

THE STATE OF SOUTH CAROLINA
IN The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi L. Harrington, Circuit Court Judge

Opinion No. 2012-206566 (S.C.Ct. App. filed July 20, 2012)

Larry G. Harvin, #253468, Petitioner,
v.
State of South Carolina, Respondent.

APPENDIX

- Larry G. Harvin, #253468
M=C.I. F.1-125.B
386 Redemption Way
M=Cormick, SC 29899

- PETITIONER PRO. SE.

- Matthew J. Friedman
Ass't. Atty. Gen.
P.O. Box 11549
Columbia, SC 29211

- Attorney for Respondent

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S.C. Supreme Court

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

LARRY G. HARVIN, # 253468 PETITIONER - Vs. - STATE OF SOUTH CAROLINA; WARDEN LEROY CARTLEDGE; RESPONDENT(S)
--

C.A. No.: 2010-CP-10-4462

PETITION FOR A WRIT
OF HABEAS CORPUS

FILED
 2010 JUN - 11 PM 1:55
 CLERK OF COURT
 BY

ABOVE-CAPTIONED Petitioner approaches this Court of the Ninth Judicial Circuit seeking Relief in the form of Immediate Release From Imprisonment upon the below-submitted 'Factual Allegations ...' drafted and presented in the form of Grounds.

I.

FACTUAL ALLEGATIONS
WARRANTING HABEAS
CORPUS RELIEF.

Petitioner's following Grounds establish a "violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.", see Butler v. State, 302 S.C.466, 397 S.E.2d 87, 88 (S.C. 1990).

- A • GROUND ONE :INSUFFICIENT EVIDENCE (PROOF)TO SUPPORT CONVICTIONS

• Petitioner alleges his current convictions stand upon 'insufficient (false / perjured) evidence', and that the State's burden of proof is never satisfied beyond a reasonable doubt upon such circumstances. [For the expanded 'Prima Facie' showing on this Ground, please see the conjoined "NOTICE AND MEMORANDUM OF JURISDICTION..." , Pp. 3-16 under "GROUND ONE ..."] .

- Procedurally, claims of 'Sufficiency of Evidence' cannot be brought on an Application for Post-Conviction Relief (see § 17-27-20 (a)(6), S.C. Code of Laws (1996, as Amended)); so, this action under § 17-17-10, et. seq., is properly retained in law as the Constitutional remedy for challenging the Sufficiency of Evidence. See Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (S.C. 1998).

- B • GROUND TWO :

PROSECUTOR (SOLICITOR)MISCONDUCT

· Petitioner alleges the Solicitor's Misconduct (in 'knowingly' presenting false/perjured evidence to the jury after the false nature of the evidence was made known (or, was cognizable) to the Solicitor, arguing matters outside scope of case against Petitioner, and used prejudicial references calculated to produce a wrongful conviction) denied him a Fair Trial. [For the expanded 'Prima Facie' showing on this Ground, please see the conjoined "NOTICE AND MEMORANDUM OF JURISDICTION..." , Pp. 16-22 under "GROUND TWO..."]

- Procedurally, the claim of prosecutor misconduct raises a direct appeal issue that is barred from Post-Conviction Relief under § 17-27-20(b) (1996, as Amended) (accord Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974)). The instant action is therefore proper for entertaining Petitioner's Prosecutor (Solicitor) Misconduct claim. SIMPSON, supra.

- C · GROUND THREEJUDICIAL MISCONDUCT

• Petitioner alleges the Trial Judge's Misconduct (in giving instructions 'Hand of One, Hand of All' and 'Inferred Malice from use of Deadly Weapon' to jury, when no evidence existed in the record to support those instructions to the jury) denied him a Fair Trial. [For the expanded 'Prima Facie' showing on this Ground, please see the conjoined "NOTICE AND MEMORANDUM OF JURISDICTION ...", Pp. 22-28 under "GROUND THREE ... "].

- Procedurally, this Judicial Misconduct claim is also barred under § 17-27-20(b) because it raises a direct appeal issue; yet, the instant action is proper for entertaining Petitioner's Judicial Misconduct claim. SIMPSON, *supra*.

'ENTITLEMENT TO PETITION

- In June, 2009, sometime therein, Ms. Mary McCabe (Library Services, SCDC) was conducting an inquiry into McCormick C.I.'s Law Library Inventory for Missing and Damaged Legal Materials; McCormick

Law Librarian forwarded the results of the search for any Missing and/or Damaged Legal Materials also sometime in June, 2009. Among the 'Missing' material was S.C. Code of Laws (2003) (West Group), Volume 8, Hardbound, which contained pages 125 to 152; Ms. McCabe returned a copy of pages 125 to 152 to McCormick on or about July 6, 2009, and those pages which were Missing contains the HABEAS CORPUS statutes that was torn from McCormick Law Library's copy. (see ATTACHMENT D).

Petitioner's position, here, is that the 'Forfeiture of Entitlement' provision within § 17-17-20 would not be applicable to bar Petitioner's instant action; one cannot 'willfully neglect' a procedure that was unknown to him (prior to July 6, 2009 or sometime around then). See also ATTACHMENT C .

PROCEDURE UNDER

§§ 17-17-70, 17-17-80.

• Notice is hereby given to the Respondents that within three (3) days after service of this action upon them, they are required to:

"[m]ake return of such writ and bring or

cause to be brought the body of the
 person so committed or restrained
 unto or before the judge or court
 from whence the writ shall issue ...
 and shall then certify the true
 cause of his detainer or imprisonment;

...
 - § 17-17-70 (in relevant part).

- and :

"If ... he shall be brought before the
 court ... beyond the distance of one
 hundred miles then within the space
 of twenty days after the delivery of
 such writ and not longer."

- § 17-17-80 (in relevant part).

- It is Petitioner's sole intention here to
 invoke the above-noted statutory provisions for
 the speedy and orderly processing of the instant
 Habeas Corpus petition.

II.

DEMANDED RELIEF.

Petitioner's interest in this section is to make it clear that 'Immediate Release from Imprisonment' is the ONLY permissible outcome to be considered in Petitioner's situation.

As noted, if Petitioner had not sought to be a Christian, there is a chance that GOD wouldn't have made provision(s) in Petitioner's mind for Petitioner to even understand the crux of his convictions - more less, to even understand enough Law to draft and file the instant action. If Petitioner didn't seek out how to live Spiritually victorious in prison, and also help other prisoners to know GOD through his testimonies, a possibility exists that the people who became inspired to help Petitioner obtain alibi evidence would've remained unknown & unreachable.

This Court is vested with the requisite authority to grant 'absolute', immediate, "release from custody" (see McCall v. State, 247 S.C. 15, 145 S.E. 2d 419 (S.C. 1965)), upon Petitioner's request; a copy of Petitioner's sentencing sheets ("Commitment" papers) appear at ATTACHMENT B, in accords with § 17-17-30.

Respectfully Submitted,

151 L. Harvin, Jr.

Larry G. Harvin, # 253468

M^cC.I. F. I. 125 B

386 Redemption Way

M^cCormick, SC 29899

5 - 4 - 10

DATE

CC
AT
AE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Larry G. Harvin, #253468,)
)
) Petitioner,)
)
) v.)
)
 State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 2010-CP-10-4462

**CONDITIONAL ORDER
 OF DISMISSAL**

FILED
 2011 NOV -8 AM 8:53
 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter comes before this Court by way of a Petition for Writ of Habeas Corpus filed June 1, 2010 and received by Respondent on April 12, 2011. Respondent made its Return and Motion to Dismiss on October 20, 2011, requesting that the application be summarily denied and dismissed.

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the July 1997 term of the Charleston County Grand Jury for murder (97-GS-10-4288), armed robbery (97-GS-10-4290), and possession of a firearm during commission of a violent crime (97-GS-10-4289). Ashley Pennington, Esquire, represented Petitioner. On October 12-16, 1998, Petitioner proceeded to trial, after which a jury found him guilty as indicted. The Honorable Daniel Pieper sentenced him to confinement for life for murder and thirty (30) years for armed robbery.

A timely Notice of Appeal was filed on Petitioner 's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Office of Appellate Defense represented Petitioner on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Harvin, Op. No. 25297 (S.C. Ct. App. filed May 29, 2001). The Remittitur was issued on June 22, 2001.

Petitioner subsequently filed his first application for post-conviction relief on August 9, 2001, in which he raised the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Court did not have jurisdiction.
4. Prosecutorial misconduct.

An evidentiary hearing was convened on September 10, 2002. By Order dated October 21, 2002, the Honorable A. Victor Rawl denied and dismissed the application with prejudice. The Petitioner submitted a motion to alter or amend pursuant to Rule 59(e), SCRCP. Judge Rawl denied the 59(e) motion by Order dated May 23, 2003.

Petitioner submitted a federal habeas corpus petition dated February 26, 2003. The State made its Return and Memorandum of Law in Support of Motion for Summary Judgment on May 21, 2003. By Report and Recommendation dated October 6, 2003, the Honorable Joseph R. McCröre, U.S. Magistrate Judge, recommended that the State's motion for summary judgment be granted. By Order dated January 15, 2004, the Honorable G. Ross Anderson, Jr., U.S. District Judge, granted the State's motion for summary judgment.

Petitioner filed a second PCR application on March 3, 2010, in which he raised the following ground for relief:

1. Ineffective assistance of trial counsel for failing to adequately prepare for defending against the State's charges by investigating into possible alibi evidence.

The State made its Return and Motion to Dismiss on June 24, 2010. The Honorable R. Markley Dennis, Jr. filed a Conditional Order of Dismissal on July 6, 2010. In a document captioned "Memorandum Supporting Motion in Opposition to Conditional Order of Dismissal," dated July 26, 2010, Petitioner alleged the following reasons that he was entitled to an evidentiary hearing:

1. Applicant's PCR application contains attachments standing as prima facie evidence to support an "after-discovered evidence" showing.
2. The law governing the "successive-writ" doctrine permits "after-discovered evidence" collateral actions on above facts.

Judge Dennis subsequently issued a Final Order on November 12, 2010.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, Petitioner's records from the South Carolina Department of Corrections, the Record on Appeal, the trial transcript, the Final Brief of Appellant, the Final of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated June 22, 2001, the first PCR application and Return thereto, Judge Rawl's Order of Dismissal, Petitioner's federal habeas petition, the State's Return thereto, Judge McCrorey's Report and Recommendation, Judge Anderson's Order dismissing the federal habeas petition, the second PCR application and the State's Return and Motion to Dismiss thereto, Judge Dennis' Conditional Order of Dismissal and Final Order, the current Petition for Writ of Habeas Corpus, and the State's Return and Motion to Dismiss thereto.

In his Petition for Writ of Habeas Corpus, the Petitioner alleges the following grounds for relief:

1. Insufficient evidence (proof) to support conviction.
2. Prosecutor (Solicitor) misconduct.
3. Judicial misconduct.

Petitioner has filed a "Petition for Habeas Corpus" in the Court of Common Pleas. This
 Court finds that a state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998).

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie

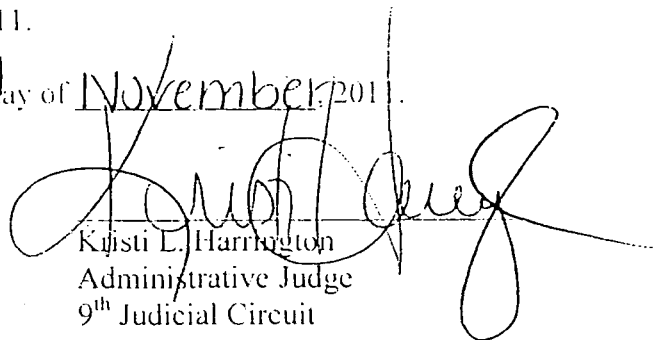
case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 495 S.E.2d 426. To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, 495 S.E.2d 426; Hunter, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, 495 S.E.2d 426. PCR is not rendered “unavailable or inadequate” merely because the petition might be dismissed as successive. In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d 426. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d 123. Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler, 500 S.E.2d 123.

Here, this Court finds that Petitioner could have raised these allegations in a prior PCR application. This Court finds that Petitioner is filing a state habeas petition to circumvent the bars of successiveness and statute of limitations that he would face with a PCR application. A

state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. Accordingly, this Court summarily dismisses the petition.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent Petitioner and expresses its intent to summarily dismiss this matter unless Petitioner advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. Petitioner is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Charleston County, South Carolina. Petitioner must also serve a copy of his response to opposing counsel Matthew J. Friedman of the Attorney General's Office at P.O. Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this 2nd day of November, 2011.



Kijisti L. Harrington
Administrative Judge
9th Judicial Circuit

Charleston, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
9th Judicial Circuit

LARRY G. HARVIN, #253468
PETITIONER,

- Vs -

STATE OF SOUTH CAROLINA,
RESPONDENT.

C/A No. - 2010-CP-10-4462

FILED
2011 DEC -5 PM 1:11
JULIE GLENN, CLERK OF COURT

MOTION IN OPPOSITION TO
CONDITIONAL ORDER OF DISMISSAL

· ABOVE - CAPTIONED PETITIONER makes Opposition to
the Honorable Circuit Court Judge Kristi L. Harrington's
November 2, 2011 'Conditional Order of Dismissal' —
received through Mail Service on November 14, 2011, and
again on November 21, 2011 — where the instant action
(being a Habeas Corpus petition brought under provisions
of §§ 17-17-10, et. seq., S.C. Code of Laws) does not raise
'PCR Claims', and therefore is not required to be filed
in the original jurisdiction of the S.C. Supreme Court;
the Conditional Order should not become Final.

· These points are expounded upon within the conjoined
'Memorandum Supporting...'

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11 - 29 - 11
DATE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th Judicial Circuit

LARRY G. HARVIN, #253468
PETITIONER,

- Vs. -

STATE OF SOUTH CAROLINA,
RESPONDENT.

C.A No. :- 2010 - CP - 10 - 4462

FILED
2011 DEC - 5 PM 4:11
JULIE N. [unclear]
CLERK OF COURT

MEMORANDUM SUPPORTING
MOTION IN OPPOSITION TO
CONDITIONAL ORDER OF DISMISSAL

ABOVE - CAPTIONED PETITIONER will expound at length as to why the 'Conditional Order' should not become Final.

I.

POINTS

A. - Contrary to language on Page 4 of Conditional Order ("...Petitioner could have raised these allegations in a prior PCR application.") stands the Statutory Authority for claims cognizable in a PCR application.

(a) - The Conditional Order correctly recites the title of Petitioner's first ground for relief is "Insufficient Evidence (Proof)

to Support Convictions".

The PCR Statute, § 17-27-20(a)(6), is clear in stating:

"... this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."

- Quoted in relevant part.

Furthermore, Petitioner addressed this very same matter on Page 2 of the original 'Petition For A Writ Of Habeas Corpus' under GROUND ONE allegation; thus, allegations of 'Insufficient Evidence' are not cognizable in a PCR action.

(b) - Petitioner's GROUND TWO ("PROSECUTOR (SOLICITOR) MISCONDUCT") and GROUND THREE ("JUDICIAL MISCONDUCT") set forth trial-based errors, cognizable on Direct Appeal, yet not cognizable in PCR pursuant to § 17-27-20(b), which

states, in relevant part:

"This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."

Also, in same original 'Petition...', under Grounds TWO & THREE, respectively, Petitioner addressed this matter (see Pages 3-4).

In concluding this Point, Petitioner submits that he couldn't have raised the Habeas claims in any PCR application because the PCR statute (§ 17-27-20) prevents it.

B. - Contrary to language on Page 3 of Conditional Order ("This Court finds that a state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court.") stands the basis of Petitioner's claims and the procedures within the Decisional and Statutory law.

(a) The Conditional Order, on Page 3, recites Petitioner's Habeas claims. The Court's language quoted above in this Point cites Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (S.C. App. 1998) for support, yet the Keeler decision clearly bars a Circuit Court from entertaining a Petition for a Writ of Habeas Corpus "where the matter alleged is one which could have been raised in a PCR application." — 500 S.E.2d at 124.

As Petitioner outlined in Point A, supra, the Habeas claims are not cognizable in PCR based on the PCR statute itself.

Under such circumstances, Keeler holds:

"if a person is procedurally barred, his only means of obtaining state habeas relief is to file a petition in the original jurisdiction of the Supreme Court."

- Id.

Nevertheless, the Habeas Corpus Statute itself opens with "Any of the judges of this State ...", § 17-17-30,

so, it is hard to see how a Circuit Court Judge 'couldn't' entertain a Petition for a Writ of Habeas Corpus raising allegations which cannot be brought before the Circuit Court on a PCR application.

• In concluding this Point, Petitioner submits that, based on the Habeas allegations before the Court, he was not required to file his Habeas petition in the S.C. Supreme Court.

II.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Conditional Order should not become Final.

Larry G. Harvin
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 M.C.I. Fil-125B
 386 Redemption Way
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// -29-11
 DATE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 Larry G. Harvin, #253468,)
)
) Petitioner,)
)
) v.)
)
 State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-4462

FINAL ORDER

FILED
 2011 DEC 16 AM 10:33
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

This matter comes before the Court pursuant to a Petition for Writ of Habeas Corpus filed June 1, 2010 and received by Respondent on April 12, 2011. The State made its Return and Motion to Dismiss on October 20, 2011, requesting that the petition be summarily denied and dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated November 2, 2011 and filed November 8, 2011, provisionally denying and dismissing this action. This Court gave the Petitioner twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached herewith is the Affidavit of Personal Service, dated November 15, 2011, serving the Order on the Petitioner.

In a document captioned "Motion in Opposition to Conditional Order of Dismissal," which was dated November 29, 2011, Petitioner alleged the following reasons that he is entitled to an evidentiary hearing:

1. Contrary to language on Page 4 of Conditional Order ("...Petitioner could have raised these allegations in a prior PCR application.") stands the statutory authority for claims cognizable in a PCR application.
2. Contrary to language on Page 3 of Conditional Order ("This Court finds that a state habeas petition must be filed in the original jurisdiction of the South

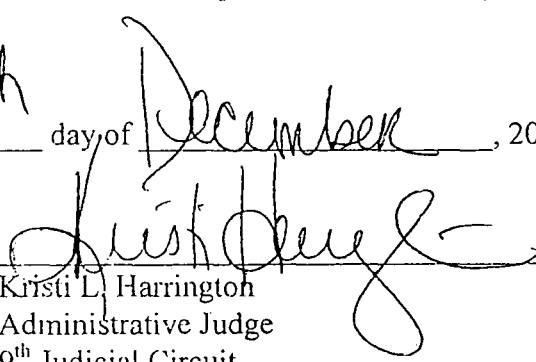
Carolina Supreme Court.") stands the basis of Petitioner's claims and the procedures within the decisional and statutory law.

This Court has reviewed Petitioner's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that the allegations are not sufficient to warrant a hearing. This Court finds that Petitioner is required to file a state habeas petition in the original jurisdiction of the South Carolina Supreme Court.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice.

This Court hereby advises Petitioner that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Petitioner's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 8th day of December, 2011.


Kristi L. Harrington
Administrative Judge
9th Judicial Circuit

Charleston, South Carolina...

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No.: 2010-CP-10-4462

FILED
2010 JAN 17 PM 4:05
CLERK OF COURT

Larry G. Harvin, #253468, Appellant,

vs.

State of South Carolina, Respondent.

WRITTEN EXPLANATION OF
IMPROPER DETERMINATION

I.

SUFFICIENT FACTS.

Appellant brought his claims (Insufficient Evidence,
Solicitor & Judicial Misconduct) before the Circuit

Court in a State Petition for a Writ of Habeas Corpus (under §§ 17-17-10 to 17-17-200, S.C. Code of Laws) because the Post-Conviction Relief ("PCR") Act statutes (§ 17-27-10, et. seq., S.C. Code) clearly states that the above-noted claims cannot be brought in a PCR application; Appellant consistently made the lower Court aware of this, but the Final Order itself is based on Appellant not bringing the above-noted claims before the Circuit Court in a PCR action.

• ARGUMENT AND CITATION

TO LEGAL AUTHORITY

- Within this Appeal, Appellant will be able to establish by the lower Court record that the Final Order was an 'improper determination' where:

(A) - Appellant consistently placed the lower Court on Notice that since GROUND ONE, of State Habeas Corpus petition, raises claims under "INSUFFICIENT EVIDENCE (PROOF) TO SUPPORT CONVICTIONS", the 'legal authority' of § 17-27-20(a)(6) states that "... this section shall not be

construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.", (in relevant part; emphasis added).

(B) - Appellant consistently placed the lower Court on Notice that GROUND(S) TWO & THREE of State Habeas Corpus petition raise Direct Appeal claims which the PCR act clearly bars under the 'legal authority' § 17-27-20 (b).

II.

CONCLUSION

WHEREFORE, having submitted the above Argument of lower Court matters, Appellant moves forward for this Court to REVERSE the effect of Judge Harrington's Final Order and REMAND to the Charleston County Circuit Court for Appellant to finally receive an Evidentiary Hearing on his State Habeas Corpus Petition.

Respectfully Submitted,

151 *L. G. Harvin*

Larry G. Harvin, # 253468

M.C.I. F.1-125.B

386 Redemption Way

McCormick, SC 29899

1 - 13 - 12

DATE

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2012206566

[2010-CP-10-04462]

Larry G. Harvin, # 253468,

Appellant,

Vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING

• Larry G. Harvin, # 253468
M^cC.I. F-1-125-B
386 Redemption Way
M^cCormick, SC 29894

- APPELLANT PRO. SE.

• Matthew J. Friedman,
~~Asst. Atty. Gen.~~
P.O. Box 11549
Columbia, SC 29211

- ATTORNEY FOR RESPONDENT

STATEMENT

Appellant Petitions this Court for a Rehearing upon the April 9, 2012 Order Dismissing the Appeal of the Honorable Kristi Lea Harrington's December 16, 2011 Final Order which erroneously disposed of Appellant's Petition for a Writ of Habeas Corpus (filed in Circuit Court on June 1, 2010) clearly against the Statutory Provisions governing the Post-Conviction Relief ("PCR") Act which clearly state that Grounds whereof alleged by Appellant are not cognizable in any PCR application.

MEMORANDUM WITH CITATION OF AUTHORITIES

Appellant submits the following Statutory Codes in support of this Petition For Rehearing:

- S.C. Code Ann. § 17-27-20 (a)(6)
- S.C. Code Ann. § 17-27-20 (b)

POINTS FOR RELIEF

1. The 'WRITTEN EXPLANATION OF IMPROPER DETERMINATION' (Attached to this Petition, with Affidavit) clearly asserted that Judge Harrington's December 16, 2011 Final Order was 'improper' because:

(a) - As to the 'Insufficient Evidence' claim within Habeas Corpus petition, S.C. Code Ann. § 17-27-20(a)(6) would never allow such a claim in a PCR Application — this fact is within Pages 2 to 3 of the 'Written Explanation...' — ; and

(b) - As to the 'Solicitor & Judicial Misconduct' claims within Habeas Corpus petition, being Direct Appeal claims in essence, S.C. Code Ann. § 17-27-20(b) would never allow such claims in PCR Applications — this fact appears on Page 3 of the 'Written Explanation...'.

- In other words, this Court 'Misapprehended' that Judge Harrington's Order is contrary to established Statutory Authority.

CONCLUSION

Upon the above-noted 'Points For Relief', Appellant submits that this Court should VACATE this Court's April 9, 2012 Order Dismissing Appellant's Appeal, and REINSTATE the Appellate process (counting the Initial Brief Forwarded on March 20, 2012, for Filing in this Court), or, alternatively in the interest of Judicial Economy, REVERSE the effect of Judge Harrington's Final Order and REMAND to the Charleston County Circuit Court for Appellant to finally receive an Evidentiary Hearing on his State Habeas Corpus Petition.

Respectfully Submitted,

151 L. Harvin

Larry G. Harvin, # 253468

M.C.I. F-1 - 125-B

386 Redemption Way

McCormick, SC 29899

4 - 17 - 12
DATE

The South Carolina Court of Appeals

Larry G. Harvin, #253468, Appellant,

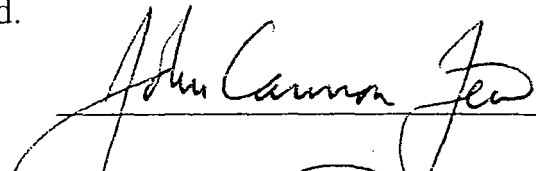
v.

State of South Carolina, Respondent.


Appellate Case No. 2012-206566

ORDER

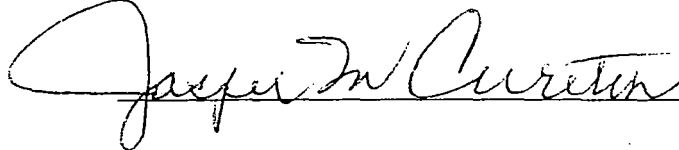
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



A. J.

Columbia, South Carolina

cc:

Larry G. Harvin, #253468

Matthew J. Friedman

FILED
7/20/12 