

The State of South Carolina
In the Supreme Court

Appeal from Spartanburg County
Court of Common Pleas
J Derham Cole Circuit Court Judge

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SEP 15 2017

S.C. SUPREME COURT

Case No: 2015-CP-42-4338

Tyrone Perry Petitioner

v.

state of South Carolina Respondent

Improper Determination by the lower Court

The determination by the lower court was improper due to the fact this is the first time the petitioner is raising ineffective assistance of counsel for failing to get a second opinion and incompetent at the time of the guilty plea. These issues could not have been raised in an earlier application due to the fact the petitioner had no knowledge of these issues due to his diminished capacity and being housed in psychiatric hospitals and mental health housing units with no access to law clerks, law book or computers. In the petitioners first PCR application filed February 19, 2008 the petitioner alleged involuntary guilty plea cause the petitioner had two witnesses present when public defender James E. Hatcher said i'll get 25 years. Also failure to investigate witness, medical records and failure to suppress coerced statements under ineffective assistance of counsel. Counsel admitted in open court to not investigating witnesses or filing any motions to suppress coerced statements. Both witnesses testified that MR Hatcher

said i'll get 25 years in exchange for my guilty plea. MR Hatcher testified he had no specific recollection. The first PCR judge did not rule on this issue violating 17-27-80 and procedurally barring me at the federal level from raising this issue. PCR counsel failed to file a 59(e) motion to preserve this issue for appellate review. Public Defender James Hatcher spoke with the petitioner's family and obtained that the petitioner was mentally ill. MR Hatcher got a mental evaluation in December 2005. The petitioner went to court february 2006. During the plea colloquy the petitioner did not understand all the questions the judge was asking and most questions had to be repeated three times. The petitioner would turn to public defender MR Hatcher who instructed the petitioner to simply answer yes. Sarah Dunn testified that the petitioner had trouble understanding the questions and was instructed by counsel to answer yes. The petitioner was NOT competent and the record reflects that during the plea colloquy and throughout the plea. At the federal level I argued that counsel was ineffective for failing to investigate medical record and investigate psychiatrists of the petitioner in which he didn't. The federal court said I was procedurally barred due to the fact the PCR judge didn't rule on this issue nor did PCR counsel file a 59(e) motion to preserve the issue for appellate review. In my second PCR filed May 30, 2014 I alleged Austin violation pursuant to Austin v- State 409 SE2d 395, unkept plea agreement, Marlar violation pursuant to Marlar v- State 653 SE2d 266. The Austin violation was because the PCR judge didn't rule on all issues raised in the initial review denying me my full bite of the apple. The unkept plea agreement is repeated from the first application, but the Marlar violation is for PCR counsel Kenneth P. Shabel not filing a 59(e) motion to reserve issues for appellate review. This issue was raise Prose to the Supreme Court in the petitioner's initial writ or Certiorari but was dismissed with prejudice with NO conclusion of law or explanation as to why when it was clearly established law. Due to the petitioner's diminished capacity

the conditional order of dismissal was issued on April 9, 2015. The petitioner attempted to appeal to the Supreme Court but the Honorable Daniel Shearouse letter stated that the order is not an appealable order Lewis-V-state 630 SE2d 464. The petitioner did not know you could only appeal a final order. The petitioner was housed at Gilliam Psychiatric Hospital with no access to a law library, computer, or law clerk for assistance. On October 13, 2015 the petitioner filed his third PCR application. The petitioner did not receive his final order of dismissal from his second PCR until January 29, 2016, but he already had his third application in. In the petitioner's third PCR application he alleges involuntary guilty plea in that applicant was incompetent at the time of the guilty plea and ineffective assistance of counsel in that counsel failed to get a second opinion as to applicant's mental health. In the petitioner's previous application he alleged counsel failed to investigate medical records and involuntary guilty plea due to counsel said the petitioner would get 25 years when in fact he got 50 years. The petitioner's issues can't be labeled as successive due to they are totally different issues. A state court's decision not to hold a competency hearing may violate due process if defendant can show there was a bona fide doubt as to defendant's competency at the time of trial Pate-V-Robinson 383 U.S. 375, Drope-V-Missouri 420 U.S. 162. Counsel violated due process due to the fact he knew I had a mental illness and didn't understand the questions the ~~PER~~ judge was asking yet and still he instructed me to say yes. The petitioner's application can't be labeled successive because the issues are different and it can't be barred by the doctrine of res judicata because the issues were never ruled upon. If my second PCR would have timely been responded to I could of addressed this issue with the Austin violation. I had NO knowledge of the issues I raised now in my third PCR application and im still in a mental health dorm taking psychotropic meds for mental health issues and

just recently just left the Gilliom Psychiatric Hospital again. I have a diminished capacity from the streets and still while incarcerated in the Department of Corrections. My ability to understand and access to law books, and Court rule books should not deny me my due process rights that are guaranteed by the constitution. I never got a full bite at the apple due to the fact the PCR judge NEVER ruled on all the issues raised at my initial PCR hearing. Then my PCR attorney failed to file a 59(e) motion to preserve my rights for appellate review. Then on writ of Certiorari to the Supreme Court I raised a Pruitt and Marlar violation and a 17-27-80 violation for my PCR attorney not filing an obligated 59(e) motion and PCR judge not ruling on all issues raised at PCR but was denied with no conclusion of law or explanation as to why clearly established law was not honored. My case was a miscarriage of justice was I was promised 25 years and my public defender took advantage of my mental capacity and me writing him up with the Disciplinary Counsel. The same with my PCR counsel. For me trying to obtain information and make my attorney come and see me it made them do nothing for me. I pray im given an opportunity to present my case so that I may receive some relief. I have been fighting for over twelve years arguing basically identical issues. I pray this is the appeal that I may seek some type of relief.

Respectfully Submitted

This 11th day of September 2017

s/ Tyrone Perry 307793
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