

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Michael T. Barnes, #318499,
Petitioner,

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JUL 06 2015
JUL - 6 2015
S.C. SUPREME COURT
S.C. Supreme Court

Vs.

Case No.: 2011-CP-10-0146
Appellate Case No. 2015-001355

STATE OF SOUTH CAROLINA,
Respondent. /

MOTION OPPOSING PROPOSED ORDER OF DISMISSAL.

Comes now, the Applicant appearing in the above captioned matter, and in pro-se capacity, to respectfully move this Honorable Court "to reject" the State's proposed order of dismissal, which suggest that Applicant's PCR is time barred.

The rub of the State's motion relies upon a misapprehended deadline according to its erroneous interpretation of the facts in this case. Coupled with the attempt to down play what "the court" shall determine to be sufficient reason, whenever there is a question of tardiness in relation to the deadlines under the Uniform Post-Conviction Act, of South Carolina.

In accordance with Clay v. United States, 537 U.S. 522, 525 (2003), in describing according to the United States Supreme, when a case "becomes final". The Supreme Court held; "a conviction be-

comes final for purposes of 28 U.S.C. §2255 proceeding (which is a federal post-conviction proceeding), "when the time expires for filing a petition for writ of certiorari" contesting the appellate court's affirmation of conviction). See also United States v. Linder, 552 F.3d 396 (4th Cir. 2009)

According to the State's posted deadline in the instant case a bar. It describes it as being December 2, 2010. Enclosed, please find that the Applicant here, "mailed his Post-Conviction Application:off... prior to that date, which was actually received at the Clerk of Court in Charleston, South Carolina, ^{before} ~~on~~ November 29, 2010". ^{IA} The Application was subsequently "returned", ^{on November 29th 2010} based on the Applicant's unfamiliarity with pleading requirements. However, in Haines v. Kerner, 404 U.S. 519 (1972), such irregularities cannot serve as a basis to impose statute of limitation barriers. Because a pro-se pleading "is to be held to a less stringent standard than formal pleadings drafted by license attorneys".

In otherwords, the Clerk was aware of what the Applicant was attempting to file, and thus, the Applicant was told to correct his errors however, the Applicant is entitled to receive the benefit of the initial date in which the application arrived ^{back} on November 29, 2010. ^{of the initial November 18th 2010 date on Mailroom Receipt, when the PCR application was initially sent off.}

Moreover, as a prong of the Due Process Clause, and fair access to the courts. A pro-se prisoner's motion, according to the United States Supreme Court is "deemed filed on the date the motion was placed into the prison's 'legal mailbox'". As opposed to

the date of its receipt by the clerk of court. See Houston v. Lack, 487 U.S. 266, 106 L.Ed2d 245, 108 S.Ct. 2399 (1988). Thus, because the relied upon proposed order under South Carolina Law, (as described by the Attorney General's Office) is in direct conflict with a United States Supreme Court decision. Such interpretation by state actors must give way to the Constitutional interpretation as decided by the United States Supreme Court. See Altria Group Inc. v. Good, 129 S. Ct. 538 (2008)(Under the Supremacy Clause, state laws that conflict with federal law is without effect). See also Farina v. Nokia, 625 F.3d 97 (3rd Cir. 2010)(federal law can preempt state law in three ways; (1) express preemption, (2) field preemption and (3) conflict preemption); see also Board v. Sealaska Corp., 83 F.3d 422 (9th Cir. 1996)(Under the Supremacy Clause, federal law preempts state law either by expresses provision, by implication, or by conflict between state and federal law).

Thus, because there exist a "conflict in determining the date this Applicant should have received", (i.e. the date deemed "the mailbox rule" as in when the Applicant placed his pleading in the institutional mailbox, under Houston v. Lack; and the date the State relies on, "i.e. being the date the motion was subsequently 'returned' ~~on~~^{on} November 29, 2010's receipt of Applicant's PCR by the Charleston Clerk of Court. The State is anything except entitled to "summary judgment", to dismiss the PCR on the relied upon grounds. As the Applicant has clearly demonstrated "sufficient reason", in accordance with the governing statute, why the

Post Conviction Application, shall not be denied, based on a violation of the statute of limitations. And therefore humbly as well as respectfully request this court to "reject the State's proposed order for summary dismissal". And schedule the PCR evidentiary hearing based on the grounds for relief cited within.

Wherefore, in clarification, the date on the "enclosed exhibit". Is the date of receipt^{back} from the Charleston Clerk of Court, after the initial filing. By virtue the Applicant failed to be sufficiently knowledgeable concerning the PCR statute when forwarding his application. Under Haines v. Kerner, such doesn't give the State the right to take an unfair advantage of the situation and ask this Court for summary dismissal.

For the above reasons shown, the Applicant respectfully request the relief based on the grounds supported within the PCR application. And for any other relief deemed just and proper by this Honorable Court.

Respectfully Submitted,

s/ Michael Barnes
Micheal T. Barnes, #318499
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: filed
(6/11/2015)
7/1/2015

(4 of 4)

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S.C. SUPREME COURT

CERTIFICATE OF SERVICE

I, Michael T. Barnes, do hereby certify that I have mailed a true and correct copy of my pro-se motion opposing the State, in its motion for summary judgement, by placing a copy of the same in the institutional mailbox on ~~(7/1/2015)~~ ^{7/1/2015} with adequate postage pre paid, to the below listed address(es). This motion is in regards to the 10 days allowed to give written explanation in compliance to the Rule 243(c) of the South Carolina Appellate Court Rules.

1) S.C. Attorney General's Office
Post Office Box 11549
Columbia, S.C. 29211-1549

2) Supreme Court Building
1231 Gervis St.
Columbia, SC 29211

/s/ Michael Barnes
Michael T. Barnes, #318499
Broadriver Corr. Institution
4460 Broadriver Rd.
Columbia, S.C. 29210

filed
~~(7/1/2015)~~
7/1/2015

(i)

RECEIVED

JUL 06 2015

S.C. SUPREME COURT

Sworn and Subscribed before me
this 15th day of July 2015

Susan H. Frye
Notary For South Carolina

My Commission Expires
March 5, 2018

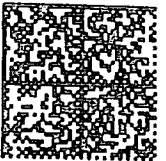
My Commission expires _____

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & C.S.
CHARLESTON COUNTY
100 BROAD STREET, SUITE 106
CHARLESTON, SOUTH CAROLINA 29401-2258

RETURN SERVICE REQUESTED

D/S Auth 14 Columbia

PRESORTED
FIRST CLASS



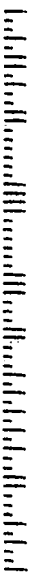
UNITE
02 1M
0004264295
MAILED FROM ZIP CODE 29405
NOV 29 2010

Exhibit #1
copy of envelope and
date the initial PCR
application was returned.

|||||
MICHAEL BARNES #318499
LEE C/DAR SOUTH/1257
990 WISACKY HWY
BISHOPVILLE, SC 29010

RECEIVED
NOV 29 2010
LEE C/DAR ROOM

JAPBSMT 29010



COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

Exhibit #2
Copy of letter
Received with initial
Per application

From: Clerk of Court, Charleston County, South Carolina

The enclosed document is being returned for the following reason(s):

Master's fee must be paid before the order can be signed.

Instrument not signed/dated.

The Judge is no longer in this circuit. Forward document to him/her directly.

Insufficient amount of filing fee. Correct amount: _____

This document is a copy. Must file the original.

Not a Charleston County case.

Check or money order must be made payable to the Clerk of Court.

Case ended: Date: _____ Reason ended: _____

Check not signed.

Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.

Case not found matching this caption.

Information may be obtained from our web-site at www3.charlestoncounty.org.

Cover sheet not included. (SCCA/234)

Other: Wrong application form. Please fill out
the attached form & return for filing

Please make necessary corrections and return for recording. Thank you for your assistance.

Staff initials BS

Date 11/19/10

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
843-958-5000 FAX 958-5020
WWW3.CHARLESTONCOUNTY.ORG

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843-958-4400 FAX 958-4434
WWW3.CHARLESTONCOUNTY.ORG

CLERK OF COURT
CHARLESTON COUNTY

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

RE: BARNES, MICHAEL

TO: BARNES, MICHAEL

EXhibit #4

03/27/2008

Copy of letter of Clerk of Court when application was initially requested by applicant. Why would their office provide the wrong PCR application form from the start.

- (1) IN ORDER FOR THIS OFFICE TO PROVIDE YOU WITH THE COPIES YOU ARE
---- REQUESTING YOU MUST 1.) PAY THE \$5.00 FEE OR 2.) PROVIDE US WITH
A STATEMENT FROM THE SCDC EAST COOPER TRUST FUND WHICH SHOWS THE
FINANCIAL STATUS OF YOUR ACCOUNT, IF YOUR ACCOUNT REFLECTS NO
MONIES HAVE BEEN RECEIVED YOU WILL NOT BE CHARGED THE FEE.
- (2) INSUFFICIENT AMOUNT OF FILING FEE. CORRECT FEE AMOUNT: -----
- (3) WARRANT/INDICTMENT NUMBER IS REQUIRED IN ORDER TO FILE REQUEST.

- (4) JAIL TIME SHOULD BE REQUESTED THROUGH YOUR CASEWORKER/ATTORNEY.

- (5) YOU NEED TO CONTACT COURT REPORTER FOR YOUR TRANSCRIPT.

- (6) YOU WILL NEED TO CONTACT THE AGENCY PLACING THE DETAINER. THIS
---- OFFICE CANNOT PLACE OR RELEASE A DETAINER.
- (7) XXXX
---- MR BARNES, PLEASE FIND ENCLOSED COPIES OF THE WARRANTS
AND INDICTMENTS AND PCR APPLICATION REQUESTED.

THANK YOU

- (8) RESEARCH COMPLETED. DOCUMENTS ENCLOSED. PLEASE FORWARD

DEPUTY CLERK

MKH

Michael Barnes #318499
BRCI Mustang/Rm#183
4460 Broad River Rd,
Columbia/SC 29210

SCDC
JUL 22 2015
MAIL ROOM

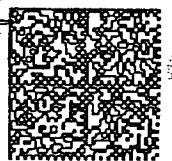
RECEIVED

JUL 01 2015

BRCI
MAIL ROOM

COLUMBIA
SC 29200
01 JUL '15
PM 11

Supreme Court Building
1231 Gerwig St.
Columbia, SC 29211



UNITED STATES POSTAGE
PRIMEV BOWERS
02 1M
0008003534
MAILED FROM ZIP CODE 29210
\$00.705
JUL 01 2015

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM, THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.
BROAD RIVER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

29201322699

