

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

De Andrea G. Benjamin, Circuit

Case No. : 2018-001287

Todd Michael Sowell, Petitioner,

VS.

State of South Carolina Respondent.

243 (c) MOTION

I, Todd M. Sowell, Petitioner, makes the following explanation required by Rule 243 (c) of the South Carolina Appellate Court Rules as instructed by the Honorable Clerk of Court Mr. Shearouse.

Issue Presented

Is this PCR successive and / or untimely?

The Material Facts

Before I filed the current PCR application, I filed a Grievance with SCDC on my credit for time served issue. A Step 1 Grievance actually informed me to file a PCR Hearing and the Step 2 final on 4-27-15 stated I will need an order signed by a judge instructing SCDC to backdate my sentence to begin on a specific date, and resolved the matter as such. I could not have raised the claim in any earlier ap-

plication until the decision from SCDC became final. I filed copies of these Grievances with this PCR.

Before I filed the current PCR application, I arrived at MacDougall in March of 2014 and I never was exposed to computers being in the law library prior to that. Then, not until an additional computer was installed in the law library in March of 2015 did reasonable access to research allow me to discover I had a juror misconduct issue, because we only had 1 computer for the whole yard. At that point in time I was waiting for my petition for writ of habeas corpus to be finalized and on Aug. 31, 2015 when it became final, I then proceeded to include this issue with the PCR filed on Sept. 29, 2015.

Argument and Authorities

In the Conditional Order of Dismissal at pg 5 the PCR Court found that I failed to establish a reason why current allegations was not raised in the previous application. This statement oversimplified the issue and left out relevant considerations about my PCR. The PCR Court did not consider the Grievances I filed with the application where SCDC instructed me to file a PCR on my credit for time served issue. I filed this issue within 1 year after the decision from SCDC became final.

In Tilley v. State, 511 S.E. 2d 689, Inmate's 4th application for PCR on the ground he did not know he would be ineligible for parole due to sequence of his sentences, was not "successive"; inmate learned of his ineligibility in letter from parole board, and he filed his fourth ap-

plication less than one month later, and he could not have raised claim in any earlier application because he was then unaware of such claim. So, when Tilley learned he was ineligible for parole he filed for PCR. Likewise when I learned SCOC's position that I was ineligible for credit, I filed for PCR - as instructed by them - and I could not have raised this claim until sepc's position had crystallized.

Also, the PCR Court in the Conditional Order of Dismissal on pg. 7 stated that my issue of juror misconduct is unfounded and will not allow this application to overcome the bar of successiveness and untimeliness. If the question of juror misconduct was solely a question of law then the PCR Court would be able to make this determination, but the issue is a mixed question of law and fact, and to conclude my argument is unfounded without a hearing is a hasty generalization. A genuine issue of a material fact remains whether a juror at my trial was in fact an attorney who intentionally concealed his occupation to the court.

In McCoy v. State 737 S.E. 2d 623, a genuine issue of a material fact remained whether a PCR claim of juror misconduct in a juror failing to disclose that her cousin was married to solicitor could have been discovered prior to defendant's filing of initial application for relief, thus precluded summary dismissal of 2nd application as successive. §17-27-9a

The McCoy Court held that where PCR application alleges facts that would establish an exception to either the statute of limitations or the bar against successive applications, and those facts are not conclusively refuted by the record before the trial court, a question of fact is raised which can only be resolved by a hearing.

Conclusion

Therefore, I submit these (2) two arguable issues along with the facts and citation to legal authority to assert that the determination by the PCR Court was improper in the question of the application being successive and / or untimely in accordance with Rule 243 (c) of the South Carolina Appellate Court Rules.

IF I have found favor in this Court's sight, a full brief on all issues will be provided at Your request.

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