

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

APR 21 2010

**SC SUPREME COURT**

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

---

Appellate Case No. 2015-002513

---

Dyzshon R. Boykins, #354347, .....Petitioner-Respondent,

v.

State of South Carolina, .....Respondent-Petitioner.

---

**PETITION FOR WRIT OF CERTIORARI  
OF RESPONDENT-PETITIONER**

---

ALAN WILSON  
Attorney General

J. CLAYTON MITCHELL  
Assistant Attorney General  
S.C. Bar No. 101443

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR  
RESPONDENT-PETITIONER

**TABLE OF CONTENTS**

QUESTION PRESENTED.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT .....4

    The PCR court erred in denying the State’s motion to dismiss by recognizing the doctrine of equitable tolling to excuse Petitioner-Respondent’s noncompliance with the statute of limitations.....4

CONCLUSION.....8

## **QUESTION PRESENTED**

Whether certiorari is warranted to review the post-conviction relief court's ruling denying the State's motion to dismiss by recognizing the doctrine of equitable tolling to excuse Petitioner-Respondent's noncompliance with the statute of limitations.

## STATEMENT OF THE CASE

Petitioner-Respondent is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. The Orangeburg County Grand Jury indicted the Petitioner-Respondent at the November 2011 term of General Sessions for Armed Robbery (2011-GS-38-1722) and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-38-1723). Mark Wise, Esquire represented the Petitioner-Respondent on these charges.

On February 11, 2013, pursuant to negotiations, Petitioner-Respondent waived presentment to the grand jury and pleaded guilty to Entering a Bank With Intent to Steal (2011-GS-38-1722). The Honorable Eugene C. Griffith accepted the parties' negotiations and sentenced Petitioner-Respondent to seven (7) years' imprisonment. The Possession of a Weapon During the Commission of a Violent Crime charge was *nolle prossed*. Petitioner-Respondent did not appeal his plea or sentences.

Petitioner-Respondent filed an application for post-conviction relief on June 30, 2014. (App. p. 19-27). Respondent-Petitioner ("the State") filed a Return and Partial Motion to Dismiss on February 23, 2015. (App. p. 28-32). The Honorable Maite Murphy convened an evidentiary hearing on the application at the Dorchester County Courthouse on May 22, 2015. (App. p. 33). Petitioner-Respondent was present and represented by Jonathan D. Waller, Esquire. (App. p. 33). At the hearing, the State argued the action should be dismissed because it was filed outside of the statute of limitations. (App. p. 45, line 20 – p. 47, line 12). This motion was denied. (App. p. 46, lines 21-25). The PCR court issued an order filed August 26, 2015, denying Petitioner-Respondent relief on the merits of his application. (App. p. 62-70). This Petition for a Writ of

Certiorari follows.<sup>1</sup>

### STANDARD OF REVIEW

“[W]e review questions of law *de novo*, and ‘will reverse the decision of the PCR court when it is controlled by an error of law.’” Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later. S.C. Code Ann. § 17-27-45(A) (Supp. 1998).

---

<sup>1</sup> The State filed a notice of appeal on December 7, 2015, and Petitioner-Respondent’s cross-petition is still pending. The State reserves the right to file a return to that cross-petition at the appropriate time.

## ARGUMENT

**The PCR court erred in denying the State's motion to dismiss by recognizing the doctrine of equitable tolling to excuse Petitioner-Respondent's noncompliance with the statute of limitations.**

The PCR court erred in denying the State's motion to dismiss based on the statute of limitations. The PCR court allowed Petitioner-Respondent's case to reach the merits by considering the prison environment and whether there was sufficient access to materials to draft an application. The State submits certiorari is warranted to review and correct the PCR court's error in equitably tolling the one (1) year statute of limitations.

### How the Issue Arose

The State filed a Return and Partial Motion to Dismiss which argued that all allegations except those relating to a belated direct appeal be dismissed as untimely filed. (App. p. 28-32). The motion noted that Petitioner-Respondent pleaded guilty on February 11, 2013, and did not file the application until June 20, 2014. At the hearing, the State argued in support of the motion to dismiss and requested the court to dismiss all allegations except those related to a White<sup>2</sup> claim. (App. p. 35, lines 14-22). The PCR court allowed Petitioner-Respondent to testify as to why he was unable to file the application within the statute of limitations. Petitioner-Respondent emphasized that the facility he was placed in was on lock down for a long period of time and that he was unable to access the law library to work on his application. (App. p. 36, line 19 – p. 40, line 9). The PCR court denied the motion to dismiss citing Petitioner-Respondent's lack of access to materials to submit an application as grounds to toll the statute of limitations.

---

<sup>2</sup> White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

## Analysis

The State submits the PCR court erred in applying the doctrine of equitable tolling. There is no recognized legal authority to support the PCR court's ruling denying the State's motion to dismiss. The Supreme Court of South Carolina has reiterated that the Uniform Post-Conviction Relief Act, first adopted in 1969, "was to encompass the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy." Williams v. Ozmint, 380 S.C. 473, 671 S.E.2d 600 (2008). S.C. Code Ann. §17-27-10 to -160. South Carolina Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Petitioner-Respondent entered his plea to the offenses he is challenging on February 11, 2013. The application was filed on June 30, 2014, more than four (4) months after the statutory filing period had expired.

Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of the statute of limitations. Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (S.C. Ct. App. 2008) (internal citations omitted). Equitable tolling is reserved for extraordinary circumstances. Hooper v. Ebenezer Senior Services and Rehabilitation Center, 377 S.C. 217, 230, 659 S.E.2d 213, 220 (S.C. Ct. App. 2008) (reversed on other grounds). The South Carolina Supreme Court has only recognized equitable tolling in PCR actions in the limited circumstance of mental incompetency. Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009). "A claim of mental

incompetence does not constitute a *per se* reason to toll the statute of limitations . . . Rather, the critical inquiry remains whether the circumstances preventing a petitioner from making a timely filing were both beyond the petitioner's control and unavoidable despite due diligence." Id (citing Com. V. Carmeal, 274 S.W.3d 420 (Ky. 2008)). South Carolina courts have even held that incarceration in another state does not toll the running of the statute of limitations. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). Ignorance of the statute of limitations is not an excuse for late filing, even when an applicant claims he did not learn of the statute because he was incarcerated in another state. Id.

In Pelzer, the applicant admitted that the application was not "technically" filed within one year of the date of the issuance of the remittitur, and the court emphasized that "statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system." Pelzer, 378 S.C. at 520 (citing Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). South Carolina applies "[p]erhaps the most stringent requirement for equitable tolling of a post-conviction statute's time limit. . . In South Carolina, incarceration in another state *never* tolls the statute of limitations, and mental incompetency tolls the statute of limitations only if the petitioner shows that his mental incompetency prevented compliance with the deadline." Sanchez v. State, 816 N.W.2d 550, 561 (Minn. 2012) (internal citations omitted) (emphasis in original).

Here, it is clear that Petitioner-Respondent has filed this application after the one (1) year statute of limitations had expired. The State submits Petitioner-Respondent had ample opportunity to complete and file an application in a timely manner. The statute of limitations is an objective statute and unless certain extraordinary circumstances are shown in conjunction

with the exercise of due diligence, Petitioner-Respondent must have filed this application by February 12, 2014.

The State submits that Petitioner-Respondent is not entitled to the equitable tolling of the statute of limitations. Petitioner-Respondent has not shown that any extraordinary circumstances existed that prevented him from filing his application in a timely manner. The mere excuse that the prison where Petitioner-Respondent was housed was subject to numerous lockdowns does not justify his noncompliance with the statute. Nor does Petitioner-Respondent's alleged lack of access to materials necessary to complete an application excuse his noncompliance. It is noteworthy that the facilities where Petitioner-Respondent was housed were only on lockdown for a few months out of the one (1) year when the statute of limitations was running. (App. p. 38, line 9 – p. 40, line 9). Petitioner-Respondent also testified that he had access to pen and paper during that time period. (App. p. 37, lines 11-12). The State submits Petitioner-Respondent's testimony was found to be not credible and that the PCR court erred in relying on it to support its ruling denying the motion to dismiss. (App. p. 64). Further, the PCR court's ruling seems to require that courts must review each individual applicant's prison environment and access to materials necessary to complete and file an application to determine whether that applicant must have filed within one (1) year. This examination is in contravention of the purpose of the statute of limitations. See Pelzer 378 S.C. at 520 (“One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.” (internal citation omitted)).

Accordingly, the PCR court's ruling recognizing the doctrine of equitable tolling to excuse an untimely filed application is unsupported by any legal authority and requires reversal.

## CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to grant certiorari, dispense with further briefing, and correct this error by reversing the PCR court's ruling denying the motion to dismiss. In the alternative, the State requests this Court to grant certiorari and allow the opportunity to fully brief the issue.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. CLAYTON MITCHELL  
Assistant Attorney General  
S.C. Bar No. 101443

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

By:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

April 21, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM RICHLAND COUNTY  
The Honorable Maite Murphy, Circuit Court Judge

---

Appellate Case No. 2015-002513

---

Dyzshon R. Boykins, #354347,.....Petitioner,

v.

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

---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a copy of the **Petition for Writ of Certiorari of the Respondent-Petitioners** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

**Tiffany L. Butler, Esquire  
S.C. Commission of Indigent Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201**

This 21<sup>st</sup> day of April, 2016

  
JENNA C. BROWN  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

April 21, 2016

RECEIVED

APR 21 2016

80 SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Dyzshon R. Boykins, #354347 v. The State of South Carolina**  
**Appellate Case No. 2015-002513**  
**Lower Court Case No. 2014-CP-38-00798**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of **Petition for Writ of Certiorari of the Respondent-Petitioner** in the above-referenced case. By copy of this letter we are serving petitioner today.

Sincerely,

J. Clayton Mitchell  
Assistant Attorney General  
S.C. Bar No. 101443

JCM/jcb  
Enclosures

cc: Tiffany L. Butler, Esquire