd.
Columbia, S.C. 29210



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