

Timothy E Green, Petitioner,

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State of South Carolina, Respondent.

Appellate No. 2017-001168.

Supreme Court of South Carolina.

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S.C. SUPREME COURT

Petitioner comes before this court asking that his (PCR) application be heard before the Supreme Court due to the lower court error in law determining that the action is barred as being successive, untimely under the statute of limitations.

The South Carolina Supreme Court has held that S.C. Code Ann. § 17-27-45(c) provides that if a PCR applicant discovers "material facts not previously presented and heard that require vacation of [his] conviction or sentence" he may file a PCR application "within one year after the date of actual discovery... or after that date when the facts could have been ascertained by the exercise of reasonable diligence.

18 U.S. Code § 3501 Admissibility of Confessions (e) here of, shall be admissible in evidence if it is voluntarily given.

On February 9, 2016 Petitioner filed his second P.C.R for Newly Discovered Evidence. The evidence is a January 15, 2010 hearing that petitioner received from co-defendant Curtis Harris on Sept 1, 2015. See [exhib +A] pg 39 lines 20-25 and pg 40 lines 1-3. An voluntary confession that.

• Petitioner is not guilty for murder and that if Petitioner had gone to trial Mr Harris was going to testify on petitioners behalf.

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. Leamon 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 records 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).

As to the timeliness issue, the PCR judge misconstrued Section 17-27-45 (A) in finding Petitioner was required to file his claim within one year after his trial, rather than one year after the remittitur was sent from his direct appeal. The time limitation in § 17-27-45 (A) provides that, where a defendant appeals his conviction, the one-year period begins the date the remittitur is sent by the appellate court — not the date of conviction. Further, the PCR judge apparently overlooked the discovery rule in Section 17-27-45(C), which allows one year after the discovery of "material facts not previously presented and heard that require vacation of the conviction or sentence" to file a PCR application. Petitioner argued he did not discover the transcript of Co-defendant Mr Harris until September 1, 2015, and promptly filed his second PCR application after making that discovery. Petitioner's claim that he is entitled to the benefit of the discovery rule is entitled to the benefit of the discovery rule. If the facts are not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner's claim.

• State v South, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993) (noting that to obtain a new trial based on newly discovered evidence, the evidence must be material to the issue of guilt or innocence.) which co-defendant Voluntary Confession 18 U.S. Code § 3501 Admissibility of Confession (e) puts Petitioner under a claim of actual innocence People v Harper, 2013 IL app (1st) 102, 181 (No 1-10-2181. People v Knight, 405 IL 1 app 3d 461, 937 N.E.2d 789 (3rd Dist 2010) Because of this, Petitioner has met Clark five-pronged newly discovered evidence standard test.

For the reasons stated above, Petitioner finds the PCR judge erred in summarily dismissing Petitioner's application because genuine issues of material fact exist as to whether his claim is successive or time-barred. Petitioner ask this court that his application be granted and remand the matter for a hearing.

[s] Timothy Green

Timothy Green 324607

Pro se Petitioner

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1 just testify against you?

2 A In a way. And really, I really couldn't
3 say, because I had talked to him a couple of times
4 in the County Jail, and he was saying this. He was
5 saying that he wasn't, and then, you know -- so I
6 really couldn't say for sure.

7 Q And on the flip side --

8 A Yes.

9 Q -- were you prepared to testify against
10 him?

11 A No, I wasn't prepared to testify against
12 him, but I was prepared to say that he didn't have
13 anything involved in the -- I didn't have anything -
14 - I was prepared to say that he --

15 COURT REPORTER: Could you back up?

16 THE COURT: Don't talk so close to the
17 microphone.

18 MR. HARRIS: Oh, okay.

19 THE COURT: It makes it pop. It's okay.

20 A I was prepared to say that he didn't have
21 too much involvement really as far as killing the
22 man, killing Mr. Bush, that he was just there to
23 help me carry whatever I was taking from the store.

24 Q So if you -- I want to make sure I hear
25 that right. If you were to testify at Mr. Green's

1 trial, it was to try and say he wasn't that involved
2 and that you were the one who killed him?

3 A Yes.

4 Q Nothing further. Thank you.

5 THE COURT: Anything in redirect, Mr.
6 Thompson?

7 MR. THOMPSON: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Were you afraid that -- when you filed
11 your motion to suppress and you included your co-
12 defendant's statement in that, were you afraid that
13 they were going to try you together and use his
14 statement against you?

15 A Yes.

16 Q And at any point in time did you have any
17 indication or did you know that Mr. Green, if you
18 had gone to trial, was going to testify against you?

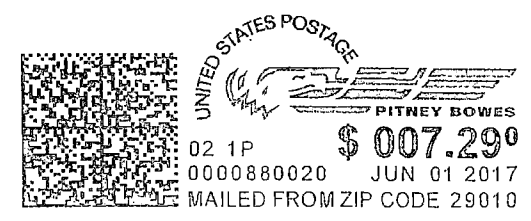
19 A No.

20 Q But all of that didn't really matter after
21 your attorney came and told you that you had no
22 chance at trial, you'd get life, is that right?

23 A Yes. If I possibly lose, I could possibly
24 get life, yes.

25 MR. THOMPSON: I have no further

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STICKER AT TOP OF ENVELOPE TO THE RIGHT
RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL
3010 0000 7805 7493

The Supreme Court of South Carolina
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Legal