

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Greenville County
Edward W. Miller, Circuit Court Judge

JAMES SPURGEON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001010

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's case should be remanded for a full hearing to determine if he should be serving a life without parole sentence?

STATEMENT

On September 24, 1987, petitioner appeared before the Honorable Victor Pyle, Jr. in Greenville County and pled guilty to murder. A life sentence was imposed. Robert Ray, Esq. was plea counsel. (App. p. 15)

On October 30, 2014, petitioner filed an application for post-conviction relief. He stated that this application should not be considered as successive to any previous applications he had filed because this current application was based on newly discovered evidence under S.C. Code § 17-27-45 (c). (App. p. 1- p. 10) Respondent filed a return and motion to dismiss dated January 23, 2015. (App. p. 15- 19) The Honorable Robin B. Stilwell issued a conditional order of dismissal dated January 20, 2015. The order gave petitioner 20 days to explain why the order should not become final. (App. p. 20- p. 22) Later, Judge Stilwell decided to hold a hearing on the motion. A hearing on the State's motion was held on April 25, 2015 before the Honorable Edward W. Miller. Petitioner was present and was represented by Brian P. Johnson, Esq. Respondent was represented by Karen C. Ratigan, Esq. (App. p. 23- p. 30) On April 29, 2015, Judge Miller issued an order granting respondent's motion to dismiss and denied and dismissed the application for post-conviction relief.

This petition follows.

ARGUMENT

Petitioner's case should be remanded for a full hearing to determine if he should be serving a life sentence without the possibility of parole.

In his memorandum of in support of his post-conviction relief application petitioner wrote that he pled guilty to murder in 1987.¹ On July 23, 2014, he received notification from the South Carolina Department of Corrections Division of Classification that said he had multiple violent offenses and he was ineligible for parole. Petitioner stated that when he pled guilty to murder in 1987 he was not told by the trial court that he would receive life without parole and then years later be told he was ineligible for parole.² (App. p. 7- p. 8) Petitioner's memorandum stated that to find he was ineligible for parole was newly discovered evidence under the S.C. Code § 17-27-45 (c). (App. p. 7)

Petitioner stated that respondent should not attempt to argue that his application was successive because he could not have raised this ground in a previous application because this was newly discovered evidence. Petitioner cited Tilley v. State, 334 S.C. 24, 511 S.E. 2d 689 (1999) which held that an inmate's fourth PCR application was not successive when the inmate was unaware that he could not be considered for parole when he pled guilty. Petitioner filed his application within one year of finding out he was not parole eligible. Petitioner also cited Coats v. State, 352 S.C. 500, 575 S.E. 2d 557 (2003) which held that a petitioner's claim that counsel was ineffective for improperly advising him that he would be parole eligible was appropriate for PCR and that petitioner's claim fell within the rule providing where there was evidence of material facts

¹ He had pled guilty to another murder back in 1973 where he was given a life sentence but was paroled in 1983. (App. p. 15)

² The sentencing sheet for the 1987 murder guilty plea shows that his sentence was for life not life without parole. (App. p. 36)

not previously presented, a PCR application was to be filed within one year after date of actual discovery of facts, and did not have to be filed within one year after conviction. (App. p. 9- p. 10)

At the very brief motion hearing respondent announced that the day before she filed an amended return and motion to dismiss where she added the affirmative defense of laches. Appointed PCR counsel said they would oppose the motion to dismiss and wished to amend the application for post-conviction relief. One of the issues he wanted to add was ineffective assistance of plea counsel where petitioner was led to believe that after 20 years, he would be eligible for parole. (App. p. 25, line 24- p. 26, line 20)

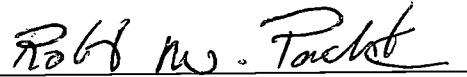
In the order of dismissal with prejudice the PCR judge cited the PCR statute of limitations of one year under S.C. Code § 17-27- 45 (c). But he failed to recognize Tilley v. State and Coats v. State cited above. Next, the PCR judge wrote that laches bars the petitioner from raising the allegations in his PCR application. While laches is an equitable defense, equity also demands justice. The plea judge is still alive as is plea counsel. We still have the sentencing sheet that shows a sentence of life not life without parole. Petitioner very well could have a claim against plea counsel's advice.³ Petitioner is entitled to a full hearing on the merit of his application. McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)

³ It is also error for a trial judge to misinform a defendant about parole eligibility. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991). And it is error for a trial judge to fail to inform a defendant of a mandatory minimum sentence. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

CONCLUSION

Petitioner's writ should be granted and his case should be remanded for a full hearing with the appointment of counsel.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Edward W. Miller, Circuit Court Judge

JAMES SPURGEON,

PETITIONER,

V.

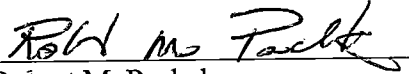
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001010


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 Karen C. Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. James Spurgeon, Jr. #070122, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 31st day of August, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 31st day
of August, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.