

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Appeal from LEE County
Hon. Judge Ferrell Cothran Jr.
2016-CP-31-0115
Appellate Case No. 2017-002007

Bruce B. Thomas
Appellant
vs.

Explanation

State of South Carolina
Respondent

RECEIVED

OCT 23 2017

SC Court of Appeals

Bruce B. Thomas, Pro-se
Broad River Court East
4460 Broad River Rd
Columbia, S.C. 29210

DISCUSSION

The Court in its order dismissing Appellant's petition for writ of Habeas Corpus the Court made the following determinations: To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR.) remedies *Simpson v. State* 495 S.E.2d 429, "Exhaustion includes filing of an application, the rendering of an order adjudicating the issues and petitioning for, or knowingly waiving, appellate review".

Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. PCR is not rendered unavailable merely because the petitioner's application might be dismissed as procedurally barred.

The Court concludes by stating "This Court agrees with the respondents that the claims made in the petition for writ of Habeas Corpus could have been raised in a post-conviction relief application". This determination is improper.

First it is uncontested that Appellant did in fact exhaust all available remedies.

Second the Court's determination is improper because the Court is overlooking a jurisdictional question. When the Appellant denied the element of Malice and the State put forth no evidence of Malice. The Court was without jurisdiction to accept the guilty plea. SEE State v. Peppers 552 S.E. 2d 228, State v. Rice 737 S.E.2d 485. If the trial Court accepts a conditional guilty plea, then the plea will be vacated on appeal. SEE IN RE. JOHNNY LEE 638 S.E.2d 682, Also Hyman v. State 723 S.E.2d 375. By way of background, and as you stated in your letter, it is established in South Carolina that a guilty plea must be unconditional - State v. Rice 737 S.E.2d 485 (2013) as our State Supreme Court has stated "the basis for this is of course, the settled doctrine that a guilty plea constitutes waiver of all prior claims of constitutional rights or deprivation thereof". 2016 WL 2607249 office of the Attorney General State of South Carolina. This issue was raised again before the Court on a motion for reconsideration, the Court

Responded to the Motion, but failed to Address this Claim that was properly before the Court. Neither did the Court. Respond to this Claim when it was raised again in a motion to reconsider.

Jurisdictional questions as a matter of law can be raised at anytime. Once the Appellant denied the element of Malice to the Court during the guilty plea, the Court was without Jurisdiction to accept a guilty plea that was conditioned by the denial of Malice. It is clearly established South Carolina Supreme Court precedence that Conditional Pleas are not accepted in South Carolina.

Appellant has presented this Court with sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the Circuit Court was improper.

Bruce B. Thomas

State of South Carolina
In The Court of Appeal
Appeal From Lee County
Appellate Case No. 2017-002007

RECEIVED

OCT 23 2017

SC Court of Appeals

Bruce B. Thomas
Appellant
vs.

Certificate of Service

State of South Carolina
Respondent

Appellant declares under the penalty of perjury that he mail a copy of his Explanation, Original Brief, Letter to the Clerk of the Court of Appeals, to the parties listed below.

Clerk, S.C. Court of Appeal
1220 Senate St.
Columbia, S.C. 29201

Bruce B. Thomas

Ms. Julie A. Coleman
P.O. Box 11549
Columbia, S.C. 29211

cc: Fole

Dated: Oct. 19 2017

RECEIVED

OCT 23 2017

SC Court of Appeals

Ms. Jenny A. Kitchings
Clerk, S.C. Court of Appeals
1220 Senate St
Columbia, S.C. 29201

Oct 19 2017

Appellate Case No. 2017-002007

Dear Ms. Kitchings;

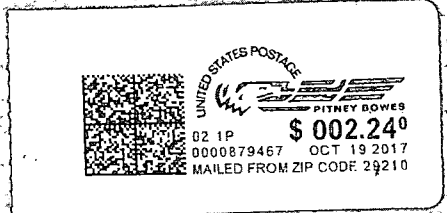
Per your communication please be advised of the following: I am an indigent incarcerated inmate in the S.C. Dept. of Corrections. who is challenging his conviction and sentence pro-se. I have been granted leave to proceed in forma pauperis by the lower court on this matter.

Enclosed is a written explanation as required. Also enclosed is a certificate of service providing proof that the clerk of the trial court was served as required.

Copies of the court's order of dismissal to the petition for writ of Habeas Corpus and Motion to Reconsider are enclosed as well.

Thank you
Bruce B. Thomas

Bruce B. Thomas 320186
BRCI Mur. 148
4460 Broad River Rd.
Columbia, S.C. 29210



RECEIVED
OCT 19 2017
BRCI
MAILROOM

RECEIVED
OCT 23 2017
SC Court of Appeals

Clerk, S.C. Court of Appeal
1220 Senate St.
Columbia, S.C. 29201

Legal