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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM FLORENCE COUNTY
HON. JUDGE MICHEAL G. NETTLES
2013-CP-21-00613

S.C. SUPREME COURT

Richard W. Stokes
Applicant,

v.

State of South Carolina
Respondent.

APPEAL

August 22, 2017

Richard W. Stokes
R. W. Stokes
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

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Statement of the Case

This Matter Come before the Court by way of an application for Post Conviction Relief filed March 4, 2013. Respondent made it's return on May 17, 2013, requesting the application be summarily dismissed as untimely, successive and barred by the equitable doctrine of Laches. The Court issued a Conditional Order of Dismissal on May 1, 2017. Applicant filed Opposition to Conditional Order of Dismissal on June 7, 2017. On June 28 the Court filed it's final Order of Dismissal. Applicant filed a timely Notice of Appeal with the South Carolina Supreme Court and a Motion for Appointment of Counsel. This appeal follows.

Question Presented

Did the Lower Court err when it ruled that Applicants Post conviction relief application was untimely, successive and barred by Laches?

The Honorable Judge Nettles, in his Order of Dismissal ordered that for the reason set forth above and in this Court's Conditional Order of Dismissal, the PCR application is hereby denied. The Court's Conditional Order of Dismissal is founded on three point's of law; the Doctrine of Laches, S.C. Code Ann. 17-27-90 and the statute of Limitations.

Laches: is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done Gordon v. Drew 595 S.E.2d. 864. See applicant's Motion in Opposition to Conditional Order of Dismissal "Laches".

Statute of Limitations: The ground raised in the present application was unavailable previously. A new ruling by the United States Supreme Court Lafler v. Cooper 132 S.Ct.1376 March 21, 2012. See Tilley v. State 511 S.E.2d.689. S.C. Code Ann. 17-27-90: The present applicant was file within the one year requirement mandated by 17-27-90. As stated above this filing was base upon a new ruling by the United States Supreme Court. These are the reason relied upon by the court in his Conditional Order of Dismissal, and was opposed by the applicant in his Motion in Opposition. None of these reason apply! The Court in it's final Order states on page 2 "A sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

The Court is overlooking clear and undisputed fact presented by the applicant as to why this decision should not become final. The applicant stated clearly with the legal authority as support for his claim.

Why this application must not be denied and a hearing ordered!

The Honorable Judge Nettles states in his Final Order of Dismissal "Although no South Carolina court has passed on this exact issue, courts within the fourth circuit and elsewhere have repeatedly declined to apply Lafler and it's companion Missouri v. Frye 566 U.S. 133 retroactively.

To establish retroactive application, the petitioner must either show that the new rule is substantive rather than procedure, or that the new rule is a watershed rule of criminal procedure, implicating the fundamental fairness and the accuracy of the criminal proceeding.

When a decision of the Supreme Court results in a new rule that rule applies to all criminal cases still pending on direct review; as to conviction that are already final, however the rule applies only in limited circumstances U.S. v. Morris, 429 F.3d. 65.

The general rule regarding retroactive application of judicial decisions, is that decisions creating New Remedies to vindicate existing rights are applied retrospectively, Carolina chloride Inc. v. South Carolina Dept. of Transp. 706 S.E.2d. 501.

Existing Right: Defendants have a Sixth Amendment Right to Counsel, a Right that extends to the plea-bargaining process, Padilla v. Kentucky 130 S.Ct. 1473. The defendants have a right to effective assistance of counsel at critical stages of a criminal proceeding U.S.C.A. Const. Amend. 6. Lafler v. Cooper 132 S.Ct. 1376. The decision in Lafler v. Cooper created a new remedy that vindicated the applicant's right to effective assistance of counsel at all stages.

A case announces a new rule for the purpose of retroactively when it breaks new ground or imposes new obligation on the state or the federal government or to put it differently a case announces a new rule if the result was not dictated by precedent existing at the time defendant's conviction became final Tally v. State 640 S.E.2d. 878. A new rule of criminal law which is not a "clear break" from earlier precedent (Strickland) and which does not establish that

trial courts action is void ab initio or that defendants conduct was not subject to criminal punishment should be applied. A new substantive rule that is, one that alters the range of conduct or the class of persons that the law punishes, generally applies retroactively U.S. v. Morris 127 S.Ct. 121, Smith v. Moore 137 F.3d. 808.

Decision of the South Carolina Supreme Court that nolle prosequere may support a malicious prosecution case of action would be applied retroactively under South Carolina law, as the court only modified the existing cause of action. A decision which create new substantive right must be given prospective effect only, while decisions which create new remedies vindicating existing right may be given retrospective application. See Falk v. Sadler 533 S.E.2d. 350.

When the United States Supreme Court ruled in Lafler v. Cooper that counsel was ineffective when he failed to fulfill his duty to communicate formal offers from the prosecution, it create a new remedy vindicating an existing right and that right is applicant's right to effective assistance of counsel at all stages.

Plea counsel's has a duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that maybe favorable to the accused Bell v. State 765 S.E.2d. 4. U.S.C.A. Const. Amend 6. Because counsel failed to make any attempt to protect petitioner's interest regarding this significantly lower sentence, counsel performance fell below prevailing professional norms.

(1) It is a factual point that the applicant's PCR application does comply with S.C. Code 17-27-90.

(2) It is a factual point that the Doctrine of Laches does not apply, because Applicant did diligently file his application in a timely manner.

(3) It is a factual point that the Supreme Court decision in Lafler v. Cooper created a substantive rule that vindicated applicant's existing right to effective assistance of counsel.

(4) It is a factual point that a new substantive rule vindicating existing right are to be applied retroactively.

CONCLUSION

Applicant P.C.R. application must be heard because it does comply with all standard applicable to the cases that are final when the Supreme Court creates a new substantive rule vindicating an existing right. The Applicant's P.C.R. application is in the narrow group of case that the new rule must be applied retroactively.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Richard W. Stokes
Applicant,

v.

CERTIFICATE OF SERVICE


State of South Carolina
Respondent.

Applicant, declares under the penalty of perjury that he did mail a copy of his Appeal to the parties listed below by placing them in the U.S. Mail.

Clerk, Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Alan Wilson Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Thank You



Richard W. Stokes
Broad River Corr. Inst.
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Columbia, S.C. 29210

(Exhibit)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT
)
Richard W. Stokes) Case No. 2013-CP-21-00613
Applicant,)
) MOTION IN OPPOSITION TO
v.) CONDITIONAL ORDER OF DISMISSAL
)
STATE OF SOUTH CAROLINA)
RESPONDENT.)
_____)

This matter comes before the court by way of an application for Post Conviction Relief filed by the applicant on March 4, 2013.

Statute of Limitations

Successive post-conviction relief (pcr) applications are disfavored and the applicant has the burden to establish that any new ground raised in the subsequent application could not have been raised by him in a previous application see Tilley v. State 511 S.E.2d 689. The applicant in his present Application raise a ground that was unavailable previously. The court will find that this ground for relief asserted does have sufficient reason why this ground was not asserted in the original or supplemental application.

Laches

Whether a claim is barred by Laches is to be determined in light of the facts of each case taking into consideration whether the delay has worked injury prejudice, or disadvantaged to the other party, delay alone in assertion of right does not constitute Laches. Applicant did exercise reasonable diligence in filing his application. Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done see Gordon v. Drew 595 S.E.2d 864. On page one of the Court's Conditional Order of Dismissal the court states " This Matter comes before the court by way of an application for post conviction relief filed by Richard W. Stokes (applicant) on March 4, 2013. " The P.C.R application that the court is identifying was filed based on a U.S. Supreme

Court ruling decided March 21, 2012. Lafler v. Cooper, 132 S.Ct. 1376. The equitable doctrine of Laches does not apply. Applicant filed the PCR application with due diligence.

The Court has failed to consider the facts of the applicants. The applicants P.C.R application is based on a recent (as it applies to when this PCR was filed, within the 1 year requirement) ruling from the United States Supreme Court in Lafler v. Cooper, 132 S.Ct. 1376 March 21, 2012. The applicant has shown that this is a new ground that could not have been raised in any previous application see Tilley v. State, 511 S.E.2d 689. This is sufficient reason " that is required by S.C. Code 17-27-90., as well as the could not have been raised in the previous application" requirement. Therefore for the purpose of S.C. Code ann. 17-27-90, this applicatio is not "Successive". The Court's Conditional Order of Dismissal is found on three points of law, on this Doctrine of Laches, S.C. Code 17-27-90, and the Statute of Limitations. None of these points of law applies to the applicant P.C.R application, as shown above.

The merits of the applicant's P.C.R application are not being addressed by the court, However, A look to the grounds raised in the present application will show that the court must order an evidentiary hearing to determine whether ineffective advice led to an plea offer rejection, and to determine whether defendant would have accepted the plea. See Lafler v. Cooper, 132 S.Ct. 1380-1381.

CONCLUSION

Applicant has shown this court that the reasons stated in the Conditional Order of Dismissal do not apply to the applicant's application for P.C.R . A evidentiary hearing must be ordered to determine the facts and merit involved in the present P.C.R application.

Respectfully

Richard J. Stetler

June 7, 2017

CC: File

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	FOR THE TWELFTH JUDICIAL CIRCUIT
)	
Richard W. Stokes)	Case No. 2013-CP-21-00613
Applicant,)	
)	
V.)	CERTIFICATE OF SERVICE
)	
STATE OF SOUTH CAROLINA)	
Respondent.)	
_____)	

Applicant, Richard W. Stokes, declares under the penalty of perjury, that he mailed a copy of his Motion in Opposition to Condition Order of Dismissal to the parties listed below by it in the U.S. Mail clearly addressed as below.

Thank You

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Clerk of Court
Florence County
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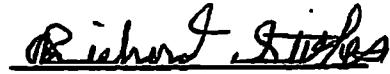
Hon. Michael G. Nettles
Chief Administrative Judge
Twelfth Judicial Circuit
180 N. Irby St.
Florence, S.C. 29501

Date: June 2, 2017
cc: File

SWORN and SUBSCRIBED before me
this 2 day of June, 2017.


Notary Public For South Carolina

My Commission Expires: 9/16/2020


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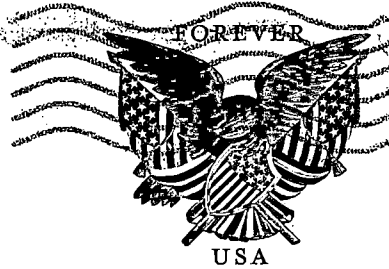


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