

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Kimmie Shipes Heaton #249607
Applicant

V.

State of South Carolina
Respondent

(IN THE COURT OF COMMON PLEAS
(EIGHTH JUDICIAL CIRCUIT
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2014-CP-30-0071

Applicants Response to Conditional
Order of Dismissal

In response to the Respondent's motion, the Applicant would submit the following:

Allegation A- Successiveness & Allegation B- Statue of Limitations

Sufficient reason could not have been raised in previous application for post-conviction relief therefore this application for post-conviction relief is not successive. Diagnosis of psychosis of applicant would not allow her to put forth issues on record to preserve said issues for appeal. People v. Harris (109A.D. 2d 351, 491 N.Y.S. 2d 678 (2d Dep.'t 1985)) The trial court failed to conduct a hearing to determine applicant's competency to stand trial, though the facts known to the court raised a real doubt as to competency. Courts recognize this because if the defendant was incompetent, then s/he could not be expected to raise the issue of competency at trial or put facts in the record sufficient to preserve the claim for reveiw on appeal.

Applicant meets the statute of limitations for filing under after discovered evidence. Applicant discovered evidence upon review of SCDC medical records for an unrelated reason. Applicant then immediately filed a new post-conviction relief which puts her within the year allotted for filing after the discovery of evidence.

Allegation C- Does not meet the Lanier test

After discovered evidence of the records from Laurens County Mental Health (see TAB 2 of PCR Application) will most certainly pass the Lanier test for the following reasons:

1. The evidence will probably change the result of a trial if that new trial is granted
The new evidence demonstrates and supports that not only was applicant unable to coherently enter a guilty plea, but that the attorney's defense strategy was incompetent due to lack of knowledge concerning said evidence. Would evidence have been presented, the outcome of the trial would have almost surely been different. The defense could have presented factors that demonstrated a picture of the immediate mindset that lead to the commission of this crime. Therefore, the newly discovered evidence would change applicant's conviction and sentence.
2. Has been discovered since the trial
Due to mental health disturbance, applicant could not articulate to defense counsel that she was being seen by a psychiatrist at Laurens County Mental Health. Applicant only developed the clarity several years later and remembered this.
3. Could not have been discovered before the trial
Applicant's defense counsel could not request and submit for review records that he was unaware existed. Defense counsel continually testified that applicant was not seeing a

psychiatrist and that applicant had only been examined by a psychiatrist once (see included PCR transcript, March 16, 2000, page 41 lines 18-20)

4. Is material to the issue

The issue is applicant's competency to enter a guilty plea. To coherently and knowledgeably waive her constitutional rights afforded her by the United States. Laurens County mental Health Records show applicant was suffering from psychosis which entailed hallucinations and delusions. For the court of law to have proof that such a plea was entered in that mental capacity is violating applicant's due process of law.

5. Is not merely cumulative or impeaching

Laurens County mental Health records are of Applicant's mental health competency at time of plea entry. All other records reviewed were of Applicant's adolescence.

Respondent continually refers to Dr. Harold Morgan's report as Applicant's after discovered evidence when in fact the after discovered evidence is the Laurens County Mental Health patient records of the Applicant. Dr. Morgan's report is a summary of records of Applicant as an adolescent. (see plea entry transcript, TAB 3 of Post-Conviction Application, page 21 line 25 and page 22 line1)

Allegation D- Res Judicata

To establish res judicata, the Respondent must show that the prior suit and the current suit have the same three elements: (1) identity of the parties; (2) the identity of the subject matter; (3) adjudication of the issue in the former suit. While the Applicant concedes that the parties are the same in this action and the former action, the Applicant argues that the second and third elements have not been satisfied. With regard to the second and third elements of res judicata, the subject matter in the first action was ineffective. Applicant is stating that the court, not counsel, made a fundamental error in accepting a guilty plea from a defendant suffering from psychosis. An error so grave that, if not rectified, would result in a denial of fundamental due process. *Robert v. State, Ind.*, 492 N.E. 2d 310, 313

Applicant prays that the court hereby accepts these specific reasons that are factual and legal, as to why the Applicant should receive a hearing.

S/ _____
Kimmie Shipes Heaton #249607

November 13, 2014

Original

State of South Carolina	(In the Court of Common Pleas Eighth Judicial Circuit
County of Laurens	(
	(2014-CP-30-0071
Kimimie Shipes Heaton #249607	(
Applicant	(
v.	(<u>Amendment to</u>
State of South Carolina	(Applicants Response to
Respondent	(Conditional order of
	(Dismissal

Case Law Update

Jamison v. State (opinion No. 27454, Oct 22, 2014), the Supreme Court considered the question of whether a guilty plea precluded PCR relief based on after-discovered evidence. The Court stated: "Although we find that a guilty plea does not preclude post-conviction relief following a guilty plea in all circumstances, we nonetheless conclude that the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea.

... Indeed, the traditional, newly discovered evidence factors are 'difficult, if not impossible to apply when ^{the} moving party pleaded guilty instead of standing trial."

The Court further held that "when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where

the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicants guilty plea to be vacated."

This case law is hereby presented as further support of the Applicants ~~attorneys~~ after-discovered evidence.

s/ _____
Kimmie Shipes Heaton # 249607

January 5, 2015