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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No.: 2015-002214

Quintin Linen, 238553,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did PCR court properly find that Petitioner received full appellate review for his first PCR application and that, even viewing the facts in a light most favorable to Petitioner, his Austin v. State claim was properly barred by the doctrine of *Laches*?

STATEMENT OF THE CASE

Petitioner (Quintin Linen) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the January 1988 term of the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire, represented Petitioner. On January 29, 1988, Petitioner pled guilty as indicted. The Honorable John Hamilton Smith sentenced him to a term of imprisonment of twelve years. Petitioner did not appeal his conviction or sentence, and he was released from SCDC custody.

Petitioner did not file his first PCR application (1997-CP-10-2086) until April 2, 1997, more than nine years after his 1988 conviction. Petitioner filed this application after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926). On April 8, 1997, Petitioner proceeded to trial and was found guilty as indicted. The Honorable Charles W. Whetstone, Jr., sentenced Petitioner to life imprisonment without parole (LWOP) pursuant to the "two strikes" law. *See* S.C. Code Ann. § 17-25-45 (2014).

In his first PCR application, Petitioner alleged the following grounds for relief:

1. Ineffective assistance of counsel:
    i. "Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses."
2. Guilty plea – waiver of rights not knowingly and voluntarily made:
    i. "Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimidated and like I did not have a choice. I did what Mr. Brown

told me to do, not what I felt was right."

This application was subsequently merged with Petitioner's second PCR application (1998-CP-10-5031), which was filed on December 31, 1998, and addressed his 1997 conviction. He alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. "The manner in which the State has proscribed that my sentence be carried out is unconstitutional;" and
3. After discovered evidence, constitutional issues – novel issues.

An evidentiary hearing was held at the Charleston County Courthouse on May 22, 2000. Juan Tolley, Esquire, represented Petitioner. By order filed October 12, 2000, the Honorable H. Dean Hall denied and dismissed both applications with prejudice. The order stated:

> This Court finds Petitioner's 1997 PCR application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Petitioner was convicted on January 28, 1988; however, he filed his application on April 2, 1997, well after the July 1, 1996 statute of limitations passed. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Petitioner filed a pro se motion to alter or amend judgment pursuant to Rule 59(e), SCRCP, on November 7, 2000. Upon information and belief, a hearing was held on February 15, 2001, at the Charleston County Courthouse.[1] Ellen Howard, Esquire, represented Petitioner. By order filed July 30, 2003, the Honorable Daniel F. Pieper denied the motion.

[1] Judge Hall retired prior to the Rule 59(e) hearing, and Chief Administrative Judge Pieper presided over the hearing.

Petitioner appealed, and Eleanor Duffy Cleary, Esquire, represented him. The South Carolina Supreme Court denied his Johnson[2] petition for a writ of certiorari on May 13, 2004. The remittitur was issued on June 1, 2004.

Petitioner subsequently filed another PCR application (2001-CP-10-1999) on March 16, 2001, challenging both his 1988 and 1997 convictions, and alleging the following ground for relief:

1. "Denied unlawful PCR procedures and direct appeal."
2. "Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S.C. Bar Court out of legal lawful jurisdiction of S.C. Circuit Court."
3. "Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded indictment at no time has any counsel been honest and lawfully working for my best interest."
4. "Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCRs and etc."

Respondent made its return and motion to dismiss on June 14, 2001. On July 5, 2001, Petitioner submitted a pro se memorandum in opposition to Respondent's motion to dismiss. Ellen Howard, Esquire, represented Petitioner. Upon information and belief, Petitioner withdrew his application at a hearing on January 16, 2002. By order filed January 17, 2002, the Honorable R. Markley Dennis, Jr., dismissed his application with prejudice after finding Petitioner freely, voluntarily, and intelligently withdrew his application.[3]

Petitioner filed his current application on March 31, 2014, solely challenging his 1988 conviction and alleging the following grounds for relief:

1. Petitioner was denied the opportunity for his

[2] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).
[3] Petitioner subsequently filed two more PCR applications (2005-CP-10-4339, 2007-CP-10-2431) and a pro se federal petition for a writ of habeas corpus (04-2382) challenging his 1997 conviction, which were all dismissed.

one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life without parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.

2. Petitioner was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Petitioner now respectfully argues that the Petitioner's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Petitioner was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should now have his first PCR action reopened and that he be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

Respondent filed a Return and Motion to Dismiss on February 17, 2015. An evidentiary hearing was convened at the Charleston County Courthouse on April 23, 2015. Petitioner was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Elizabeth H. Neyle, Esquire. On September 22, 2015, the Honorable W. Jeffrey Young issued an Order of Dismissal. On June 3, 2016, Petitioner filed a Petition for Writ of Certiorari to this Court. This Return follows.

STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

The PCR court properly found that Petitioner received full appellate review for his first PCR application and that, even viewing the facts in a light most favorable to Petitioner, his Austin v. State[4] claim is properly barred by the doctrine of *laches.*

Petitioner claims the PCR court erred in "denying Petitioner's application for Post-Conviction Relief for the records before the court demonstrated that Petitioners' original PCR action addressing his 1988 judgment was improperly dismissed an invalid order issued in connection with a separate PCR case involving different charges, a separate general sessions proceeding in a different defense attorney." Petitioner also claims the PCR court erred "in denying Petitioner's application for Post-Conviction Relief with the records before the court demonstrated that Petitioners' original PCR action addressing his 1980 judgment was improperly dismissed without notice to petitioner and without the opportunity to respond required by statute." These arguments are without merit.

In a PCR case, the lower court's findings will be upheld where there is "any evidence of probative value." As viewed through the procedural history and the PCR's findings, the PCR court properly dismissed Petitioner's PCR application.

Petitioner pled guilty in 1988 to armed robbery and waited until April 2, 1997, to file his first PCR application, only after he was given notice that the State was seeking a life without parole sentence on another arm robbery charge. This case was later merged with his 1998 PCR action which was fully vetted an evidentiary hearing held at the Charleston County Courthouse on May 22, 2000. In the Order of Dismissal, the Honorable Dean Hall specifically held that Petitioner's 1997 PCR application, collaterally attacking his 1988 was barred by the statute of limitations. (App. p. 311; 432). See Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App.

[4] 305 S.C. 453, 409 S.E.2d 395 (1991).

1992) (*Res judicata* prohibits subsequent actions by the same parties on the same issues); see also Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). Clearly, this issue has already been raised and ruled upon. Therefore, the PCR court properly held that "[Petitioners'] claim that he was 'denied the opportunity for his one full collateral review of the judgment and sentences addressed in his first PCR' is without merit and must be dismissed." (App. p. 434).

Additionally, the PCR court was correct in holding that Petitioner has already received a full appellate review in his prior case. Petitioner's 1997 and 1998 PCR cases were obviously appealed by PCR appellate counsel to this Court via a writ of certiorari pursuant to Johnson, *supra*, on May 13, 2004. (App. p. 338). Petitioner was given an opportunity to file a pro se petition and argue the issue he is now arguing. Clearly, Petitioner filed a response as evidenced in the Order dated May 13, 2004 from this Court. (App. p. 346). This Court then issued a remittitur on June 1, 2004. Subsequently, Petitioner filed a successive PCR application and 2001, which he freely, voluntarily and intelligently withdrew. (App. p. 373). Undoubtedly, Petitioner has had a full review of his 1988 armed robbery conviction and his 1997 and 1998 merged PCR actions. Petitioner has simply consumed the entire apple. Thus, the PCR court properly found that "[Petitioner] received appellate review and was assisted by counsel for his 1997 and 1998 PCR actions."

Nonetheless, the PCR court further found that Petitioner's current action is barred by the doctrine of *laches*. The PCR court held that this "application was filed more than twenty-six years after [Petitioners' 1997 conviction], more than thirteen years since Judge Hall's order denying his first PCR application, and more than nine years since [this Court] denied his petition

for writ of certiorari." (App. p. 435). The PCR court explained that "our courts require reasonable diligence in pursuing relief." (App. p. 435). Additionally, the PCR court quoted McElrath v. State[5] in saying that this requirement "guards the State's legitimate expectation that it will not be called upon without due calls, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Lastly, the PCR court properly held that the "delay in filing this application and his Austin claim more than 13 years after the order of dismissal from his first application has greatly prejudiced Respondent." (App. p. 435). Respondent clearly agrees with the PCR court in that it would be nearly impossible to produce witnesses and evidence to respond to petitioner's allegations or defend a collateral or direct attack against his 1997 and 1998 PCR actions, let alone his 1988 armed robbery conviction. Therefore, the PCR court's order in this case must be affirmed.

[5] 276 S.C. 282, 283, 277 S.E.2d 890, 891 (1981)

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General
SC Bar # 78871

By: _____
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September 28, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County
Court of Common Pleas
The Honorable W. Jeffrey Young, Circuit Court Judge

QUINTIN LINEN,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Tara Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

This 28th day of September, 2016

Brianna Arnone
BRIANNA ARNONE
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
SEP 28 2016
S.C. SUPREME COURT

September 28, 2016

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

Re: **Quintin Linen v. State of South Carolina**
Appellate Case No. 2015-002214
Lower Court Case No. 2014-CP-10-2117

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

J. Rutledge Johnson
Assistant Deputy Attorney General
SC Bar No. 78871

JRJ/bea
Enclosures

cc: Tara Shurling, Esquire (2 copies)