

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV - 4 2015

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2015-001010

James Spurgeon, Jr.,.....Petitioner,

v.

State of South Carolina,.....Respondent.

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General  
S.C. Bar # 68331

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

QUESTION PRESENTED .....2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW .....3

ARGUMENT

    Petitioner’s case should not be remanded to circuit court. ....4

CONCLUSION .....8

## **QUESTION PRESENTED**

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

## STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the September 1987 term of General Sessions for murder (1987-GS-23-5180). (App.pp.37-38). Robert Ray, Esquire represented Petitioner.

On September 24, 1987, Petitioner pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to life imprisonment. (App.p.36). Petitioner did not file an appeal.

Petitioner filed an application for post-conviction relief (PCR) on October 30, 2014 (2014-CP-23-5942). (App.pp.1-13). Respondent filed a return and motion to dismiss on February 3, 2015 and an amended return and motion to dismiss on April 20, 2015. (App.pp.15-19; Supp.App.pp.1-4). A hearing was held at the Greenville County Courthouse on April 21, 2015. (App.pp.23-29). Petitioner was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. In an order filed May 5, 2015, the Honorable Edward W. Miller granted Respondent's motion to dismiss and denied the PCR application. (App.pp.31-35).

## STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

## ARGUMENT

### **Petitioner's case should not be remanded to circuit court.**

Petitioner argues he should have a full hearing on the merits of the allegations raised in his PCR application. This argument is without merit.

#### A.

Petitioner was sentenced on September 24, 1987. (App.p.36). More than twenty-seven years later, Petitioner filed a PCR application. (App.pp.1-13). In the application, Petitioner argued “newly discovery evidence” and stated he “was not advised by the trial court during sentecing [sic] that if [he] does plea guilty to this 1987 murder [he] would receive life without parole, and after he plead guilty and several years later [he] was ineligible for parole.” (App.p.8). Petitioner cited Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) and Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (2003). (App.p.9).

At the beginning of the PCR hearing, Respondent informed the PCR judge that a return and motion to dismiss the matter had been filed on January 23, 2015. (App.pp.15-19; p.25). Respondent stated the motion to dismiss was based upon the expiration of the statute of limitations. (App.p.25). Respondent stated that, while the chief administrative judge had signed a conditional order of dismissal in this case, the judge subsequently set the matter for a hearing. (App.pp.20-22; p.25). Respondent noted an amended return and motion to dismiss was filed the previously day, and that PCR counsel had been previously informed of this action and given a draft copy of the pleading. (App.pp.25-26). Respondent noted the amended return and motion to dismiss merely added the affirmative defense of laches. (App.p.26; Supp.App.pp.1-4). Respondent moved to dismiss the case.

(App.p.26).

Counsel for Petitioner argued that Petitioner wished to amend his PCR application to argue (1) he was not advised he was ineligible for parole and (2) the indictment was insufficient. (App.pp.26-27). Counsel argued he might be able to develop better issues if the application could be amended. (App.p.27). Petitioner stated he “was under the impression” that he had a parole date. (App.p.28).

**B.**

In granting Respondent’s motion to dismiss, the PCR judge found the PCR application should be dismissed because (1) it was filed after the expiration of the statute of limitations and (2) it was barred by the doctrine of laches. The PCR judge also noted Petitioner failed to meet his burden of proving the existence of newly-discovered evidence. (App.pp.31-35).

**C.**

The PCR judge did not err in granting Respondent’s motion to dismiss Petitioner’s PCR application. It is well-settled that the applicant in a PCR proceeding has the burden of proving the allegations in his PCR application. Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814; see also Rule 71.1(e), SCRPC (“The [PCR] applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). As such, Petitioner should have been prepared to fully argue against dismissal of his PCR action at the motion hearing. Petitioner should have been prepared to present – through credible evidence or testimony – that he was misadvised about the parole eligibility of the

murder charge he pled guilty to in 1987.<sup>1</sup> Instead of presenting testimony from a credible witness (such as his plea attorney) to advance an argument that he was misadvised about parole eligibility, Petitioner merely stated he was “under the impression” the charge was parole eligible. (App.p.28). Petitioner, in fact, never argued he was misadvised about parole eligibility. Rather, he merely argued (1) in his PCR application that he was not advised by the trial judge about parole eligibility and (2) at the PCR hearing that he was not advised about parole.

While Petitioner now argues the PCR judge erred in failing to address Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) and Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (2003), this argument is without merit. Tilley is inapplicable in this case. In Tilley, this Court held a PCR application should not be considered successive if it raised an issue of parole eligibility. As this was Petitioner’s first PCR application, Tilley is not on point. Coats is also distinguishable from the case at bar. In Coats, the defendant was incorrectly advised that he would be parole eligible. This Court held the defendant should have a hearing on the merits of his “claim regarding counsel’s mistaken advice that [he] would be eligible for parole.” Id. at 504, 575 S.E.2d at 559. As noted supra, however, Petitioner argued he was not advised about parole – not that he was misadvised about parole. Further, Petitioner failed to present any credible evidence, documentation, or testimony either that he was misadvised or that he filed his PCR application within one year of having allegedly learned of his parole status.

---

<sup>1</sup> Petitioner had already been convicted of another murder charge on October 21, 1973 and received a life sentence on that charge. (App.p.39).

While Petitioner argues he only recently discovered he is not eligible for parole, he failed to present any credible evidence or testimony to this effect that could be considered by the PCR judge. Without such, Petitioner failed to meet his burden of proof. Accordingly, Petitioner failed to present facts and evidence to rebut Respondent's motion to dismiss and meet his burden of proof. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."). The PCR judge properly granted the Respondent's motion to dismiss and dismissed the PCR application. As such, the matter should not be remanded to circuit court.

**CONCLUSION**

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General  
S.C. Bar # 68331

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
ATTORNEYS FOR RESPONDENT

November 4, 2015

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

---

Appellate Case No. 2015-001010

---

James Spurgeon, Jr.,.....Petitioner,

v.

State of South Carolina, .....Respondent.

---

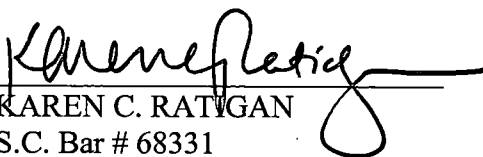
**CERTIFICATE OF SERVICE**

---

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in inter-agency mail and addressed to:

Robert M. Pachak, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.  
This 4th day of November, 2015.

  
KAREN C. RATIGAN  
S.C. Bar # 68331  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
ATTORNEY FOR RESPONDENT