

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Supreme Court County

Honorable R. Ferrell Cothran, Circuit Court Judge

ORIGINAL

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S.C. SUPREME COURT

RENWICK MOSE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-000609

BRIEF OF PETITIONER

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ISSUE PRESENTED

Did the lower court err in dismissing petitioner's application for post-conviction relief on the ground that it reached the clerk's office three days outside the statute of limitations when it was placed in the SCDC mail out box seventeen days prior to the PCR filing deadline?

STATEMENT

Petitioner Renwick Dassan Mose pled guilty to first degree burglary and first degree assault and battery during the March 2013 term of the Williamsburg County General Sessions Court before Judge Clifton Newman. Petitioner was sentenced to an aggregate prison term of twelve years. Cesar McKnight represented petitioner at the plea proceeding, and Assistant Solicitor Kimberly V. Barr appeared on behalf of the state. App. 1-41. No direct appeal was taken from the plea proceeding.

Petitioner filed a PCR application dated March 10, 2014, with the Williamsburg County Office of the Clerk of Court listing allegations of ineffective assistance of trial counsel. App. 43-50. The respondent filed a return dated September 26, 2014, and moved to have petitioner's PCR application summarily dismissed as untimely filed. App. 51-54. On October 1, 2014, Judge W. Jeffrey Young issued a Conditional Order of Dismissal on the ground that petitioner's PCR action was untimely filed. App. 56-58. Petitioner submitted a "Motion in Response to Conditional Order of Dismissal" on December 5, 2014. App. 59-62. On February 5, 2015, Judge R. Ferrell Cothran, Jr. issued a Final Order dismissing petitioner's PCR action as untimely filed. App 63-64.

Petitioner appealed Judge Cothran's Final Order and filed a petition for writ of certiorari dated April 6, 2016. This Court granted the petition via Order dated September 8, 2016. This brief of petitioner follows.

ARGUMENT

The lower court erred in dismissing petitioner's application for post-conviction relief on the ground that it reached the clerk's office three days outside the statute of limitations when it was placed in the SCDC mail out room seventeen days prior to the PCR filing deadline.

During the plea proceeding, the solicitor apprised the plea judge of the facts in the case. Apparently, petitioner entered Terry Cooper's room at the Meetze Hotel in Williamsburg County on September 17, 2010, and attacked Cooper. App. 6, 1.10- p. 7, 1.6. On March 7, 2013, petitioner pled guilty to the burglary and assault charges filed in connection with the case. App. 1 – 41.

On March 10, 2014, petitioner's PCR application was stamped "filed" at the Clerk of Court's Office for Williamsburg County. App. 43 – 50. Petitioner argued in his response to the Conditional Order of Dismissal that he signed and placed his PCR application in the SCDC mailroom for mailing on February 18, 2014. App. 59 – 62. The PCR judge ruled as follows:

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court notes S.C. Code Ann. §17-27-40 provides that a proceeding is "commenced by filing an application with the clerk of court. Mailing does not constitute filing under §17-27-45(A). Gary v. State, 347 S.C. 627,557 S.E.2d 662 (2001). This Court notes the Applicant was pled guilty on March 7, 2013. As this action was filed on March 10, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann §17-27-45(a) (Supp. 2003). App. 63-64.

In Peloquin v. State, 321 SC 468, 469 S.E.2d 606 (1996), the Court held that after July 1, 1996, via S.C. 17-27-45 (a), applicants shall file their PCR actions "within one year after the entry of a judgment of a conviction or within one year after sending the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

The state contended that petitioner missed the March 7, 2014, PCR filing deadline by three (3) days. However, petitioner actually complied with the one-year PCR filing deadline because he

signed, notarized, and placed his PCR application in the SCDC mail out room on February 18, 2014, which was well in advance, i.e. seventeen (17) days, before the March 7, 2014 deadline. Regardless of the calculations, petitioner clearly made a good faith effort to meet the deadline. Furthermore, an analysis of the three-day late filing dilemma in light of the overall intent of the PCR statutory scheme would seem to be a minimal time lapse. Therefore, the dismissal of petitioner's PCR action based on three-day late filing was unfair and in violation of the spirit of the PCR statutory boundaries regarding filing deadlines.

The Spirit v. Letter of the Law & Form Over Substance

Legislative intent governs when ascertaining statutory interpretations; and the intent is discovered primarily from the language in the statute wherein words are given their plain and ordinary meaning. State v. Brown, 402 S.C. 119, 740 S.E.2d 119 (2013). However, a court can consider the spirit of the enactment or the spirit of a law if the letter of the law or the literal import of the statute would lead to an absurd result that could not have been contemplated by the legislature. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E. 2d 258 (1984); South Carolina Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946). Compare, Collins v. Doe, 343 S.C. 119, 539 S.E.2d 62 (2001), where driver Collins sought recovery of injury claims via the presentation of witnesses in her case rather than the required witnesses' affidavits under section 38-77-1701, but was awarded damages ultimately based on the Court's rationale that "although section 38-77-170 [did] not specifically provide for sworn testimony as a substitute for an affidavit...such testimony fulfill[ed] the legislative intent...and to hold otherwise would elevate "**form over substance.**" In the case at bar, a three-day bar to a PCR action would be considered unfair in light of the spirit of the law and form over substance also.

Reasonableness in Applying the Law

The theory of reasonableness is also assigned to the enforcement of newly enacted laws. For example, when the Peloquin Court addressed the issue of barred PCR claims under the newly legislative enactment of the one-year statute of limitations for filing PCR applications, the Court held that “no new limitation shall be made to affect existing claims without allowing a **reasonable** time for [the] parties to bring [their PCR] actions.” The issue of whether a barred PCR action is reasonable was raised in Wilson v. State, 348 S.C. 559 S.E.2d 581 (2002), and Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999). In Wilson, the Court held that the one-year deadline to file a PCR action did not apply where a defendant did not voluntarily waive his right to a direct appeal due to ineffective assistance of trial counsel in failing to file the direct appeal notice. In Odom, the Court held that the one-year deadline did not apply to Austin appeals because Austin appeals are belated appeals where PCR appellate reviews were not voluntarily waived. In Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), the Court held that an inmate who did not voluntarily waive his right to a PCR appeal be granted one if it is proven that PCR counsel failed to file the notice of appeal in the PCR case. A three-day late bar to a PCR action clearly would be considered unreasonable.

Equitable Tolling

Also, see Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009), where the court addressed the issue of the tolling the statute of limitations for mentally incompetent PCR applicants who failed to timely file for PCR actions due to mental incompetency. One is entitled to equitable tolling if he shows that he has been pursuing his rights diligently and that some extraordinary circumstance stood in his way. Pace v. DiGuglielmo, 544 U.S. 408 (2005). Filing one’s PCR application

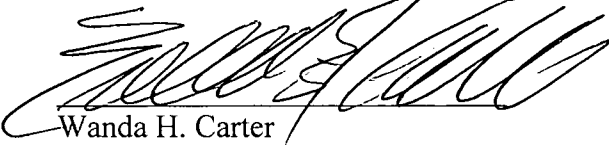
seventeen days in advance of the due date in which to file the PCR action was due diligence on petitioner's behalf, and his inability to regulate SCDC mail outings constituted extraordinary circumstances beyond his control. Compare Holland v. Florida, 130 S.Ct. 2549 (2010), where the court held that the one-year statute of limitations on petitions of federal habeas relief by state prisoners is subject to equitable tolling. Note that petitioner's case differs from the facts in Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (2008), where the court denied relief to an inmate requesting equitable tolling where he filed his PCR application timely, but in the wrong venue, because the error was simple neglect.

One Bite At The Apple

Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "**one bite at the apple.**" Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Wilson v. State, *supra*, Odom v. State, *supra*. Here, it was unconscionable for the PCR judge to dismiss petitioner's PCR action when he mailed his PCR application in seventeen days prior to the deadline to do so, and due to no fault of his own, his PCR application did not leave the SCDC mailroom in time to reach the Clerk's Office until a mere three days after the statutory deadline of one-year to file PCR actions. Therefore, based on the totality of the circumstances surrounding petitioner's pursuit of his PCR action, a sense of fundamental fairness would require that petitioner be afforded the benefit of his PCR action filed in his case.

CONCLUSION

Based on the foregoing position taken by petitioner, counsel for petitioner requests that this Court reverse the PCR judge's ruling and allow petitioner to receive his PCR hearing in the case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

RENWICK MOSE,

PETITIONER,

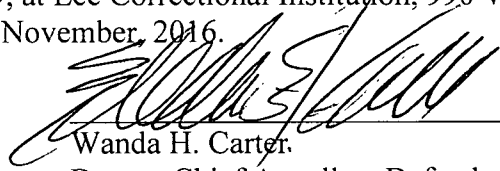
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STATE OF SOUTH CAROLINA,

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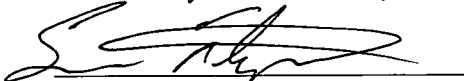
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Renwick Mose, #271319, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 9th day of November, 2016.



Wanda H. Carter.
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of November, 2016.

 (L.S)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.