



December 29, 2016, the State consented to counsel's request. On December 8, 2017, Applicant, through counsel, filed a Supplemental Response to Conditional Order of Dismissal, with supporting Affidavits on the matter of newly discovered evidence. On March 20, 2018, the Honorable William H. Seals, Jr. signed a Final Order of Dismissal, which was filed on March 26, 2018. Thereafter, Petitioner, through counsel, filed a timely Motion Pursuant to Rule 59, SCRPC. On May 10, 2018, the Honorable William H. Seals, Jr., issued an Order Denying said Motion, which was filed on May 18, 2018.

As was argued to the lower court, Petitioner submits that his Application and responsive pleadings make allegations that are not ripe from summary dismissal without even a motion hearing being held. South Carolina Code 17-27-70 (c), provides:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Petitioner submits that the summary dismissal of his Application was in error and is a matter that should be reviewed by this Court.

Additionally, Petitioner has raised claims under South Carolina Code Section 17-27-45 (c), which require a hearing in order for such claims to be properly evaluated and ruled upon. Petitioner provided case law and Affidavits in support of these claims, as is reflected in the standing Order of Dismissal. Petitioner submits the dismissal of these claims merit appellate review.

Finally, as acknowledged in the standing Order of Dismissal, Petitioner has alleged that his case presents a rare circumstance, and he should be allowed to proceed on a successive PCR Application. See Ramirez v. State, 413 S.C. 351, 373, 776 S.E.2d 101,

113 n. 16 (Ct. App. 2015), *aff'd in part, rev'd in part*, 419 S.C. 14, 795 S.E.2d 841(2017) (quoting Aice v. State, 305 S.C. 448, 451, 405 S.E.2d 392, 394 (1991)). Petitioner submits appellate review is necessary to determine if he was afforded "one full bite of the apple" and to determine if a miscarriage of justice has occurred. See Poston v. State, 339 S.C. 37, 528 S.E.2d 422 (2000), Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Finally, Petitioner would ask this Court to allow his appeal to proceed in line with the recent reasoning set forth by this Court in Mangal v. State, Op. No. 27726 (S.C. Sup. Ct. filed October 4, 2017), as follows:

We first considered Martinez in Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013). We held Martinez "is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." 404 S.C. at 365, 745 S.E.2d at 377. We considered Martinez again in Robertson. Reaffirming Kelly, we held "Martinez does not afford Petitioner a right to file a successive PCR application by merely alleging ineffective assistance of prior PCR counsel." 418 S.C. at 516, 795 S.E.2d at 34. In Robertson, however, we permitted the PCR applicant to pursue successive application the PCR court found was procedurally barred. 418 S.C. at 516, 795 S.E.2d at 34.

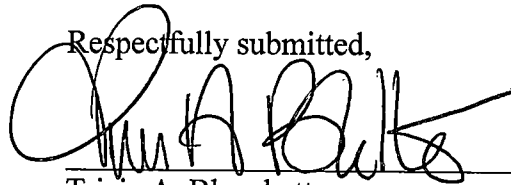
The Supreme Court's decision in Martinez reminds us that the Sixth Amendment guarantee of effective assistance of counsel is a "bedrock principle in our justice system." Simmons and Martinez counsel us that there are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure. These considerations should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings. We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial issues.

As we stated in Odom and repeated in Robertson, "All applicants are entitled to a full and fair opportunity to present claims in one PCR application." Robertson, 418 S.C. at 513, 795 S.E.2d at 33; Odom, 337 S.C. at 261, 523 S.E.2d at 755.

In the instant case, Petitioner was not afforded “a full and fair opportunity” to present the claims addressed in his current Application and responsive pleadings.

Based upon the foregoing, Petitioner would respectfully request the opportunity to proceed with an appeal of the lower court’s Order summarily dismissing his Application without a hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

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