

WRIT OF CERTIORARI FROM POST CONVICTION
RELIEF ACTION TO THE SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 05 2018

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Joseph Derham Cobe, Jr.; Circuit Court Judge

Case No: 2018-000398

William Leon Burnett, #358645 Appellant,

v.

State of South Carolina Respondent,

EXPLANATION TO LOWER COURT'S
IMPROPER DETERMINATION

• Did Circuit Court err in its determination in its "Final Judgment" Citing Post Conviction Relief was filed untimely and in succession after discovered evidence. Yes. It wasn't filed untimely and successive.

Appellant filed the Post-Conviction Relief Action under Mose v. State, (S.C. 2017) 420 S.C. 500, 803 S.E.2d 718 (Application for Post-Conviction Relief was "filed" for limitation purposes, which was delivered to and

received by Clerk of Court, not when it was delivered to prison personnel for mailing, and defendant was entitled to equitable tolling of one-year statute of limitations period, governed by application, on September 23, 2016 to prison mailroom coordinator, Ms. Virginia Grubbs. She notarized it. I was clocked and dated on October 4, 2016 by Spartanburg County Clerk of Court. S.C. Code Ann. 17-27-70(a)(b). the Appellant met the guidelines, and S.C. Code Ann. 17-27-70(c) did not apply, because compliance with statute was accorded and sustain in its tota subsection as mentioned above. See U.S. v. Berry, 684 F.3d 1031, 1033 (9th Cir. 2010) (defendant's motion for new trial untimely when filed almost 10 years after conviction, though court analyzed merits of the claim because government failed to object.) On the other hand, Appellant received the requested after discovered evidence three years later after resentencing, on October 1, 2015 through F.D.I.A. compelling Solicitor Barry J. Barnett's office to turn it over. Otherwise ethical misconduct would have been pursued through corrective channel of command. In April 2015, a letter was written to former attorney Richard H. Welch putting him on judicial notice. In instance case, U.S. v. Moore, 709 F.3d 287, 292-94 (4th Cir. 2013) (new trial granted where newly discovered evidence uncovered by defendant's due diligence and would likely result in acquittal at new trial.) supported Appellant's meeting requirements. Under the three prong test, the medical examination reports weren't available before trial. It wasn't possible that to discover it beforehand through back of due diligence by Attorney Welch who improperly compiled Appellant's case because of violations under S.C. Appellate Court Rules (SCACR), Rule 407 "Professional Conduct"; Rule 14 Communications (a)(5). All under Rule 413 Lawyer Disciplinary Enforcement. Appellant even got the partial mental evaluations through F.D.I.A. on Appellant's own due diligence. Likewise, other newly discovered evidence turned up on August 5, 2016 of correspondence from Senior General Sessions Clerk Ms. Tanya Camp citing case was

Dismissed on October 4, 2018 of Indictment No. 2012-GS-42-01465.

Lastly, Appellant filed a Motion for New Trial based on after-discovered evidence on April 2016, and Circuit Court Judge R. Keith Kelly denied the motion (which was filed under Rule 60(b), (SCRP), stating it was a Rule 29(b), (SCRCrimP), issue to resolve a criminal matter. Again, Appellant refiled according to his instructions dated September 2016 while still within the one-year statute of limitations before filing the 2nd Post-Conviction Relief Action. Letters were written to the Solicitor's Office on May 18, 2015 and August 18, 2015 respectively. McCoy v. State, 401 S.C. 363, 737 S.E. 2d 623, as well as, State v. Green, 294 S.C. 835, 363 S.E. 2d 688. Consequently, no judge can convict in a court of law under one indictment, two separate counts of the same offense, but distinct in statute; that it carries the exact transparent copy of aggravating factors. Multiplicious in nature and successive in punishments.

For the foregoing grounds presented and supported factually, accurately, with documentation, ask for an evidentiary hearing on the merits to resolve the arguable issues with Appellant presenting himself according to S.C. Code Ann. 40-5-80 and 17-3-10 - State v. Barnes (S.C. 2014).

Wherefore, Court should consider P.C.R. timely filed.

March 28, 2018

William Leon Burnett
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PROOF OF SERVICE : WRIT OF HABEAS CORPUS FROM POST
CONVICTION RELIEF ACTION TO THE SUPREME COURT

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PROOF OF SERVICE

I, William Leon Burnett, certify that I have served the EXPLANATION TO LOWER COURT'S IMPROPER DETERMINATION on Mr. Rasheeda Cleveland on March 28, 2018 by depositing a copy of it in the United States Mail, postage prepaid, addressed: South Carolina Attorney General's Office, 1000 Assembly Street, Post Office Box 11549, Columbia, South Carolina 29211-1549 on March 28, 2018.

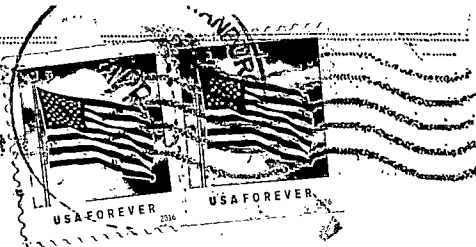
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