

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 16 2015

Certiorari to Spartanburg County
J: Derham Cole, Circuit Court Judge

S.C. Supreme Court

EDDIE DEAN DOGAN, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002763

PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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Division of Appellate Defense
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ISSUE PRESENTED

Whether the PCR court erred in dismissing Petitioner's PCR application based on his failure to comply with a previous court order requiring Petitioner to pay a filing fee and submit an affidavit of non-frivolity where the statutes regulating PCR practice and procedure specifically provide that no filing fee is required and list a standard for summary dismissal of an application that does not include the necessity of an affidavit of non-frivolity.

STATEMENT

On August 3, 1998, the Spartanburg County Grand Jury indicted Petitioner Eddie Dean Dogan for contributing to the delinquency of a minor and first degree criminal sexual conduct with a minor. App. 19-22. On March 1, 1999, Petitioner proceeded to trial represented by Donald A. Thompson. Petitioner was found guilty on both counts, and the trial judge sentenced him to thirty years' incarceration for the sexual conduct charge and three years' incarceration for the contributing to the delinquency charge. App. 1-5.

On June 3, 2013, Petitioner filed an application for post-conviction relief ("PCR"). In the application Petitioner stated his claim was based on "actual innocence," "Prosecution/Detective Boyd Investigation Report File," and "First Opportunity to Raise issue." App. 2-4. Petitioner also stated in the application that he had previously filed PCR applications in 2003 and 2007. On June 20, 2013, Petitioner filed another application for PCR setting forth the same grounds. App. 8-14.

On October 22, 2014, the State filed a return and motion to dismiss Petitioner's PCR claims. The motion stated that Petitioner, "following numbers frivolous and repetitive filings, was served with an Order Restricting Future Filings on April 4, 2012." App. 15. The motion then recited language from the order issued by the Honorable J. Mark Hayes, II:

1. The Clerk of Court is directed to refuse to accept further petitions and applications from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
2. The Applicant is prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. The requisite filing fee must also be submitted with any subsequent filings.
3. Any Applications submitted with properly notarized affidavits will be submitted to the Administrative Judge for Common Pleas to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed; and

4. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

App. 15-16. The motion then sought dismissal of Petitioner's applications with prejudice because Petitioner did not submit a filing fee or affidavit or seek approval of the Administrative Judge for the Court of Common Pleas. App. 16. On November 20, 2014, the Honorable J. Derham Cole dismissed Petitioner's applications based on his failure to comply with the terms of the order Restricting Future Filings. App. 17-18.

ARGUMENT

The PCR judge erred in dismissing Petitioner's PCR applications because the order restricting Petitioner's filings was contrary to statutory law and invalid.

The PCR judge erred in dismissing Petitioner's PCR applications because the order restricting Petitioner's filings was contrary to statutory law and invalid. In *Stokes v. Denmark Emergency Med. Services*, 315 S.C. 263, 433 S.E.2d 850 (1993), this Court explained the judicial authority to regulate court practice and procedure:

Section 4 of Article V of the South Carolina Constitution provides in pertinent part: "The Supreme Court shall make rules governing the administration of all the courts of the State. *Subject to the statutory law*, the Supreme Court shall make rules governing the practice and procedure in all such courts." The clause "subject to the statutory law" establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure.

Id. at 266-67, 433 S.E.2d at 852.

South Carolina Code section 17-27-45 states that a person convicted of a crime who alleges the existence of evidence of material facts not previously presented and heard requiring vacation of the conviction "may institute, without paying a filing fee, a proceeding under [the Uniform Post Conviction Relief Act] to secure relief." This section also provides such a person must file the application within one year of discovering the facts or of when he should have discovered the facts

through reasonable diligence. The provision “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence [and it] shall be used exclusively in place of them.” S.C. Code § 17-27-45(B). The person institutes the proceeding by filing an application in which he has “specifically set forth the grounds upon which the application is based,” although “[a]rgument, citations and discussion of authorities are unnecessary.” S.C. Code Ann. § 17-27-50.

Generally, once a court receives an application, the court must hold a hearing to receive evidence and arguments. S.C. Code Ann. § 17-27-80. The court may only dismiss the application without a hearing when “on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings.” S.C. Code Ann. § 17-27-70(b). Thus, “[s]ummary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” *Al-Shabazz v. State*, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (1999). A successive PCR application is favored when a reason exists to permit a person under sentence to litigate again. *Land v. State*, 274 S.C. 243, 246, 262 S.E.2d 735, 736 (1980). Thus, a person may file a successive application by setting forth a sufficient reason that the ground was not asserted or was inadequately raised. S.C. Code Ann. § 17-27-90.

In this case, the order restricting Petitioner’s PCR filings was contrary to the provisions of the procedural PCR statutes. First, the order required Petitioner to pay a filing fee for the PCR application. As quoted above, the PCR application provided the exclusive avenue for a claim of the type that Petitioner filed, and the legislature explicitly stated that no filing fee applies. Secondly, the order required that Petitioner submit an affidavit of non-frivolity and that an Administrative Judge

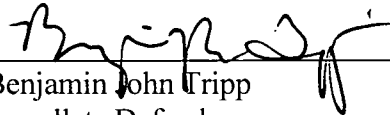
make a finding that the allegations were non-frivolous. However, the PCR statutes provide that an action is commenced merely by setting forth the factual basis for the claim, and no argument or discussion of authorities is necessary. Thus, these two requirements added standards for the contents of Petitioner's applications not set forth by the legislature in the PCR statutes. The order restricting filings exceeded the PCR court's authority to regulate practice and procedure and was invalid, and Judge Cole erred in relying on it to dismiss Petitioner's applications.

Additionally, the dismissal was prejudicial because Petitioner was entitled to a hearing of his claim under the PCR statutes. The PCR court could only dismiss the application without a hearing if (1) Petitioner did not allege in the applications the existence evidence of material facts not previously presented and heard requiring vacation of the conviction or (2) if Petitioner did not set forth a sufficient reason that he did not present the evidence in a previous PCR application or a direct appeal. However, Petitioner's applications described as evidence a "Prosecution/Detective Boyd Investigation Report File" and stated that the applications were the "First Opportunity to Raise issue." App. 2-4. Accordingly, the applications met the standards for non-dismissal of non-meritorious and successive PCR claims, and the PCR judge was required to hold a hearing for Petitioner to present evidence and argument.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Eddie Dean Dogan's petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of June, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

EDDIE DEAN DOGAN, JR.,

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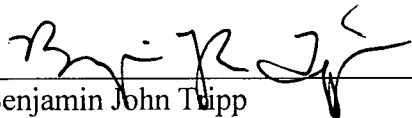
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002763


CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire this 16th day of June, 2015.


Benjamin John Tapp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of June, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.