

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2014-001964

Robert James Miller, Jr.,

v.

Robert M. Stevenson, III,

RECEIVED
JUL 27 2015
Appellant SC Court of Appeals

Respondent.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. CROOM HUNTER
Assistant Attorney General

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the lower court properly dismissed the Appellant's Petition for Writ of Habeas Corpus because it was not properly filed in the original jurisdiction of the Supreme Court.

STATEMENT OF THE CASE

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire, represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning. Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge, Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of three (3) years, the balance would be suspended with probation. Restitution of \$30,000.00 was also ordered. The Applicant did not appeal.

2012-CP-20-0352

The Appellant filed his first application for post-conviction relief on August 30, 2012.

The Appellant raised the following issues in his first application:

1. Ineffective assistance of counsel.
 - a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
 - b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
 - a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
 - a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

An evidentiary hearing was convened on July 28, 2014 at the Lancaster County Courthouse. The Appellant was present and represented by W. Michael Hemlepp, Jr., Esquire. The State was

represented by J. Croom Hunter, Esquire, of the South Carolina Office of the Attorney General. By Order signed August 28, 2014 and filed September 10, 2014, the Honorable W. Jeffrey Young denied and dismissed the application.

A timely Notice of Appeal was filed and an appeal was filed pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) by Wanda H. Carter, Esquire, of the Office of Appellate Defense. By Order dated April 23, 2015 The Supreme Court of South Carolina denied the petition. The remittitur was returned on May 20, 2015.

The Appellant filed a Petition for Writ of Habeas Corpus with the Fairfield County Clerk of Court on May 6, 2014 (2014-CP-20-0163). In his habeas petition, the Appellant raised numerous allegations on which he sought relief.

Upon information and belief, the Appellant was present at a hearing before the Honorable Brian M. Gibbons. However, the State was not given notice of the scheduled hearing and no one was present at the hearing to represent the State. On September 8, 2014, Judge Gibbons filed a form order denying the Appellant's Petition for Writ of Habeas Corpus. This appeal follows.^{1 2}

¹ Respondent submits Appellant did not properly serve Respondent pursuant to Rule 4, SCRPC, when he initiated the instant suit. Respondent was not aware of the filing of this action until after the Circuit Court already denied it and Appellant filed this appeal. Respondent further submits Appellant did not properly serve his initial brief on Respondent pursuant to Rule 208(a)(1), SCACR. Respondent did not receive a copy of Appellant's Initial Brief until July 23, 2015, which did not include a Certificate of Service. See Attachment A. Finally, Respondent submits Appellant misled the Court when he informed the Court no hearing had been held, and thus it was not possible for Appellant to provide Respondent with a transcript of the lower court hearing pursuant to Rule 207, SCACR. In Appellant's Explanation pursuant to Rule 203(d)(1)(B)(vi), received by Respondent on December 29, 2014, Appellant states he was, in fact, given a hearing before Judge Gibbons on September 4, 2014. See Attachments B and C.

² Respondent finds it difficult to reconcile two letters received from the Court on July 22, 2015 and July 23, 2015, respectively. In the first letter, the Court advised Appellant his motion to allow late filing contained deficiencies, and his appeal would be dismissed if the deficiencies were not corrected within ten days. However, the next day, Respondent received a letter from the Court advising Respondent's initial brief and designation of matter should have been filed with the Court and was past due. Respondent submits such instructions are incompatible, especially considering Respondent did not receive a copy of Appellant's initial brief until July 23, 2015. See Attachments D and E.

ARGUMENT

The Appellant claims the lower court improperly dismissed his habeas petition. The Respondent submits Applicant did not properly file the petition in the original jurisdiction of the South Carolina Supreme Court, and the dismissal of the petition by the lower court was proper. “At common law, habeas relief was only available to a convicted defendant to attack the jurisdiction of the court imposing the sentence. However, during the 1950s and 1960s, South Carolina courts greatly expanded the use of the writ in order to ensure that our state afforded prisoners a proceeding where they could assert claims regarding constitutional violations.” Williams v. Ozmint, 380 S.C. 473, 476, 671 S.E.2d 600, 601 (2008). “In 1969, South Carolina adopted our version of the Uniform Post-Conviction Relief Act, which drastically limited the availability of habeas corpus.” Id.

The purpose of habeas corpus is to test the legality of the prisoner's present detention. McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (1965). The only remedy that can be granted is release from custody. Id. A habeas corpus petition must support the requested relief. Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994). The person seeking relief by a writ of habeas corpus has the burden of sustaining the allegations of his petition by a preponderance of the evidence. Shelton v. State, 239 S.C. 535, 123 S.E.2d 867; Moore v. State, 241 S.C. 279, 128 S.E.2d 109. Habeas corpus is available only when other remedies are inadequate or unavailable. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998).

A writ of habeas corpus will only be granted under “unique and compelling” circumstances. McWee v. State, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004). Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights. Williams, 380 S.C. at 477, 671 S.E.2d at 602. For these reasons, a defendant bears a much higher burden in a habeas proceeding. Id. A writ of habeas corpus is reserved for the very gravest of constitutional

violations “which, in the setting, constitute a denial of fundamental fairness shocking to the universal sense of justice.” Id. It is clear that not every intervening decision, nor every constitutional error at trial will justify the writ. Id.

A. The lower court properly dismissed the Appellant’s petition because it was not properly filed in the original jurisdiction of the Supreme Court.

The Uniform Post Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 329 S.C. 37, 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. Gibson, 329 S.C. 37, 495 S.E.2d 426; Keeler, 330 S.C. 568, 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.” Id. Furthermore, if a person is procedurally barred, his only means of obtaining state *habeas corpus* relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5. Id. Finally, the appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. SCACR 220.

Respondent submits Applicant did not comply with the proper procedures when he filed this petition in the circuit court. Because the matter was improperly filed in the circuit court, rather than in the original jurisdiction of the Supreme Court, the judge properly dismissed the petition. As such, this Court should affirm the lower court’s dismissal of the Appellant’s Petition for Writ of Habeas Corpus.

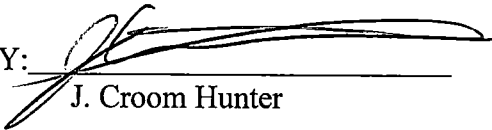
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should affirm the dismissal of the Appellant’s Petition for Writ of Habeas Corpus.

Respectfully submitted,

ALAN WILSON
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J. CROOM HUNTER
Assistant Attorney General

BY: 

J. Croom Hunter

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ATTORNEYS FOR RESPONDENT

July 27th, 2015

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Robert J. Miller, Jr.,

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vs.

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PROOF OF SERVICE

I, Ashley Haworth, certify that I have served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Robert J. Miller, Jr., #316047
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29203

I further certify that all parties required by Rule to be served have been served.

This 27th day of July, 2015.



ASHLEY HAWORTH
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ALAN WILSON
ATTORNEY GENERAL

July 27, 2015

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Robert J. Miller, Jr. vs. Robert M. Stevenson, III
Appellate Case Tracking No. 2014-001964

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copies of the Initial Brief of Respondent and Designation of Matter along with proof of service for filing in the above-referenced appeal.

Sincerely,

J. Croom Hunter
Assistant Attorney General

Enclosures

cc: Robert J. Miller, Jr., #316047
Victim Services

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