

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

RECEIVED

JUL 22 2016

SC Court of Appeals
APPELLANT.

ELIJAH MARSHALL, #186970,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

EXPLANATION PURSUANT TO RULE
243(c), SCACR
Case No.: 2016-000957

This case comes before this Court on an "Explanation" to explain why this Court should not summarily dismiss the Appellant's notice of appeal because the Respondent claims that the habeas petition filed in the state court in this matter exceeds the statute of limitation to file such a petition. However, there is no statute of limitation as to when a petitioner may petition a court for a writ of habeas corpus. Habeas corpus remains available as an "extraordinary" constitutional remedy in certain circumstances. See Gibson v. State, 495 S.E.2d 426, 428 (S.C. 1998). The circumstance involved here should be deemed "extraordinary" by this Court and review should be granted. Habeas corpus is available only when other remedies are unavailable. Id. It is clear hear that the Respondent believes that a PCR application would be inappropriate at this time.

Not every constitutional error at trial will justify issuance of a writ of habeas corpus. The writ will only issue when the Petitioner's claims meets the Butler v. State, 397 S.E.2d 87, 88 (1990) standard - meaning that a violation has occurred "which, in the setting, constitutes a denial of fundamental fairness shocking to universal sense of justice". The Petitioner believes that this case meets the standard of denial of fundamental fairness because of his trial and appellate counsel ineffectiveness and being denied due process of law in this situation. The legal proceedings involved here are shocking to the universal sense of justice.

The South Carolina Supreme Court has granted the writ in only a handful of cases. See Tucker v. Catoe, 552 S.E.2d 712, 718 (S.C. 2001); Slack v State, 429 S.E.2d 801, 802 (S.C. 1993); and Butler v. State, supra.

If a petitioner has exhausted PCR remedies, as the Petitioner has here, he may file a petition for writ of habeas. The Petitioner alleged in his petition that he has exhausted all other remedies and has set out his constitutional claims in his petition, such as ineffective assistance of counsel and denial of due process of law under the Sixth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, the Petitioner has made out a prima facie case showing that he is entitled to relief and this Court should accept the foregoing as a valid "explanation" and ignore the Respondent's contention that habeas corpus relief is improper because no PCR application would be timely at this juncture.

This 27 day of June, 2016

Respectfully submitted,
Elijah Marshall
Elijah Marshall, #186970
McCI F-4 B-side
386 Redemption Way
McCormick, SC 29899
Appellant, pro-se

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

JUL 22 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No.: 2016-000957

ELIJAH MARSHALL, #186970, APPELLANT,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2016, addressed to the attorney of record, T. Parkin C. Hunter, Esquire, Assistant Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549 [by personally delivering a copy of it to the McCormick Correctional Institution Mail room].

July 20, 2016

SWORN to and subscribed before me this

20 day of July, 2016

J. Franklin
Notary Public of South Carolina

My Commission Expires 12-16-2019

Elijah Marshall

Elijah Marshall, #186970
McCI F-4 B-side
386 Redemption Way
McCormick, SC 29899
Appellant, pro-se

ELIJAH MARSHALL #186970

McCI F-4 B-side
386 Redemption Way
McCormick, South Carolina 29899

June 24, 2016

Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Elijah Marshall, Appellant v. State of South Carolina, Respondent
Explanation Pursuant to Rule 243(c), SCACR
Case No.: 2015-000957

Dear Clerk:

Please find enclosed for filing the Explanation, and the Affidavit of Service, in reference to the above entitled matter.

Please return to me a clock-stamped copy of the enclosed document at your earliest convenience.

Thank you for your attention and assistance in this very important matter.

Sincerely,

cc: Attorney General's Office
Personal file

Elyah Marshall

ELIJAH MARSHALL #18697D

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MCI F-4 B-side 216
386 Redemption Way
McCormick, South Carolina 29899
JUL 22 2016
SC Court of Appeals

Jenny Abbott Kitchings
Clerk S.C. Court of Appeals
PO Box 11629
Columbia, S.C. 29211

July 19, 2016

RE: Elijah Marshall Appellant v. State of S.C.
Appellate Case NO. 2016-000957:

Dear Clerk Kitchings:

please find enclosed the "EXPLANATION PURSUANT TO RULE
243 (e) SCACR Case No: 2016-000957" with PROOF OF SERVICE

This letter is in response to your letter dated July
11, 2016. I send the explanation on June 27, 2016.
I also send a copy to T. Parkin C. Hunter, Esquire
Assistant Attorney General PO Box 11549 Columbia, S.C.
29211-1549 Attorney for Respondent.

Sincerely
Elijah Marshall

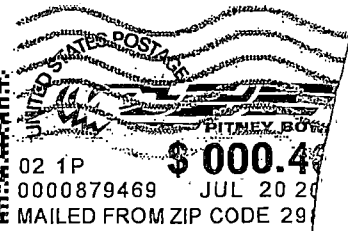
ELIZAH MARSHALL 181970

F-4 B 216

McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

AUGUSTA GA 309

20 JUL 2016



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JUL 22 2016
SC Court of Appeals

JENNY ABBOTT KITCHING
CLERK OF COURT
P.O. BOX 11629
Columbia S.C. 29211

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