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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
ROGER L. COUCH, Circuit Court Judge

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FEB 06 2017
SC Court of Appeals

STATE OF SOUTH CAROLINA

Respondent.

V.

Emilio R. Edwards

Prose Appellant.

APPELLATE CASE NO. 2017-000117

PRO SE BRIEF OF APPELLANT

Emilio Edwards
Appellant

Livesay B Corr. Inst.
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S.C. SUPREME COURT

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ARGUMENT 5

1. The Appellant argue that the court error in summary dismissal of PCR application base upon the expiration of the statute of limitations, the presumption against successive PCR application, and for failure to make a prima facie showing with regards to his subject matter Jurisdiction and newly discover evidence claim 5.

2. The Appellant argue there was no understanding of the plea between defendant and counsel. The trial Judge never inform the defendant he the right to appeal within (10) days. 5.

3. The Appellant argue that counsel was ineffective for imporpely advising him that he would be parole eligible. 5

4. The Appellant argue that counsel was ineffective for failing to request and review impanding documents and supporting material of grand Jury that had indicted defendant. 5

5. The Appellant argue that the issue of Lack of Subject Matter Jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised by the court. 5

TABLE OF AUTHORITIES

CASES

<u>Dover v. STATE</u> , 304 S.C. 433, 405 S.E. 2d 391 (1990)	5
<u>Boykin v. Alama</u> , 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 274 (1969)	5
<u>STATE v. Hazel</u> , 275 S.C. 392, 271 S.E. 2d 602 (1980)	5
<u>Harris v. Lecke</u> , 282 S.C. 131, 318 S.E. 2d 360 (1984)	5
<u>STATE v. RAY</u> , 310 S.C. 431, 437, 427 S.E. 2d 171, 174 (1993)	5
<u>STATE v. Lamber</u> , 266 S.C. 574, 225 S.E. 2d 340 (1976)	5
<u>Cherry v. State</u> , 300 S.C. 115, 386 S.E. 2d 624 (1989)	5
<u>McCoy v. State</u> (Opinion No. 27214, Feb. 6, 2013)	5
<u>LEAMON v. STATE</u> , 363 S.C. 432, 434, 611 S.E. 2d 494, 495 (2005)	5
<u>Delaney v. State</u> , 269 S.C. 555, 556, 238 S.E. 2d 679, 679 (1977)	5
<u>STATE v. McClure</u> 277 S.C. 256, 191 S.E. 2d 158 (SC 1982)	5
<u>STATE v. Funderburk</u> 259 SC 256 191 S.E. 2d 520 (1972)	5
<u>Hodges v. Rawley</u> 341 SC 79, 85 533 S.E. 2d 578, 581 (2008)	5
<u>STATE v. Blackmon</u> 304 SC 270, 403 S.E. 2d 600 (SC 1991)	5
<u>STATE v. Lee</u> 504 S.E. 2d 559 (SC App 2002)	5
<u>STATE v. Castleman</u> 64 S.E. 2d 250 (1951)	5
<u>STATE v. MEANS</u> Op No. 26105 (SC supreme Ct. Filed, App 2006)	5
<u>STATE v Best</u> 257 S.C. 361, 186 S.E. 2d 272 (1972)	5

OTHER AUTHORITIES

S.C. ANN. Code 17-27-45 (A)	5
S.C. ANN. Code 17-27-80	5

STATEMENT OF ISSUES ON APPEAL

Did the court error in finding the application be summarily dismissed based upon the expiration of the statute of limitations, and presumption against successive PCR applications, and for failure to make a prima facie showing with regards to his subject matter jurisdiction and newly discovered evidence claims.

STATEMENT OF THE CASE

This matter comes before the court by way of an application for post-conviction relief (PCR) filed March 17, 2015. The Respondent made its return on September 14, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, and for failure to make a prima facie showing with regards to his subject matter jurisdiction and newly discovered evidence claims that Applicant is entitled to relief.

Pursuant to this request, and after reviewing the pleading in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September 23, 2015, and filed September 28, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 15, 2015, serving the above mentioned Conditional Order of Dismissal on the Applicant. In a document captioned "Motion Objecting to State Motion to Dismiss and Return" and filed on September 29, 2015, Applicant argues that he deserves a hearing based upon his subject matter jurisdiction and newly discovered evidence claims. In a document captioned "Final Order" and filed on October 12, 2015, Applicant argues that his guilty was involuntarily

FACTS

Appellant may wish to set out the facts relevant to the arguments at this point in the brief. This, however, is optional, and the relevant facts may be included in the discussion of each argument. In either case, the brief must contain references to where the salient facts can be found in the Record on Appeal.

ARGUMENTS

In McCoy v. State (Opinion No. 27214, Feb. 6, 2013). The S.C. Supreme Court reversed and remanded for hearing the dismissal of the petitioner's PCR Application. The Supreme Court held that summary dismissal of the petitioner's second PCR application was error because genuine issues of material fact existed as to whether his claim was successive or barred by the statute of limitations. When considering the state's motion for summary dismissal, where no evidentiary hearing has been held the PCR Judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Limon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (Citing S.C. Code Ann 17-27-80). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR Applications and those facts are not conclusively refuted by the record before the PCR court a question of fact is raised which can only be resolved by a hearing cf. Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977)

CONCLUSION

FOR the reasons stated, this Court should reverse the judgment of the circuit court.



Respectfully Submitted,

* Emilio Edwards

Emilio R. Edwards

Livesay B. Corr. Inst.

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UNA, S.C. 29378

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 2 DAY OF February, 2017

AT THE COUNTY OF WEBSTER HORTON

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SOUTH CAROLINA

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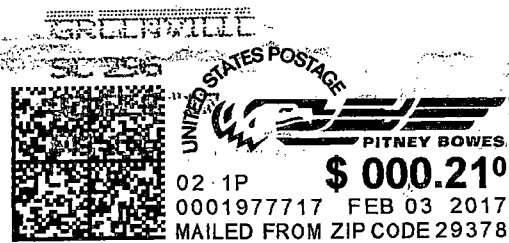
APPELLATE CASE NO. 2017-000117

CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies that a true copy of the PRO SE Brief of Appellant in the above reference case has been served upon Caitlin B. Hasting, Esquire, at the Lembert Dennis building 1000 Assembly Street, Room 519, Columbia S.C. 29201, and a copy of the PRO SE Brief of Appellant, Designation of Matter and Record on Appeal have been served upon South Carolina Court of Appeal, Calhoun Building, 1220 Senate St. Columbia, S.C. 29201

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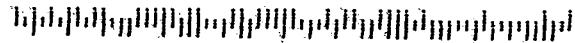
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