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Motion for reconsideration # pages

Petition of May 25 2018 discretionary review 8 pages

Explanation

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM Horry County

William H. Seals Jr., Circuit Court Judge JUN 29 2018

S.C. SUPREME COURT

Case no: 2018-000806

Keviuntae Hytower  
appellant

State of South Carolina

In the instant action of this petition Keviuntae Hytower requests reconsideration in regards to decision of May 25 2018 remittitur was sent based on notion that petition for discretionary review was untimely filed.

Request for reconsideration is based on the following:

- 1) Petitioner did not receive full time allotted under SCACR 221
- 2) Review by this court is needed in this case in the interest of justice 204 (b) SCACR

In this case the petitioner did not receive full time before remittitur was sent to lower court.

Order of May 9 2018 remittitur was sent May 25  
However, the petitioner did not receive notification

by mail until May 14 2018. This request is asking this court to consider the fact that the petitioner had no knowledge of dead line until receipt of order. Also consideration that the petitioner being incarcerated has no control over when mail comes or goes. To start count down of days with out notification is complete denial of fairness especially without any consideration of the time it takes to get from point A to B there is also the prison screening process.

In furtherance of arguement is the fact that petition for descretionary review was put in mail on 5/25/2018 did not make to post office until 29th which should be substantial to claim that mail moves threw prison system slower. Proof of this is copy of certified mail receipt which should be compared to post mark on envelope of document.

In addition the petitioner requests consideration of the count down by business days

2.

Additionally, the petitioner requests reconsideration in the interest of justice. As the conviction of October 21 2008 is undeniably illegal complete miscarriage of justice that warrants vacation

Or correction due to fact that conviction for PWID Herion stands on warrant for cocaine. Lab results in connection to warrant states substance was infact an anti fungal. Shocking to the mind is the court upheld conviction that is clearly illegal.

Upon pleading Hytower was lead to believe cocaine case would be dismissed and he would plead to Herion instead he plead to cocaine warrant and sentenced under its statute. and the Herion case was dismissed. Had he been rightfully convicted under correct warrant and its statute maximum sentence would have been 2 yrs 1<sup>st</sup> offense.

The 10/21/2008 conviction violates several of Hytower's substantial rights such as Due Process. Even more of violation is the state of South Carolina's refusal to correct it as overwhelming evidence exist of this claim which are documents of case. An evidentiary hearing is necessary which is why he is asking the Supreme Court of South Carolina for reconsideration of descretionary review.

Lastly, is request for advocacy in form of an attorney. He asks the court to consider the fact that he is currently incarcerated in Federal Prison with very limited access to S.C. State law which

Creates impediment due to his lack of legal knowledge and aide.

Based on the afformentioned statements petitioner Keviuntae Hytower respectfully request the court to reconsider the attached petition for descreection ary review.

Respectfully Submitted

K. Hytower

Keviuntae Hytower

inmate no. 23394171

Federal correctional institution

P.O. Box 1000

Butner NC 27509

- Explanation -

The petitioner has not provided copy of order of May 9th 2018 as he sent the only copy to the court. He also wants the court to know that he has no copies of the documents of case that prove his claim for the same reason requests for discovery were denied by lower courts also reason attorney is very much needed.

State of South Carolina

Case no. 2015-CP-260-7674

In the case of Keviuntae Hytower in this instant action requesting descretionary review by The Supreme Court of South Carolina. Petitioner's request for review is based on all earlier pleadings are applicable to Uniform Post Conviction Procedure Act as follows:

- Conviction and sentence violates Constitution of State also United States
  - there exist evidence of material fact not previously heard that requires vacation of conviction or sentence in the interest of justice
  - he is unlawfully held in custody or restraint by the State of South Carolina
- pertaining to the afforementioned the petitioner requests remedy due to conviction and sentence of 10/21/2008 in a Horry County Court house.

• Is Court's determination abuse of descretion?

See Buck v Davis 137 S.Ct. 759 L.Ed. 2d 1

In the case of the petitioner's requests for remedy in which extraordinary circumstance and overwhelming evidence of illegal sentence has been displayed that require relief in the interest of justice multiple violations of substantial rights exist within still the court refute pleadings denying relief the petitioners requests for advocacy due to

limited access to S.C. State law due to his current incarceration in Federal Prison, requests for discovery denied which would further adequateness of pleading most of dismissal have been granted by one judge. The petitioner feels that the fact that his conviction is totally illegal denial of due process should be enough to allow his action to prevail the lower court fails to acknowledge that Hytower's sentence is beyond defective a miscarriage of justice which continues with each denial based on his lack of legal aide, and unawareness at the time of pleading.

• Does conviction and sentence that technically stand on act that is not illegal result in miscarriage of justice?

See United States v Foote 784 F.3d 931 (4th cir 2015) in Foote the 4th circuit held that only errors resulting in fundamental defect "a miscarriage of justice" Hytower conviction and sentence is defective and much more erroneous egregiousness are within it existence of multiple violations of substantial rights that should overwhelm the procedural barr. These type of violations are the purpose of habeas relief the "remedy system". Hytower was convicted of PWID Herion a charge that he was never arrested for this charge was a result of sentence factor manipulation either that or result of an incompetence as all documents relevant to conviction.

Clearly state PWID Herion however, a closer inspection of warrant number will reveal that the cocaine warrant is warrant of conviction stipulation of plea was that he would plea to herion charge and the cocaine charge would be dropped due to lab results came negative for cocaine therefore conviction under this warrant is illegal and violation of substantial rights due to fact that conviction stands on act that is not illegal not even a controlled substance but an antifungal.

- Fraud upon the Court, if judge issues illegal sentence unknowingly how much less accountable is defendant who recieved such sentence?

See United States v Tucker, 404 U.S. 443, 445 (1972)

"We deal here, not with a sentence found imposed with the informed discretion of a trial judge, but with a sentence found at least in part upon misinformation of Constitutional Magnitude".

In the case of Hytower's conviction on 10/21/2008 is completely based on misinformation resulting in multiple violation of substantial rights. The petitioner was convicted of crime he was not charged with. The presiding judge the Honorable Larry B. Hyman sentence Hytower for PWID Herion on warrant for PWID Cocaine. Therefore he issued sentence under wrong warrant and statute. The actual warrant for herion

and its statute a maximum sentence of 2yrs could be issued 10/21/2008 Judge Hyman was robbed of judicial discretion as true nature of conviction was hidden in plain sight. 3/20/2008 a indictment for PWID Herion was true billed standing on warrant for PWID Cocaine which resulted in issue of illegal sentence.

The petitioner is adamant in his belief that a distinguished officer of the court a judge would never knowingly issued such a sentence knowingly. With that and overwhelming evidence of the sentence being illegal the lower court shouldv allowed his actions to prevail! held evidentiary hearing instead the refuted his pleading that he unknowingly plead even though it is clear that the true nature of plea was misrepresented. In the case of the conviction of 10/21/2008 Hytower was denied fairness and the court was defrauded relief should be granted by vacation of sentence How can the state invoke precludural barr when its clear that one's constitutional right has been denied rather then make proper correction in the interest of justice

• Can filing of petition for habeas relief to discovery that warrants tolling?

See Holmberg v Arbretch, 327 U.S. 397 "Where individual has been injured by fraud, remains in ignorance of it with out any want or care on his part, the bar of the statute does not run until fraud is discovered" the

high courts reasoning in this case is totally relevant to the situation at hand. Discovery of violation was not made until filing of initial petition 2015-CP-26-1741 upon receipt of return containing true bill and warrant. Immediately after discovery of violation which were inconsistencies of true bill and warrant, amended petition was filed. The case was never fully adjudicated dismissed on grounds relevant to the petitioner's initial pleadings. The newly discovered violation was acted upon in the spirit of diligence therefore should overwhelm the procedural bar after inquiries were made relevant to a decision of amended petition of Case no. 2015-CP-26-1741 the petition filed 2nd petition on grounds pertaining to the discovery of violation which the Court of Common Pleas labeled as successive refusing to acknowledge the fact no decision was made on initial petitions amendment. The Honorable William H. Seals Jr ordered the final dismissal of case no. 2015-CP-26-1741 also conditional and final order of 2nd filing case no. 2015-CP-26-7674.

is misrepresentation of true nature of plea conviction enough to warrant tolling?

See Irwin v. Dept of Veterans Affairs, 489 U.S. 111 S.Ct. 443 Provides framework deciding applicability of tolling to statute of limitations in this case the Supreme Court states "an individual must establish basis for tolling" in

the case of Hytower basis is established through excusable ignorance due to the fact that violation is not easily discovery even the court was unaware of true nature of conviction as the plea was misrepresented to all parties involved this should be enough to establish basis for tolling on issues that are of merit such a misrepresentation which resulted in violation of such rights as 5<sup>th</sup> and 6<sup>th</sup> amendment clearly applicable to Uniform Post Conviction Procedure Act.

• Can defendant's rights be violated and waive in same action? be a basis for denial of relief?

See *Gardner v United States*, 378 U.S. at 8 "Conventional notions of finality have no place where life and is at stake and infringement of constitutional rights is alleged" One of the state of South Carolina's claims is that the petitioners right were waive upon signing of sentencing sheet therefore invoking procedural bar in finality of judgement. The petitioner position is that he unknowingly waived rights due to the wolf in sheep - clothing plea as everything about the plea states it is for heroin on closer inspection reveals that he was sentence a convicted under Cocaine warrant and its statute. This Warrant was to be dismissed upon pleading yet he stands convicted of it reason for warrants dismissal was negative lab results therefore Mr. Hytower stands convicted

illegally multiple violations of substantial rights are in existence due to 10/21/2008 conviction 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 14<sup>th</sup> amendment also Sect. 3 and 14 of South Carolina's declaration of rights deserving remedy in the interest of justice.

• Does wrongful conviction, sentence under same statutory range avoid violation?

See Hicks v Oklahoma 447 U.S. 343 (1980) "such arbitrary disregard of petitioner's rights to liberty is denial of due process of law" So is the issue in this case as the State of South Carolina stands firm on its believe that even though the sentence stands on warrant for Cocaine and not heroin it still falls under same statute as both substances are punishable under same statute in that they admit that the sentence is incorrect erroneous however, thier admission downplays complete situation avoids the truth Conviction under correct warrant would fall under different subsection of Statute in this case the Court was stripped of its power to adequately sentence defendant the Court of Commons Pleas refuses to acknowledge its error refusing to grant relief basically stating its O.K. to wrongfully sentence defendant as long as its under correct time range which is wrong and is not the issue that the defendant request relief upon making it more of injustice

everytime they refused to adhere to pleading correct error of sentence by way of vacating the petitioners conviction as a conviction under correct warrant and statute he could receive no more than maximum 2yrs which has already been served before revokation as he completed 3 yrs of the 5 years of probation he was sentenced to.

All pleadings of this petition are applicable to the Uniform Post Conviction Procedure Act  
deserving relief of vacation of conviction as the petitioner stands illegally convicted actually innocent.

respectfully submitted

K. Hytower

Keriantae Hytower  
inmate no. 23344171  
Federal Correctional Institution  
P.O. box 1000  
Butner NC 27509

FEDERAL CORRECTIONAL INST. #1  
P.O. BOX 1000  
BUTNER, NORTH CAROLINA 27509

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