

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

R. Ferrell Cothran, Jr., Circuit Court Judge

2014-CP-45-125
Appellate Case No. 2015-000609

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DEC -6 2016

S.C. SUPREME COURT

RENWICK MOSE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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PETITIONER'S ISSUE PRESENTED

- I. Did the lower court err in dismissing petitioner's application for post-conviction relief on the ground that 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 OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Petitioner was true bill indicted at the July 2011 term of the Williamsburg County Grand Jury for Burglary—first degree and Assault and Battery—first degree (2011-GS-45-0105). He was represented by Cezar McKnight, Esquire. On March 7, 2013, Petitioner pled guilty to the lesser included offense of Burglary-second degree and as indicted for Assault and Battery—first degree. The Honorable Clifton Newman sentenced Petitioner without negotiations or recommendations to a twelve year term of imprisonment for Burglary—second degree and ten year term of imprisonment for Assault and Battery—first degree. Petitioner did not appeal his guilty plea or sentence.

Petitioner subsequently filed an application for post-conviction relief (PCR) on March 10, 2014 (C.A. No. 2014-CP-45-125). Respondent filed its Return and Motion to Dismiss on September 26, 2014. The Honorable W. Jeffrey Young issued a Conditional Order of Dismissal dated October 1, 2014 and filed October 17, 2014, which allowed Petitioner 20 days to submit any factual or legal reasons why the application should not be dismissed. The Conditional Order of Dismissal was served on Petitioner on November 20, 2014.

Petitioner submitted a "Motion in Response to Conditional Order of Dismissal," received by Respondent on December 10, 2014, in which he argued that his application was deemed filed by the courts under the "mail box rule" when it was placed in the mail on February 18, 2014. The Honorable R. Ferrell Cothran, Jr. issued a Final Order of Dismissal which denied and dismissed the application with prejudice signed on February 5, 2015, and filed February 13, 2015.

Petitioner filed a timely Notice of Appeal of the denial of his post-conviction relief application on March 23, 2015. Petitioner's Appendix and Petition for Writ of Certiorari were filed on April 6, 2016. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief 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 post-conviction relief 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

I. The PCR Court did not err in dismissing Petitioner's application because it was filed outside the statute of limitations.

Petitioner argues that the PCR Court erred in dismissing Petitioner's PCR application because it was mailed before the statute of limitations had passed but was not filed in the court until after the deadline.

The statute of limitations for filing an application for PCR is one year. Section 17-27-45(A) of the South Carolina Code provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of 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).

Mailing does not constitute filing. Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). "When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." Gary, 347 S.C. at 629, 557 S.E.2d at 663 (citing Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955)).

Our courts have held that "statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996).

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. 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.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

The South Carolina Court of Appeals addressed this issue in Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008). In this post-conviction relief action, the applicant notarized and mailed his application before the statute of limitations passed, but he incorrectly mailed it to the Office of Appellate Defense who then forwarded the application to the clerk's office for filing. The application was filed the following week on a date which was past the statute of limitations. The PCR court dismissed his application for failure to conform to the statute of limitations, and the applicant appealed.

The court in Pelzer affirmed the PCR court's dismissal of the application, holding that the applicant's error did not result from any lack of legal skill, but was the result of simple neglect. Pelzer at 522, 662 S.E.2d at 621. It explained that "the narrow window by which Pelzer's application missed the statute of limitations cannot be construed as so exceptional a circumstance as to warrant equitable tolling" of the statute of limitations. Id.

The current case is similar enough to Pelzer to constitute the same holding. Petitioner claims his application was placed in the SCDC mail room on February 18, 2014, which was before the March 7, 2014 deadline. Petitioner has offered no proof that the application was placed in the mailroom on that date or when it was postmarked or stamped. The only date that is certain is the date it was filed with the Clerk of Court, March 10, 2014.

As in Pelzer, Petitioner has not alleged any wrongdoing by the State or by the Clerk's office. Petitioner argues only that the spirit of post-conviction relief should allow him extra time to file his complaint. Petitioner has shown no extraordinary circumstances warranting equitable

tolling of the statute of limitations, and has failed to show any basis on which a deviation from the statute should be allowed.

Legislative Intent

Petitioner argues that the legislative intent of the statute should be considered to avoid an "absurd result that could not have been contemplated by the legislature." Brief of Respondent at 4. Respondent submits that the fact that the legislature created a statute that placed a limitation on the period of time in which an inmate could file a post-conviction relief action demonstrates the legislature's intent to set a firm deadline on the application. The legislature clearly had an interest in creating a finite window of time that they deemed reasonable to file this action in order to promote judicial efficiency. The legislature did not want inmates to be able to challenge their convictions after a long length of time has passed. They recognized that, over time, records, transcripts, and evidence are destroyed, witnesses who participated in the underlying action become unavailable, and it becomes extremely difficult for the State to lead a new trial should relief be granted. The one year deadline promotes the interests of justice required by our judicial system.

Furthermore, an application for post-conviction relief filed three days outside the statute of limitations is hardly an "absurd result that could not have been contemplated by the legislature." *Id.* The fact that the legislature set a hard deadline leads to the inevitability that PCR applications will be filed after the statute of limitations has passed and will be dismissed. This is obviously a result that the legislature contemplated and expected.

Reasonableness

Petitioner further argues that South Carolina case law requires a reasonable amount of time for the parties to file their action for post-conviction relief, and that "a three-day late bar to a

PCR action would be considered unreasonable." Brief of Petitioner at 5. Respondent submits that Petitioner was given a reasonable amount of time to file his action—one year. Petitioner had 365 days from the date he pled guilty to file an application. This is clearly a reasonable amount of time to allow Petitioner to file this action. The fact that Petitioner waited until just before the one year deadline does not make the one year deadline any less reasonable.

Equitable Tolling

Petitioner argues that the statute of limitations should be equitably tolled in this case because he has proven that he pursued his rights diligently and that extraordinary circumstances stood in his way. Brief of Petitioner at 5.

First, Respondent submits that Petitioner has not proven that he diligently pursued his rights. Petitioner had 365 days from the date he pled guilty to file his application with the clerk of court. He waited at least 348 days before he finally submitted his application to be mailed. He has offered no explanation for not submitting his application sooner. More importantly, Petitioner has offered no proof that he actually did place his application in the mail room seventeen days before the deadline. He has provided no document listing the date on which he mailed his application, and has simply alleged in his pleadings that he did so on that date. Petitioner simply has not proven that he diligently pursued his rights.

Second, Petitioner argues that the fact that the mail took twenty days to take Petitioner's application to the clerk's office for filing is an extraordinary circumstance that was out of his control. Respondent submits that this is not an extraordinary circumstance under South Carolina case law.

The Court of Appeals explained this doctrine in Pelzer:

[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in

some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.

Pelzer at 521, 662 S.E.2d at 620. It is likely that it often takes a longer period of time than usual for mail to travel from the SCDC mailroom to its final destination. This is not a rare or exceptional circumstance, as it is often the case. Petitioner should have known and accounted for the extra time it would take to mail something from the prison.

Pelzer explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights." Id. Petitioner here has not been misled by fraud or coercion by any other party.

Petitioner has failed to meet his burden in proving that he pursued his rights diligently and that extraordinary circumstances existed to prevent his timely filing, and therefore the doctrine of equitable tolling does not apply.

Petitioner has not proven any reason why the statute of limitations should not apply to his application for post-conviction relief and the lower court's dismissal of his application should be affirmed.

CONCLUSION

For the reasons stated above, this Court should affirm the lower court's ruling and deny the requested relief.

Respectfully submitted,

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December 6, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

RENEWICK MOSE, #271319

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

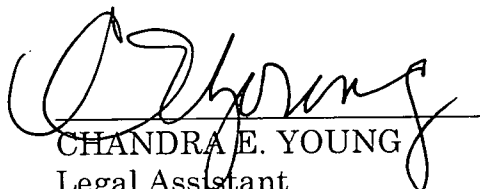
PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Brief of Respondent on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 6th day of December 2016.


CHANDRA E. YOUNG
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ALAN WILSON
ATTORNEY GENERAL

December 6, 2016

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S.C. SUPREME COURT

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

**RE: Renwick Mose, #271319 v. State of South Carolina
2015-000609**

Dear Mr. Shearouse:

I am enclosing the original and fourteen (14) copies of the Brief of Respondent in the above case.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:cey
Enclosures

cc: Wanda H. Carter, Esquire
Trisha Allen, Victim Services (letter only)