

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Berkeley County

Honorable Perry H. Gravely, Circuit Court Judge

\_\_\_\_\_

RECEIVED

MAY 30 2017

S.C. SUPREME COURT

RODNEY LADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002093

\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_

David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT .....3

CONCLUSION .....7

PETITION TO BE RELIEVED AS COUNSEL .....8

**ISSUE PRESENTED**

Whether the PCR court erred in ruling that the statute of limitations barred petitioner's PCR action where petitioner demonstrated that the limitations period should have been tolled because of his mental illness and other health problems, including eye surgery, which prevented him from filing his application within the one-year period?

## STATEMENT

In May 1999, a Berkeley County grand jury indicted petitioner for murder. App. 475. On November 15, 1999, petitioner pled guilty to murder before the Honorable R. Markley Dennis, Jr. App. 1. Sharon Capers represented the State. App. 1. Michael Brown represented petitioner. App. 1. Judge Dennis sentenced petitioner to thirty years' imprisonment pursuant to a negotiated plea. App. 5, ll. 18 – 24. App. 20, ll. 3 -5. Petitioner did not appeal. App. 23.

On February 29, 2012, petitioner filed a PCR application. App. 22. Preliminary hearings on motions to dismiss, for discovery, and for summary judgment were held on September 8, 2014, December 9, 2014, and July 22, 2015. App. 182. App. 215. App. 248. On January 21, 2016, the evidentiary hearing on the merits was held before the Honorable Perry H. Gravely. App. 288. Tricia A. Blanchette represented petitioner. App. 288. Rutledge Johnson represented the State. App. 288. At the hearing, Judge Gravely granted the State's motion to dismiss and motion for directed verdict based on the statute of limitations. App. 424, l. 23 – 429, l. 5. On May 3, 2016, Judge Gravely entered a written Order of Dismissal. App. 447. On September 13, 2016, the court denied petitioner's Rule 59(e) motion. App. 465. This petition follows.

## ARGUMENT

The PCR court erred in ruling that the statute of limitations barred petitioner's PCR action where petitioner demonstrated that the limitations period should have been tolled because of his mental illness and other health problems, including eye surgery, which prevented him from filing his application within the one-year period.

Despite medical records proving petitioner was mentally ill and had a failed cornea transplant, the court ruled his PCR application was untimely filed. App. 451-53. Plea counsel did not perform a thorough investigation before petitioner pled guilty. App. 313, l. 4 – 315, l. 4. App. 331, l. 15 – 340, l. 9. At the PCR hearing, petitioner called an investigator and an expert in crime scene reconstruction who both detailed the lack of investigation in this case. App. 313, l. 4 – 315, l. 4. App. 331, l. 15 – 340, l. 9.

The PCR court agreed, finding, “that there was certainly more investigation that could have been done in this case....” Appendix 456. The PCR judge also wrote that “things could have been done differently” in the investigation. App. 457. Petitioner testified that had he realized the lack of investigation by his attorney, he would not have pled guilty and would have gone to trial. App. 364, l. 24 – 365, l. 6.

In November 1999, at the time of petitioner's guilty plea, he was mentally ill. App. 446. Petitioner produced medical records from the South Carolina Department of Corrections showing its communication with the Berkeley County Jail. App. 446. These records show petitioner had a history of visual hallucinations. App. 446. He was taking the antipsychotic medication Mellaril as well as Lorazepam and Ativan. App. 446. The Department of Corrections continued his antipsychotic medication. App. 446. Petitioner was taking these medications prior to entering his guilty plea. App. 348, ll. 23 – 25.

It is apparent from the plea hearing that plea counsel knew petitioner was mentally ill, but did not inform the plea judge about the seriousness of petitioner's condition nor that he was taking antipsychotic medication. App. 16, ll. 6 – 10. Plea counsel obviously knew that petitioner had some mental difficulties because he told the court that petitioner had a “terrible emotional deficiency, character problem, whatever you want to call it that had to do with simply his ability to be positively involved with his wife and with his children.” App. 16, ll. 6 – 10. This statement indicates that plea counsel was on notice of petitioner's illness and failed to investigate petitioner's mental health. See Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017) (holding that attorney's failure to investigate competency constitutes deficient performance).

Petitioner testified that after being arrested, the county jail “put me on some psychotic medication. And I didn't ask for it. So I guess I was at a pretty bad state.” Appendix 345, ll. 17 – 23. He could not communicate normally and was unable to assist in his defense. App. 345, l. 24 – 346, l. 3. Petitioner did not inform the plea judge that he was under the influence of these medications because he was relying on his attorney to inform the Court. App. 350, ll. 2 – 17.

Petitioner testified that he filed his PCR application at the earliest date that he was capable. App. 383, ll. 18 – 21. From the time he was arrested until 2001 he received antipsychotic medication. App. 384, l. 9 – 385, l. 8. Even after petitioner was able to cease taking these powerful drugs, he remained in treatment and received mental health counseling. App. 385, ll. 1 – 12. In 2004, petitioner's eye became infected. App. 385, ll. 13 – 15. The infection became a lesion and between 2006 and 2007, petitioner underwent a corneal transplant. App. 385, ll. 13 – 23. The transplant failed. App. 385, l. 18 – 386, l. 9. Petitioner could not see, was losing his vision, and was unable to file his PCR application. App. 385, l. 18 – 386, l. 9. Petitioner also had surgery on his spine, including fusion of vertebrae and a discectomy. App.

388, ll. 16 – 389, l. 7. He was also treated for corneal transplant rejection in 2009 and 2011 which prevented petitioner from filing his application. App. 389, ll. 8 – 16.

Civil action limitations periods are statutorily tolled while persons are insane. See S.C. Code Ann. § 15-3-40. South Carolina also recognizes that the doctrine of equitable tolling applies to statutes of limitations. Hooper v. Ebenezer Senior Svcs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). “Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it.” Id. “The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” Id. at 116-17, 687 S.E.2d at 33 *quoting* Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex.App.2006).


The PCR court failed to recognize that the above-stated principles require a flexible application of equitable tolling to promote fairness and erroneously seized on petitioner’s admission that no court or doctor had ever found him incompetent. App. 451-52. App. 401, l. 16 – 402, l. 2. The court adopted the State’s overly strict interpretation of Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) to deny relief. App. 417, l. 4 – 418, l. 2. Ferguson did not require a prior finding of incompetence in order to toll the PCR statute of limitations. Ferguson at 619-20, 677 S.E.2d at 602. The Court’s remand instructions in Ferguson specifically allow the PCR court to make findings regarding incompetence and its duration. Id. The reasoning urged by the State would prevent constitutional claims of ineffective assistance of counsel from being raised solely on the caprices of mental health treatment in prison, a factor that is outside of the control of an inmate.

The Court's recent holding in Ramirez supports petitioner's interpretation of Ferguson. Ramirez at 21-23, 795 S.E.2d at 845-46. The Court emphasized that plea counsel was "on notice" of the defendant's possible incompetency. Id. The Court held that a PCR applicant need only demonstrate a reasonable probability that he was incompetent at the time of the plea in order to prevail. Id.

When Ferguson is read together with Ramirez, petitioner demonstrated that he is entitled to relief. It is undisputed that petitioner was on antipsychotic medication at the time of his guilty plea, but plea counsel failed to have him evaluated or inform the court. Petitioner testified at the PCR hearing that he could not communicate normally and was unable to assist in his defense, which is the definition of legal incompetence. See S.C. Code Ann. § 44-23-410(A); State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). App. 345, l. 24 – 346, l. 3. Petitioner also could not see because of the operations on his eye. Petitioner's testimony combined with his undisputed medical records satisfy the requirements of equitable tolling and the PCR court erred in finding petitioner's application untimely. This Court should grant certiorari, order further briefing, and reverse petitioner's conviction.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari, order further briefing, and reverse petitioner's conviction.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of May, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Berkeley County

Honorable Perry H. Gravely, Circuit Court Judge

---

RODNEY LADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

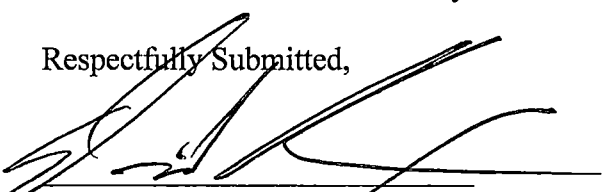
---

Counsel for Rodney L. Ladson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's guilty plea hearing before Judge R. Markley Dennis, Jr., which was held on November 15, 1999, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Rodney L. Ladson.

Respectfully Submitted,



---

David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of May, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 30th day of May, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Berkeley County

Honorable Perry H. Gravely, Circuit Court Judge

—————  
RODNEY LADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Alicia A. Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Rodney L. Ladson, #262438, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 30th day of May, 2017.



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of May, 2017.

Mark Hender (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023