



The Supreme Court of South Carolina

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September 7, 2018

Mr. Roderick McRae, 236188
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: Roderick McRae v. State
Appellate Case No. 2018-001615

Dear Mr. McRae:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at

www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please

note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

While the final order of dismissal which was filed on July 27, 2018, states that no response was filed regarding either the State's motion to dismiss or the conditional order of dismissal, the public case index reflects that you filed two documents after the filing of the conditional order on June 11, 2018: one filed on June 19, 2018, entitled "Traverse Motion to Return and Motion to Dismiss, and Traverse to Conditional Order of Dismissal and Request for Summary Judgment," and one filed on July 24, 2018, entitled "Opposition to Conditional Order of Dismissal." A copy of those documents is enclosed.

By copy of this letter, the State is asked to please file a response addressing why the above listed documents were not treated as a return to the motion to dismiss or as a response to the conditional order of dismissal. This response should be filed with ten (10) days of the date of this letter.

Very truly yours,



CLERK

Enclosures

cc: Kelly Oppenheimer, Esquire (with enclosures)

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
10th JUDICIAL CIRCUIT

CASE NO.: 2018 -CP-37-100

Roderick McRae (236188))
Applicant Plaintiff,)
vs.)
State of South Carolina)
Respondent Defendant.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Applicant PROSE.</u> <u>Roderick McRae</u> , Bar No. _____ Address: <u>MCC</u> <u>386 Redemption way, McCormick, S.C.</u> Phone: <u>N/A</u> Fax: <u>N/A</u> E-mail: <u>N/A</u> Other: <u>N/A</u>	Defendant's Attorney: <u>Respondent</u> <u>Kelly Oppenheimer</u> , Bar No. _____ Address: <u>P.O. Box 11549</u> Phone: _____ Fax: _____ E-mail: _____ Other: _____
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
Nature of Motion: Post Conviction Relief
Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.
X _____, 2018
Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee
 PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
 Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____
JUDGE CODE _____
Date: _____, 20____

CLERK'S VERIFICATION
Collected by: _____ Date Filed: _____, 20____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2018 JUN 19 A 8:32

IN THE State of South Carolina
COURT OF Common Pleas
FOR THE Tenth Circuit
OF Oconee

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2018 JUN 19 A 8:33

Roderick G. McRae
S.C. DC. No. 236188
Applicant

case no. 2018-CP-37-100

TRaverse Motion to
Return and Motion to
Dismiss, and TRaverse
to Conditional Order
of Dismissal and
Request for Summary
Judgment

V.

State of South Carolina
Respondent

Presiding Judge: Honorable
R. LAWTON MCINTOSH

Come now Roderick G. McRae, Applicant PROSE, and Respect-
fully files this TRaverse to Respondent's Return and Motion to Dismiss,
and Conditional Order of Dismissal and Request this Honorable Court
to grant Summary Judgment Pursuant to S.C. Code 17-27-(b)(c)
and S.R. Civ. Proc. 56(c). (The Laws of the State of South Caro-
lina allows any party an opportunity to move for Summary Dispo-
sition of an application, when it appears from the Pleadings,
that there is no genuine issue of Material Fact and the Moving
Party is entitled to judgment as a Matter of Law. Therefore
the Applicant is Entitled to Relief on the Claims
Raised in his Current PCR). (1 of 5)

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MAIL ROOM

CURRENT CLAIMS

(1) THE RESPONDENT IS RELYING UPON A PRIOR CONVICTION THAT DOES NOT CARRY A MAXIMUM SENTENCE OF 30 YRS OR MORE UNDER S.C. CODE 17-25-45 (THE APPLICANT'S SENTENCE IS CONSTITUTIONALLY INVALID), BECAUSE THE PRIOR FLORIDA CONVICTIONS DOES NOT CARRY A MAXIMUM SENTENCE OF 30 YRS OR MORE.

THIS HONORABLE COURT SHOULD TAKE A JUDICIAL NOTICE IN THE BEST INTEREST OF JUSTICE AND PROTECT APPLICANT'S CONSTITUTIONAL RIGHTS AND ALLOW THIS CLAIM IN BECAUSE COUNSEL THAT PREVIOUSLY RAISED THIS ISSUE RAISED IT INADEQUATELY AND ONLY ARGUED THE CONSTITUTIONALITY OF THE STATUTE AS STATING THAT IT CONTAINED MORE THAN ONE SUBJECT (S.C. CONSTITUTION ARTICLE 3 SECTION 17), THIS SENTENCING CLAIM IS RELEVANT TO THE ORIGINAL PREVIOUS PCR'S AND APPLICANT SHOULD BE ALLOWED TO RELATE BACK TO THE ORIGINAL PCR S.C. CIV. PROC. 15(C), Mayle v. Felix, 545 U.S. 644, 125 S.Ct. 2562, 162 L.Ed 2d 582. THIS HONORABLE COURT SHOULD ALLOW THE APPLICANT AN OPPORTUNITY TO AMEND THE ORIGINAL PCR TO CONFORM TO THIS CLAIM, SOUTH CAROLINA LAW ALLOW AMENDMENT OF A CLAIM TO CONFORM TO THE EVIDENCE EVEN AFTER JUDGMENT HAS BEEN REACHED ON A CLAIM THIS CAN BE DONE AT ANY TIME S.C. CIV. PROC. 15(B).
S.C. CODE 17-27-90 THIS PCR SHOULDN'T BE CONSIDERED AS SUCCESSIVE

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C. 17-27-50 To meet Burden of Proof) and Rule 71.1(c) S.C.R. Civ. Proc.
THE APPLICANT WAS REPRESENTED BY COUNSEL AT THE TIME
OF THE PCR AND DUE TO THE LAWS OF SOUTH CAROLINA (SEREP11)
APPLICANT WASN'T ALLOWED TO FILE ANY KIND OF PLEADING
OR MOTION IN HIS CASE TO AMEND THE PCR, NO MATTER
HOW INADEQUATELY RAISED ISSUES WAS IN THE PCR S.C.
CODE 17-27-90, BECAUSE SOUTH CAROLINA DOES NOT
ALLOW HYBRID REPRESENTATION IN ANY CASE FROM SOMEONE
WHOES REPRESENTED BY COUNSEL. (THE APPLICANT SHOULDN'T
BE HELD LIABLE FOR INVITED ERROR THAT PRESUDICED THE
OUT COME OF THE PCR), THE APPLICANT HAS ALWAYS ACTED
IN GOOD FAITH AND FOLLOWED AND COMPLIED TO COURT
PROCEDURES, DUE TO THE ERRORS OF PCR COUNSEL'S THE
OUT COME ^{OF} THE PCR HAS BEEN PRESUDICED AND IMPEDED THE
PCR EVIDENTIARY ^{HEARING} WHICH WOULD'VE ALLOWED APPLICANT A
FULL AND FAIR OPPORTUNITY TO BE HEARD S.C.R. CIV. PROC.
12 (b), AND TO HAVE THIS CLAIM FULLY ADJUDICATED ON
THE MERITS S.C. RULES CIV. PROC. 56 (d), 28 U.S.C. 2254(d),
S.C. CODE 17-27-80, S.C.R. CIV. PROC. 52 (a), AND S.C. CODE 17-27-70 (b).
PCR COUNSEL IMPEDED APPLICANT'S ABILITY TO MEET HIS
BURDEN OF PROOF TO PROVE THIS CLAIM AND ALL OTHER CLAIMS
WHICH ENTITLED HIM TO RELIEF AS REQUIRED BY SOUTH CAROLINA LAW S.C. CODE 17-27-50 AND S.C.R. CIV. PROC. 71.1 (c).
BUTLER V. STATE 286 S.C. 441, 334 S.E. (3 OF 5)
2d 913 (1985)

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OTHER CURRENT CLAIMS

- (2) ACTUAL innocence AND Factual innocence
- (3) Legal innocence
- (4) Fundamental Miscarriage of Justice (Break in the Chain of Custody)
- (5) AFTER Discovery Evidence
- (6) INEFFECTIVE ASSISTANCE OF COUNSEL (Counsel Stipulated to Drug Quantity)

WHEREFORE, THE APPLICANT RESPECTFULLY PRAY THAT THIS HONORABLE COURT ACCEPT THIS TRAVERSE MOTION IN THE CASE AT BAR AND SCHEDULE AN EVIDENTIARY HEARING ON THIS PCR IN THE BEST INTEREST OF JUSTICE TO PROTECT MY CONSTITUTIONAL RIGHTS AND TO ASSURE THAT MY SENTENCE AND CONVICTION IS CONSTITUTIONALLY VALID TO PREVENT A MISCARRIAGE OF JUSTICE. THE APPLICANT IS PRESENTING EVERYTHING IN HIS CASE IN GOOD FAITH AND NOT TO PRESUDICE THE RESPONDENT OR TO WASTE THIS HONORABLE COURT'S TIME. TO JUST RELY UP THE DOCUMENTS AND FILES IN THIS CASE ISN'T ENOUGH IN AND OF ITSELF TO ASSIST THIS HONORABLE COURT IN REACHING A PRESUMPTION OF CORRECTNESS (4 OF 5)

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
10th Judicial Circuit

FILED OCONEE COUNTY, SC
CLERK: BEVERLY H. WHITFIELD
CLERK OF COURT

Roderick McRae, #236188,
Applicant,

2018 JUL 24 A 11:54

C/A No.: 2018-CP-37-100

v.

State of South Carolina,
Respondent,

OPPOSITION TO
CONDITIONAL ORDER OF DISMISSAL

ABOVE-CAPTIONED APPLICANT ('McRae') makes Opposition to the Conditional Order of Dismissal, rendered by the Honorable R. Lawton McIntosh, and Filed on June 11, 2018, granting McRae twenty (20) days from the July 6, 2018 day which service of said document was completed upon McRae, for McRae to show why the Conditional Order should not become final against McRae.

I.

(a) - The Conditional Order should not become final where, on Judge McIntosh's Finding that McRae 'Newly Discovered Evidence' claim fails based on McRae failing to make a prima facie showing (see 'Conditional Order' pp. 8-9), the following facts exist:

(i) - the Conditional Order overlooks and otherwise fails to address the allegation stating how he received 'After discovered evidence of a

Copies to:
City (P) McRae and Oppenheimer
DSS other _____
mailed _____ Boxed _____ handed _____

ENTERED
AW
COMPUTER

Brady violation by Solicitor' in failing to turn over documents, that Mr. Rae received from SKED years after his conviction, which reveal that a chain of custody forms / reports does not specify the amount of drugs, nor state wherefore the state Trooper C.E. Long got (seized) the firearm weapon, nor what he did with it thereafter; there is absolutely no evidence entered into the record which shows Mr. Rae could have presented the basis of his 'Newly Discovered Evidence' prior to time alleged, and when a new trial is sought by way of after acquired evidence, a PCR Court should grant a new trial upon sufficient allegations (constituting a prima facie showing) that the evidence was recently discovered and cast a light upon the potential that a trial or sentencing will more than likely produce a different result. (see, e.g., Weik v. State, 761 S.E. 2d 757 (S.C. 2014) (opting to remand upon showing of mitigation evidence in sentencing phase; was erroneously overlooked by PCR Court); State v. Spann, 513 S.E. 2d 48, 100 (S.C. 1999))

(granting new trial where new evidence was discovered eighteen (18) years after the original trial)). Thus, where the Conditional Order moves for summary dismissal by saying McRae failed to make a prima facie showing (see Conditional Order, Pg. 9, ln. 5-7), this is in error, and should not support Judge McIntosh's Conditional Order.

II.

CONCLUSION

WHEREFORE, McRae submits that Judge McIntosh's Conditional Order should not become Final.

Respectfully Submitted,

15/ Roderick McRae
Roderick McRae, #236188
M.C.I. F. 3-233.B
386 Redemption Way
McCormick, SC 29899

7 - 17 - 2018
DATE

To the Court I'm Ask for more
time because we are lock
down and its hard for me
to get to the law library
so if its anyway possible that
I can get more time than
the 20 day

I do appericate it
very much

Roderick
MRAE

FILED DEBORAH COURTNEY SC
DEVERLY H. WATFIELD
CLERK OF COURT
2010 JUL 21 A 11:54