

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Spartanburg County  
Honorable Robin B. Stilwell, Circuit Court Judge  
\_\_\_\_\_

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JUN 06 2018

S.C. SUPREME COURT

LAURIE DANIELLE HOLLIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001561  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Joanna K. Delany  
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ATTORNEY FOR PETITIONER

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## **ISSUES PRESENTED**

1.

Whether the court erred by denying Petitioner a hearing based on failure to comply with the one-year statute of limitations where Petitioner legitimately thought Tommy Thomas, Esq., had been hired by family and would file a PCR application to protect her rights, but he did not, given the highly unusual facts of the case?

2.

Whether the PCR court erred by denying Petitioner a hearing where Petitioner alleged after-discovered evidence, but the court did not apply the correct statute of limitations for after-discovered evidence?

## STATEMENT

Petitioner lived at Oakview Apartments in Spartanburg. App. 176, ll. 1-5; App. 128, ll. 18-21. Oakview was a social community: it was common for people to “hang out outside a lot,” and was not “uncommon to see crowds of folks standing around talking.” App. 176, ll. 17-25. The evening of April 7, 2011, Petitioner and several other people were there standing together in the parking lot. App. 183, ll. 3-10.

Shortly thereafter, Stephen Means (the decedent), was shot and killed in the parking lot at Oakview. App. 122, ll. 5-20; App. 123, ll. 6-10; App. 130, ll. 13. After the decedent was shot, a group of young males ran away from the scene. App. 171, ll. 6-13. “[A] lot of people had started coming from around the corner.” App. 166, ll. 11-12. Officers rendered CPR, but the decedent had no pulse and was not breathing when paramedics took him to the hospital. App. 123, l. 11-17; App. 145, l. 22 – 146, l. 1; App. 146, ll. 16-24.

Petitioner was convicted of the murder and armed robbery of the decedent under the theory that the hand of one is the hand of all. Molly Bogan claimed at trial that she was in the parking lot and heard Petitioner start “talking about some dude and was talking about how—I didn’t really catch on to it; she was just like something about how they were about to get somebody because somebody had snitched on somebody.” App. 183, ll. 17-21; App. 203, ll. 2-9. However, Bogan initially told the police on April 7th that she did not see anything, and was inside an apartment when the shooting occurred. App. 204, l. 20 – 206, l. 25.

Nevertheless, Bogan claimed at trial that Petitioner walked off, some guys walked towards Petitioner, Bogan looked away, then looked back when she heard a gunshot. App. 183, l. 23; App. 184, ll. 14-17; App. 184, l. 25 – 185, l. 2. Bogan alleged at least four people, including Petitioner and Charles Anderson, were near the decedent when he was shot by Anderson. App.

185, ll. 3-15; App. 186, l. 14 – 187, l. 7. The decedent fell to the ground, and everyone scattered. App. 185, ll. 8-9; App. 187, ll. 20-24.

According to Molly Bogan, a Latrica Martin was present with Bogan when Petitioner supposedly made the comment about a “snitch,” and the decedent was killed. App. 181, ll. 11-13; App. 185, ll. 18-22.

The decedent was wearing a necklace with a charm depicting the cartoon character Stewie that he bought at the mall. App. 234, ll. 7-22; App. 226, ll. 16-24; App. 164, ll. 3-15. The necklace and charm were not among his belongings recovered by the police from the hospital. App. 240, ll. 9-25. The decedent’s cousin, Anthony Kelly, claimed at trial that he saw Petitioner wearing the charm at a party the weekend after the decedent was killed. App. 231, ll. 2-7; App. 233, l. 20 – 234, l. 4. However, Kelly never went to the police with this allegation that Petitioner wore the charm; instead he waited five-hundred forty-four days to come forward at trial. App. 506, ll. 5-12; App. 232, ll. 19-24. The charm was never recovered.

The state also asserted that a purple shirt police retrieved from Petitioner’s sister’s vehicle was evidence that Petitioner was in close proximity to the decedent when he was killed. App. 307, ll. 10-20; App. 313, l. 23 – 314, l. 13; App. 265, ll. 14-16. The shirt was tested for gunshot residue, and lead particles were found. App. 415, ll. 8-15. However, gunshot residue is composed of not only lead, but “lead, barium, and antimony,” and the state’s expert admitted that someone welding could also have lead particles on their clothing. App. 415, ll. 18-20; App. 416, ll. 9-15. Moreover, there was no evidence the shirt had the decedent’s DNA or Petitioner’s DNA on it, and the shirt was taken from a vehicle filled with a large amount of used clothing that Petitioner’s mother resold at flea markets. App. 467, l. 22 – 468, l. 25; App. 270, ll. 15-20; App. 271, ll. 10-12; App. 273, ll. 4-9.

On this evidence the state proceeded to trial against Petitioner and her codefendant Charles Anderson. She was convicted of murder and armed robbery, and sentenced to thirty years' imprisonment for each indictment, to be served concurrently. App. 742; App. 745.

Petitioner appealed, arguing the trial court erred by not directing a verdict of acquittal based on the paucity of evidence. App. 655. However, the South Carolina Court of Appeals affirmed Petitioner's convictions. *State v. Hollis*, Op. No. 2014-UP-319 (S.C. Ct. App. filed August 6, 2014).

The remittitur was issued August 22, 2014. App. 702. On October 6, 2015, Tommy Thomas, Esq., filed an application for post-conviction relief (PCR) on Petitioner's behalf, alleging ineffective assistance of counsel. App. 703 – 709; App. 727, ll. 5-7. The state filed a return and motion to dismiss on February 23, 2017, requesting the application be dismissed as untimely, and the Honorable J. Derham Cole issued a conditional order of dismissal because the application was filed beyond the one-year statutory filing period. App. 710 – 713; App. 714 – 719.

Petitioner filed a reply to the conditional order of dismissal, arguing genuine issues of material facts existed as to whether Petitioner's claim was untimely, and that pursuant to S.C. Code Ann. § 17-27-45(C) there was evidence of material facts, in the form of a search warrant and a shirt with gunshot residue on it, that were not known by Petitioner until within a year of her filing. App. 720 – 723.

On June 30, 2017, a hearing was convened before the Honorable Robin B. Stilwell. App. 724. No testimony was heard or exhibits entered. App. 725, ll. 1-2. PCR counsel explained that Petitioner was told her mother retained Tommy Thomas, Esq., to represent her on PCR. App. 720 – 721; App. 727, ll. 2-5. Petitioner's mother hired Tommy Thomas, and said she paid him

\$2,000, but he untimely filed and served the application when he received the first payment of \$500. App. 720; App. 729, ll. 15-20. PCR counsel said Petitioner's mother led her to believe Mr. Thomas had been retained, but in fact, Petitioner's mother was still "trying to come up with the money." App. 730, ll. 19-23. Mr. Thomas' paralegal confirmed they filed the application the day after receiving the first payment. App. 730, l. 23 – 731, l. 2.

Petitioner observed that the state had filed their return nearly a year and a half after Petitioner's application, despite a statutory requirement the response be made within thirty days of docketing the application contained in S.C. Code Ann. § 17-27-70(A). App. 721. Petitioner argued equity demanded she not be held accountable to statutes of limitations to a greater degree than the state, and asked for equitable tolling. App. 721.

PCR counsel explained that because a conditional order of dismissal was issued, she had not been provided with a transcript, but Petitioner told her there was material evidence she could present, that had not been presented at trial, in the form of a witness named Latricia Martin. App. 728, l. 23 – 729, l. 1. PCR counsel asked that Petitioner be given the opportunity to present this information to the court. App. 729, ll. 4-6.

The PCR court granted the state's motion and issued a final order of dismissal for failure to comply with the statute of limitations. App. 734 – 739. The court applied the statute of limitations contained in subsection (A) of S.C. Code Ann. § 17-27-45, which provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The court declined to apply equitable tolling of this statute of limitations despite Petitioner's belief her mother had retained Tommy Thomas, Esq. App. 736.

The court disagreed that new evidence warranted late filing of the PCR application, and found that Petitioner's claims of new evidence in the form of a shirt with gunshot residue on it and a search warrant were contradicted by the record. App. 737. The court noted the shirt was admitted as a state's exhibit at trial, and the search warrant was mentioned at trial. App. 737. As to the newly-discovered witness, the court said Petitioner failed to allege this in her application, and that Petitioner

failed to demonstrate if this alleged witness was discovered prior to the trial, could not have been discovered by the exercise of due diligence prior to trial, would probably change the result if a new trial was held, is material to the issue of guilt or innocence, and would not be merely cumulative or impeaching.

App. 737.

This petition for writ of certiorari follows.

## ARGUMENT

1.

The court erred by denying Petitioner a hearing based on failure to comply with the one-year statute of limitations where Petitioner legitimately thought Tommy Thomas, Esq., had been hired by family and would file a PCR application to protect her rights, but he did not, given the highly unusual facts of the case.

“A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application.” *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

S.C. Code Ann. § 17-27-45(A) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

However, this Court had found equitable tolling to apply to the statute of limitations to file a PCR action where “circumstances preventing a petitioner from making a timely filing were both beyond the petitioner’s control and unavoidable despite due diligence.” *Ferguson v. State*, 382 S.C. 615, 618, 677 S.E.2d 600, 602 (2009) (internal quotations omitted) (quoting *Com. v. Carneal*, 274 S.W.3d 420 (Ky. 2008)).

“[T]olling the statute of limitations in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to no fault of his own does not create an exception by which incarcerated litigants may avoid time restrictions. Instead, it provides PCR applicants with functionally equivalent time bars and seeks to ensure equal access to the courts for all.” *Mose v. State*, 420 S.C. 500, 510, 803 S.E.2d 718, 723 (2017) (internal quotations and citations omitted) (quoting *Lewis v. Richmond City Police Dep’t*, 947 F.2d 733, 736 (4th Cir. 1991)).

“Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (internal quotations omitted).

Petitioner was prevented from timely filing for PCR because she legitimately thought her mother had retained an attorney to represent Petitioner on her post-conviction relief claims. Thus, she has not received one full bite at the apple. PCR counsel correctly argued that equitable tolling should apply to the statute of limitations because the failure to timely file was through no fault of Petitioner, as she relied on her mother’s assurances that Tommy Thomas, Esq., had been retained to protect her rights.

The case against Petitioner was extremely thin. The decedent’s cousin came forward a year and a half after the murder claiming he saw Petitioner wearing the decedent’s necklace, and lead particles were found on a shirt in Petitioner’s sister’s vehicle. The key evidence against Petitioner was testimony by Molly Bogan that Petitioner was near the decedent when he was killed, and said something about someone getting a “snitch.” However, Bogan initially claimed to police that she knew nothing about the crime.

The court should have applied equitable tolling and allowed Petitioner to proceed to a hearing regarding ineffective assistance of counsel, given the unusual circumstances of the case.

The PCR court erred by denying Petitioner a hearing where Petitioner alleged after-discovered evidence, but the court did not apply the correct statute of limitations for after-discovered evidence.

Alternatively, Petitioner asserts the court applied the wrong statute of limitations. The PCR court held Petitioner's application was barred because she failed to file within one year of remittitur. However, Petitioner alleged new evidence. Because no hearing was held, the court did not hear whether Petitioner discovered the new evidence within one year of filing her PCR action. The statute regarding filing procedures for PCR applications based on after-discovered evidence provides:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application **must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant** or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(C) (emphasis added).

The discovery rule in § 17-27-45(C), "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." *McCoy v. State*, 401 S.C. 363, 369-70, 737 S.E.2d 623, 626-27 (2013) (internal quotations and alterations omitted).

To obtain a new trial based on after-discovered evidence, the party must show that the evidence: "(1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." *Clark v. State*, 315 S.C. 385, 387-88, 434 S.E.2d 266, 267 (1993).

The court disagreed that new evidence warranted late filing of the PCR application. The court found that Petitioner's claims of new evidence in the form of a shirt with gunshot residue on it and a search warrant were contradicted by the record, noting the shirt was admitted as a state's exhibit at trial, and the search warrant was mentioned at trial. App. 737.

As to the newly-discovered witness, the court said Petitioner failed to allege this in her application. App. 737. In *Mangal v. State*, 421 S.C. 85, 92, 805 S.E.2d 568, 571-72 (2017), this Court found the PCR court acted within its discretion in not ruling on an allegation counsel was ineffective for failing to object to improper bolstering because the allegation was not raised in the written application, was not mentioned as an additional claim at the beginning of the hearing, was not made with specificity, and was only mentioned briefly by PCR counsel in summation. This Court explained: "To the extent PCR counsel's brief statement constitutes a claim for ineffective assistance of counsel, we find a PCR judge would have difficulty recognizing it." *Id.* at 92-93, 805 S.E.2d at 572. However, here PCR counsel did clearly allege the existence of this witness at the beginning of the hearing. App. 728, l. 23 – 729, l. 1.

The court also said Petitioner

failed to demonstrate if this alleged witness was discovered prior to the trial, could not have been discovered by the exercise of due diligence prior to trial, would probably change the result if a new trial was held, is material to the issue of guilt or innocence, and would not be merely cumulative or impeaching.

App. 737. However, without a hearing, Petitioner did not have the opportunity to demonstrate these requirements.

According to Molly Bogan, "Latricia" Martin was present when Petitioner supposedly made the comment about a "snitch." App. 185, ll. 18-22. PCR counsel told the court that Petitioner could present material evidence, in the form of witness Latricia Martin, that was not

presented at trial. App. 728, l. 23 – 729, l. 1. PCR counsel asked that Petitioner be given the opportunity to present this information to the court. App. 729, ll. 4-6.

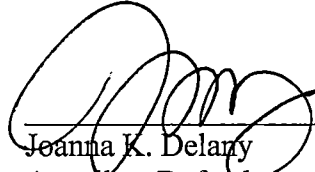
Martin’s testimony as to whether Petitioner made incriminating remarks is material to guilt or innocence given the scarcity of evidence against Petitioner, as Latricia Martin could potentially refute Bogan’s testimony. Martin’s testimony Petitioner did not make the “snitch” remark would not be “merely” impeaching, due to the paucity of evidence against Petitioner.

Petitioner should be provided a hearing, so that the court can hear and determine when Petitioner discovered Martin’s statement, if it is material to guilt or innocence, if it would not be merely cumulative or impeaching, and whether Martin’s testimony would probably change the result of the trial.

Under the highly unusual facts of this case, the court erred by denying Petitioner a hearing regarding after-discovered evidence without determining when Petitioner discovered new evidence in the form of Ms. Martin for purposes of applying the statute of limitations, and where it was required by fundamental fairness.

**CONCLUSION**

Based on the foregoing arguments, Petitioner respectfully requests this Court to reverse the decision of the PCR court and remand this case to the Spartanburg County Court of Common Pleas for a PCR hearing on the merits.



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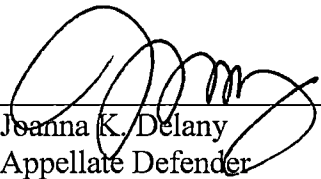
Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of June, 2018.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her ability this Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

  
Joanna K. Delany  
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ATTORNEY FOR PETITIONER

This 6th day of June, 2018.

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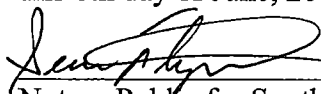
RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Jordan Cox, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Laurie Danielle Hollis, #352710, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 6th day of June, 2018.

  
\_\_\_\_\_  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6th day of June, 2018.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: October 30 2022