

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appellate Case No.2016-000323

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MAR 10 2016

S.C. SUPREME COURT

James N. Bogan)	
Applicant,)	WRITTEN EXPLANATION PURSUANT
-vs-)	TO: Rule 243(c), SCACR
State of South Carolina)	
Respondent,)	
_____)	

INTRODUCTION

Applicant is presently confined in the South Carolina Department of Corrections pursuant to commitment orders of the Spartanburg County Clerk of Court. Applicant was indicted during the June 2011 term of the Spartanburg County Grand Jury for second degree burglary (2011-GS-42-4268) and petit larceny (2011-GS-42-4267).

Applicant was represented by James Cheeks, esquire. Upon Counsel's advice, Applicant plead guilty, with the understanding he would be parole eligible. The Honorable Roger L. Couch sentenced Applicant to fifteen years for the second degree burglary and ten years for the petit larceny. The sentences were order concurrent . No direct appeal was filed or pursued.

On March 26, 2013, Applicant wrote an SCDC Form 19-11 Inmate to Staff request inquiring about his parole eligibility date. The SCDC Classification answered Applicant's request March 27, 2013

informing Applicant he was ineligible for parole due to multiple violent offenses.

On April 13, 2013 Applicant immediately filed an application for post conviction relief (PCR)(2013-CP-42-1677) alleging ineffective assistance of counsel for giving Applicant erroneous parole eligibility advice. Applicant brought the action under S.C.Code Ann. §17-27-45(c)'s discovery rule enunciated in *Coats v. State*, 352 S.C. 500, 575 S.E.2d 557 (S.C.2003).

On July 18, 2014, the Honorable J. Derham Cole, issued a Conditional Order allotting Applicant 20-days within which to provide the Court with sufficient reasons as to why the application should not be dismissed as untimely and past the one-year statute of limitations. Applicant filed a timely Opposition to the Conditional Order. Subsequently thereafter the Lower Court issued a Final order (Honorable J. Mark Hayes, II) denying relief and dismissing the PCR action with prejudice. Applicant filed a timely Notice of Appeal and on February 23, 2016 (received via Institutional legal mail) this Court issued an order directing Applicant to provide the Court with written explanation as to why the lower Court's decision was improper (Rule 243(c)SCACR). The written explanation is as follows:

Applicant submits the lower court erred in dismissing the instant application as untimely. Applicant would submit his case sits on Coats, supra on all four feet, and therefore he is entitled to an evidentiary hearing pursuant to *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

In *Coats v. State*, 352 S.C. 500, 575 S.E.2d 557 (S.C.2003),

Coats pled guilty and was sentenced to 7-years in the Department of Corrections ("SCDC"). Coat's 1-year statute of limitation to file an application for post conviction relief (PCR) had expired. Coats during his annual classification review as advised by SCDC's Classification Officer that he (Coats) was ineligible for parole. Coats immediately filed his PCR application under the discovery rule S.C. Code Ann. §17-27-45(c), which states in part: "if there is evidence of material facts not previously presented or heard which would require reversal of the conviction, the applicant has 1-year [from] the actual date of the discovery to file a PCR application.

The Coats Court held an evidentiary hearing to determine if Coats was entitled to relief and whether the 1-year statute of limitations barred Coats. This Court however, determined that Coats was not barred by the statute of limitations, and further concluded that Coats had received ineffective assistance of counsel when counsel gave Coats erroneous parole advice.

Here, the Applicant pled guilty on counsel's erroneous parole advice that he (Applicant) would be parole eligible, just like as in Coats.

After entering SCDC, Applicant wrote an SCDC Form 19-11 inmate to staff request, March 26, 2013 inquiring about his parole date, see attached exhibit (A), and on March 27, ~~2013~~ SCDC's classification returned exhibit (A) informing Applicant he was ineligible. Applicant immediately filed the instant PCR application in accordance with §17-27-45(c), and Coats, supra.

In his Opposition to the lower Court's Conditional Order, Applicant respectfully reminded the lower Court that this Court has already addressed this issue on succinctly identical facts and therefore S.C. Code Ann. §17-27-45(c), and Coats, supra should control here. The lower Court however, denied relief and dismissed the application.

Applicant would respectfully ask this Honorable Court to remand this case back to the lower Court with instructions to appoint PCR counsel, Rule 71.1(d), SCRCP and conduct an evidentiary hearing in accordance with *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983), to fully resolve this issue in the interest of justice.

Respectfully Submitted,

/s/ James Bogan

James N. Bogan, pro-se

Exhibit
A

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: NORMAN	TITLE:	DATE: 3-26-13 3-27-13
INMATE'S NAME: James Bogan	SCDC #:	288111
INSTITUTION: PERRY	LIVING QUARTERS:	Q2-A-113

I would like for you to
give me my parole eligible date
is, it soon or what.

Thank you,

James Bogan

DISPOSITION BY STAFF MEMBER:

max-out 12/12/18

sent start 4/28/11

I elig. for parole - multi. violent offenses

DATE: 3/27/13	SIGNATURE: J Norman
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-Vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Rule 243(c), explanation on the Attorney General's Office, P.O. Box 11549, Columbia, SC. 29211. The Original was served on Daniel Shearouse, Clerk, S.C. Supreme Court, P. O. Box 11330, Columbia, SC. 29211. This being done by placing the aforesaid in properly addressed, first-class postage affixed envelopes this 7th day of March, 2016.

Sworn to and Subscribed Before Me
this 7th day of March, 2016.

Nancy C. Merchant
NOTARY PUBLIC

MY COMM. EXPIRES 1-23-2023

Respectfully Submitted,

/s/ James Bogan ✓
James N. Bogan

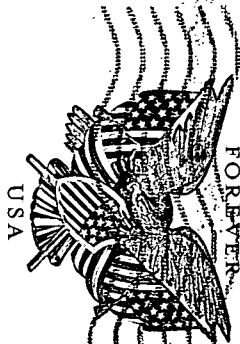
Applicant, pro-se

James N. Boggs
SCDC# 288111
PCI
430 Oaklawn Rd.
Pelzer, SC. 29669

S.C. Supreme Court
Mr. Daniel Shearouse, Clerk
P.O. Box 11330
Columbia, SC. 29211

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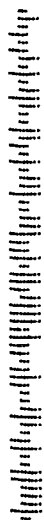
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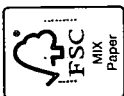
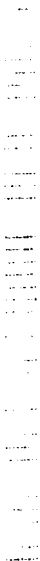
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THE DEPARTMENT OF CORRECTIONS HAS NOT INSPECTED OR CENSORED THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR THE SIGNATURES. PERRY CORRECTIONAL INSTITUTION SC DEPARTMENT OF CORRECTIONS