

MR. HAMID DENNIZIO #115800
LIEBER CORR. INST. EA-8
POST OFFICE BOX 205
RIDGEBYLL, S.C. 29472

DECEMBER 15, 2015

RE: APPELLATE CASE NO.:
2015-002184

S.C. SUPREME COURT
ATTN: MR. DANIEL SHEAROUSE
1231 GERVAYS ST., BOX 11330
COLUMBIA, S. CAROLINA 29211

DEAR HONORABLE SHEAROUSE;

PLEASE FIND ENCLOSED THE ABOVE REFERENCE APPELLATE CASE
NUMBER 2015-002184 EXPLANATION PURSUANT TO SCACR, RULE 243
(c).

RESPECTFULLY SUBMITTED,
s/ Hil

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

ALISON RENEE LEE, CHIEF ADMINISTRATIVE JUDGE

APPELLATE CASE NO.: 2015-002184

HAMID DEMMIRIO, PETITIONER,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

SCACR, RULE 243(C) EXPLANATION

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S.C. SUPREME COURT

MR. HAMID DEMMIRIO #115800
LIEBER CORR. INST. EA-8
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ISSUES

I.

DID THE PCR COURT ERRED BY SUMMARILY DISMISSING APPLICANT'S INITIAL PCR APPLICATION WHICH ASSERTED VALID CLAIMS TO WARRANT AN EVIDENTIARY HEARING ON APPLICANT'S RIGHT TO APPEAL AND/OR APPELLATE REVIEW?

II.

DID THE PCR COURT ERRED BY NOT CONDUCTING A HEARING ON THE APPLICANT'S INITIAL PCR TO FIND OUT WHETHER OR NOT IF THERE WERE AN INEFFECTIVE ASSISTANCE CLAIM?

III.

DID THE PCR COURT ERRED BY NOT RULING ON APPLICANT'S BRADY V. MARYLAND CLAIM?

III.

DID THE PCR COURT ERRED BY VIOLATING APPLICANT'S DUE PROCESS BY NEVER RULING ON APPLICANT'S UNINTELLIGENT, INVOLUNTARY, AND UNKNOWING GUILTY PLEA?

IV.

THE GIST OF APPLICANT'S CLAIM IS HIS DUE PROCESS RIGHTS WERE VIOLATED AS HE HAS NEVER RECEIVED HIS FULL BITE AT THE APPLE PURSUANT TO ODDM V. STATE, AND AUSTIN V. STATE OF HIS FIRST PCR AND IN HIS SUBSEQUENT PCR'S AND HIS ISSUE IS THE WAIVER OF CONSTITUTIONAL RIGHTS AT THE PLEA IS NOT SUPPORTED BY A WRITTEN RECORD, AND WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE PRESUMED FROM A SILENT RECORD.

VI.

HAS THE PETITIONER ESTABLISHED AN SUBSTANTIVE / PROCEDURAL
CLAIM OF INNOCENCE?

TABLE OF CITED AUTHORITIES

- AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2d 395 (1991)
ODOM V. STATE, 337 S.C. 256, 523 S.E.2d 753 (1999)
KOON V. STATE, 358 S.C. 359, 595 S.E.2d 456 (2004)
MCCOY V. STATE, 401 S.C. 363, 737 S.E.2d 623 (2013)
DELANEY V. STATE, 269 S.C. 555, 238 S.E.2d 679 (1977)
LEAMON V. STATE, 363 S.C. 432, 611 S.E.2d 494 (2005)
MOORE V. STATE, 732 S.E.2d 871 (2013)
MCELRATH V. STATE, 277 S.E.2d 890 (1981)
JOHNSON V. RIDDLE, 562 F.2d 890 (1981)
MCAUIGGIN V. PERKINS, 133 S.Ct. 1924 (2013)
MARTINEZ V. RYAN, 132 S.Ct. 1309 (2012)
JOHNSON V. ZERBST, 304 U.S. 758, 58 S.Ct. 1019 (1938)
STATE V. BATEMAN, 296 S.C. 367, 369, 373 S.E.2d 470, 471 (1988)
STATE V. LADSON, 373 S.C. 320, 644 S.E.2d 271 (S.C. APP. 2007)
CHINA V. PARROTT, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968)
WHITEHEAD V. STATE, 352 S.C. 215, 574 S.E.2d 200 (2002)
DOLIVE V. J.E.E. DEVELOPERS. INC., 418 S.E.2d 319 (1992)

EXPLANATION PURSUANT TO RULE 243

AS TO EXPLANATION AS TO WHY THIS PARTICULAR CASE IS EXCUSED OF ANY STATUTE OF LIMITATIONS OF SUCCESSIVENESS IS BASED ON ODDM V. STATE, 337 S.C. 256, 523 S.E.2d 753 (1999) WHICH HELD "STATUTE OF LIMITATIONS" DOES NOT APPLY TO AUSTIN V. STATE, 337 S.C. 256, 523 S.E.2d 753 (1991) CLAIMS OF FIRST PCR COUNSEL NOT FILING AN APPEAL OF FIRST PCR FOR SUPREME COURT REVIEW. KODN V. STATE, 358 S.C. 359, 595 S.E.2d 456 (2004) WAS KODNS 4TH PCR AND HE RECEIVED BENEFIT OF AUSTIN TO OBTAIN REVIEW TO DEFEAT SUCCESSIVE PETITION ARGUMENT S.C. CODE § 17-27-45(A) / TIMELINESS ARGUMENTS. SEE MCCUIGGIN V. PERKINS, 133 S.Ct. 1924 (2013)

THE ISSUE TO BE REVIEWED IS LACK OF A RECORD OF WAIVER OF CONSTITUTIONAL RIGHTS MOORE V. STATE, 732 S.E.2d 871 (2013) AT GUILTY PLEA COURT CANNOT PRESUME A WAIVER OF TRIAL RIGHTS FROM A SILENT RECORD. SEE MOORE. THE RECORD THAT THE SOUTH CAROLINA ATTORNEY GENERAL DID NOT PROVIDE WITH ITS RETURN AS MANDATED BY S.C. CODE ANN. § 17-27-70 AND 80, WILL AFFIRMATIVELY SHOW THAT THERE IS NO WAIVER OF TRIAL RIGHTS JOHNSON V. ZERBST, 384 U.S. 458, 58 S.Ct. 1019 (1938) AND THERE IS NO WAIVER OF TRIAL RIGHTS TO APPEAL FIRST PCR ON THIS ISSUE ODDM; KODN.

THUS, THIS CASE PROVIDES A CLASSIC EXAMPLE OF HOW THIS CASE MUST BE ALLOWED TO PROCEED UNDER RULE 243, SCACR AS STATUTE OF LIMITATION AND SUCCESSIVE PETITION DO NOT APPLY TO AUSTIN CLAIMS PURSUANT TO ODDM V. STATE, KODN V. STATE. RELIEF MATTER BE REMANDED TO THE COURT OF COMMON PLEAS FOR A FULL HEARING PURSUANT TO AUSTIN V. STATE, ODDM V. STATE. IN ADDITION TO THE ABOVE SAID MENTIONED, WHEN CONSIDERING THE STATES MOTION TO SUMMARY DISMISSAL WHERE NO EVIDENTIARY HEARING HAS BEEN HELD, THE PCR JUDGE MUST ASSUME FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT. LEAMON V. STATE, 363 S.C. 432, 611 S.E.2d 494 (2005) CITING S.C. CODE ANN. § 17-27-80 WHERE AN APPLICANT ASSERTS

FACTS THAT WOULD ESTABLISH AN EXCEPTION TO EITHER THE STATUTE OF LIMITATIONS OR THE PROHIBITION AGAINST SUCCESSIVE PCR APPLICATION AND THOSE FACTS, ARE NOT CONCLUSIVELY REFUTED BY THE RECORD BEFORE THE PCR COURT, A QUESTION OF FACT IS RAISED WHICH CAN ONLY BE RESOLVED BY A HEARING. DELANEY V. STATE, 269 S.C. 555, 238 S.E.2d 697 (1977).

IN LIGHT OF THE RECENT RULING BY THE UNITED STATES SUPREME COURT IN MARTINEZ V. RYAN, 132 S.Ct. 1309 (2012), THE APPLICANT CLAIMS SERIOUS QUESTIONS OF FACTS THAT CAN NOT BE DISPUTED BY APPLICANTS FILE. THEREFORE, A HEARING MUST BE HELD TO FULLY ESTABLISH A RECORD ON THE MERITS OF FACTS IN THIS PCR APPLICATION. SEE MCCOY V. STATE, 401 S.C. 363, 737 S.E.2d 623 (2013).

WHEREFORE, A GENUINE ISSUE OF FACTS EXISTS AS TO WHETHER APPLICANT'S CLAIM IS SUCCESSIVE UNDER S.C. CODE ANN. § 17-27-90 WHICH PERMITS AN APPLICANT TO FILE A SUBSEQUENT PCR APPLICATION ONLY IF THE APPLICANT DEMONSTRATES A SUFFICIENT REASON AS TO WHY THE CLAIMS ASSERTED THEREIN WERE NOT ASSERTED PREVIOUSLY. THE APPLICANT AVERS HE HAS DEMONSTRATED SUFFICIENT REASONS AND GROUNDS WHY HIS CLAIMS WAS NOT INCLUDED IN HIS FIRST PCR APPLICATION, IN THAT, HIS FIRST PCR COUNSEL FAILED TO RAISE THAT TRIAL COUNSELS WAS INEFFECTIVE FOR FAILING TO MAKE A CLOSING ARGUMENT AT THE GUILT AND SENTENCING PHASE DURING APPLICANT'S CRIMINAL TRIAL. BASED UPON THESE UNDISPUTED FACTS. A HEARING IS WARRANTED TO RESOLVE THESE CRITICAL ISSUES OF APPLICANT CLAIMS.

LACHES

IN MCEL RATH V. STATE, 277 S.E.2d 890 (1981), THE ABSENCE OF SOME EXPLANATION OR JUSTIFICATION FOR DELAY IN SEEKING PCR, AS IN THIS CASE, THE FEDERAL HAS HELD IN JOHNSON V. RIDDLE, 562 F.2d 313 (4th CIR. 1977) WHETHER A CLAIM IS BARRED BY LACHES IS TO DETERMINED IN LIGHT OF THE FACTS OF EACH CASE, TAKING INTO CONSIDERATION WHETHER THE DELAY HAS WORKED INJURY, PREJUDICE, OR DISADVANTAGE TO THE OTHER PARTY. THE RESPONDENT HAS NOT SET FORTH ANY EVIDENCE THAT WOULD BE UNAVAILABLE THAT WOULD BE INJURIOUS, PREJUDICE, OR PUT THEM AT SOME DISADVANTAGE. THUS, DELAY ALONE IN ASSERTION OF A CONSTITUTIONAL RIGHT DOES NOT CONSTITUTE LACHES PURSUANT TO MCCOY V. STATE.

MOREOVER, IN A PCR ACTION, IF THE RECORD FAILS TO DEMONSTRATE WHETHER A KNOWING AND INTELLIGENT WAIVER WAS EVER PRODUCED, RELIEF MUST BE GIVEN TO THE DEFENDANT. STATE V. BATEMAN, 296 S.C. 367, 369, 373 S.E.2d 476, 471 (1988). IN CHINA V. PARDTT, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) AND ITS PROGENY, A NEW TRIAL IS APPROPRIATE IF THE APPELLANT ESTABLISHES THAT THE INCOMPLETE NATURE OF THE TRANSCRIPT PREVENTS THE APPELLATE COURT FROM CONDUCTING A MEANINGFUL APPELLATE REVIEW.

SOUTH CAROLINA SUPREME COURT SHOULD REQUIRE A RECONSTRUCTED RECORD ON APPEAL TO ALLOW FOR A MEANINGFUL APPELLATE REVIEW. THE COURT MUST FIND THAT THE PETITIONER HAS ESTABLISHED PREJUDICE AND HAS DEMONSTRATED THAT THE RECORD BEFORE THIS HONORABLE COURT DOES NOT ALLOW FOR A MEANING APPELLATE REVIEW JUST LIKE STATE V. LADSON, 373 S.C. 320, 644 S.E.2d 271 (S.C. APP. 2007).


WITHOUT A TRANSCRIPT, THE COURTS ARE ESSENTIALLY LEFT WITH A BARE BONES SUMMARY OF THE EVIDENCE WITH MORE REMAINING UNKNOWN THAN KNOWN, KOON V. STATE, 358 S.C. 359, 595 S.E.2d 456 AT 367 (2004); WHITEHEAD V. STATE, 352 S.C. 215, 574 S.E.2d 200 AT 221 (2002); AND DOLIVE V. J.E.E. DEVELOPERS, INC., 418 S.E.2d 319 AT 321 (1992).

CONCLUSION

FOR THE FOREGOING REASONS, THIS HONORABLE COURT SHOULD GRANT APPLICANT'S WRIT OF CERTIORARI.

DECEMBER 15, 2015
RIDGEVILLE, S.C.


RESPECTFULLY SUBMITTED,

SI 
HAMID DEMMIRIO
PRO SE LITIGANT

CERTIFICATE OF SERVICE

I, HAMID DEMMIRIO, CERTIFY THAT I HAVE SERVED
THE EXPLANATION UNDER RULE 243(c) SCACR ON DANIEL
SHEAROUSE, CLERK, 1231 GERVAYS STREET, BOX 11330, COLUMBIA,
SOUTH CAROLINA 29211 BY DEPOSITING IT IN THE UNITED
STATES MAIL BOX FIRST CLASS.

RIDGEVILLE, S.C.
DECEMBER 15, 2015

s/ 

MR. HAMID DEMMIRIO 115800
LIEBER CORR. INST. EA-8
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472

The Supreme Court of South Carolina

Hamid Demmirio, Petitioner,

v.

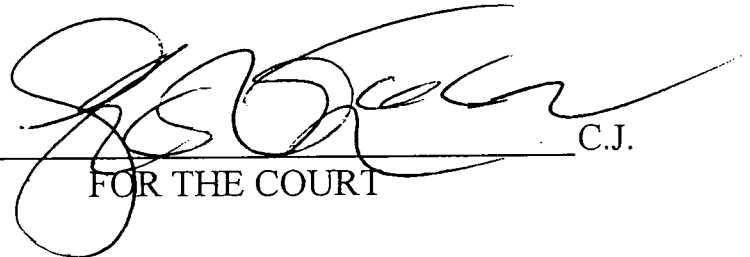
State of South Carolina, Respondent.

Appellate Case No. 2015-002184

ORDER

The motion for production of records is denied. *See* Rule 243(f), SCACR (specifying content of the appendix); *Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014) (a document that was not part of the record before the circuit court in a post-conviction relief case is not properly before the appellate court).

* Petitioner is reminded that his *pro se* explanation under Rule 243(c) of the South Carolina Appellate Court Rules must be served and filed by December 18, 2015



C.J.
FOR THE COURT

December 3, 2015

Columbia, South Carolina

cc: James Rutledge Johnson, Esquire
Mr. Hamid Demmirio, #115800

* RECEIVED ON THE 7th DEC. 2015 *

The Supreme Court of South Carolina

Hamid Demmirio, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. **2015-002184**

ORDER

The request for an extension to serve and file the pro se Rule 243 explanation is granted and extended until December 18, 2015. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

November 18, 2015

cc:

James Rutledge Johnson, Esquire
Hamid Demmirio, #115800

The Supreme Court of South Carolina
DANIEL E. SHEAROUSE, CLERK OF COURT
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COLUMBIA, SOUTH CAROLINA 29211

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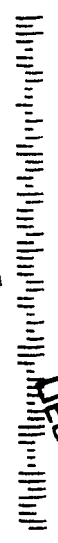
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SOUTH CAROLINA SUPREME COURT
ATTN: MR. DANIEL SHEARUSE, CLERK
1231 GERVAYS ST, Box 11330
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