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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

KRISTI L. HARRINGTON, Circuit Court Judge

Case # 2016-CP-10-705

STATE OF SOUTH CAROLINA RESPONDENT.

V.

SIDNEY FIELDS # 254392 PETITIONER.

EXPLANATION

PURSUANT TO RULE 243(c) SCACR

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Please take note that the entire record of the lower court is accompanying this explanation. Thus said, the Explanation will be referencing the same exhibits that was argued in the (PCR) application in the lower court

I

QUESTION

 # 1. DID THE LOWER COURT ERRED FOR DISMISSING THE (PCR) APPLICATION WITHOUT A HEARING WHEN THERE WAS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE (PCR) APPLICATION IS SUCCESSIVE AND TIME BARRED?

 # 2. DID THE LOWER COURT ERRED WHEN THE CONDITIONAL AND FINAL ORDER DISMISSING PETITIONER'S (PCR) APPLICATION WAS ISSUED BY ONE CIRCUIT COURT JUDGE AND THE ORDER SUBSEQUENTLY DENYING PETITIONER'S MOTION TO RECONSIDER WAS ISSUED BY ANOTHER CIRCUIT COURT JUDGE?

II

BACKGROUND

In October of 1995 petitioner entered drug rehabilitation (Rehab) at the Roper "North" Hospital in Charleston, S.C. for crack addiction.

On February 27, 1996 petitioner entered rehab a second time at the Medical University Of S.C. where he was treated for crack cocaine addiction, anxiety, and having suicidal thoughts. **Exh 5**

In that same year, petitioner subsequently entered drug rehab a third time for crack cocaine addiction, this time at the Charleston County Rehab Center. After petitioner's third rehab treatment, petitioner graduated from truck driving school in 1996 and was a professional driver until January of 1997.

On the morning of March 9, 1997 while employed as a cook at the Pagoda Chinese restaurant, petitioner took the life of Thomas Chan (co-owner of the restaurant) and took an undisclosed sum of money from the restaurant's office before the restaurant was open for business.

Several hours after the incident, petitioner called the police and admitted his involvement in the crime. Petitioner also admitted to authorities that he had a crack cocaine addiction. Petitioner was subsequently charged and indicted for Murder and Armed Robbery. **Exh 1,2**

On November 16, 1998 petitioner plead guilty and was sentenced to Life imprisonment for Murder, and 30 years for Armed Robbery to run concurrent. **Exh 3**

After the conviction, petitioner submitted several (PCR) applications including a Federal Habeas Corpus petition along with other subsequent pleadings that ended on October 8, 2015 in the S.C. Supreme Court. The clerk of court (Charleston County) mailed petitioner a notice of the Supreme Court's Judgment on October 13, 2015. **Exh 4**

Six months earlier on April 4, 2015, at the behest of the prison mental health counselor, petitioner requested his medical records from the Medical University Of S.C. to receive the name of the anti-anxiety medication that was prescribed to him during his drug rehabilitation treatment at the hospital in 1996.

In June of 2015, petitioner received his medical records, and upon review, petitioner newly discovered that he was suffering from Psychomotor Retardation at the time of his treatment at the hospital. **(Exh 5)** It must be noted that petitioner was charged with Murder and Armed Robbery 1 year later.

This newly discovered evidence that petitioner was suffering from a mental defect (Psychomotor Retardation) at the time of the crime is the bases for this current (PCR) application. **S.C. Code Ann. §17-27-45(c)**

On February 11, 2016, petitioner alleged in the application that: he is entitled to the vacation of his conviction and sentence to raise the defence of insanity in a new trial where newly discovered evidence revealed that at the time of the crime, not only was he suffering from a mental defect, this mental defect was exacerbated by his drug use causing insanity to be permanent and irreversible.

The State submitted a motion to dismiss dated October 20, 2016. Base on the State's motion, the lower court on November 8, 2016 issued a Conditional Order Of Dismissal concluding that the application is successive and time barred.

On November 23, 2016 petitioner "Responded" to the Conditional Order alleging that the court's findings on the successiveness and the untimeliness of the application is baseless. On June 12, 2018, the Conditional Order became Final.

On June 29, 2018 petitioner asked the lower court to reconsider it's Final Order pursuant to Rule 59(e) SCRCP. Petitioner argued before the lower court that: the court erred for dismissing the (PCR) application without a hearing when there was a genuine issue of material fact as to whether the (PCR) application is successive and time barred.

Petitioner asked that the Final Order be Vacated and that a hearing be held on the merits of the application. In the alternative, petitioner asked for a 59(e) motion hearing. **(see 59(e) motion)**

On August 24, 2018 the lower court denied petitioner's 59(e) motion. Petitioner's Explanation pursuant to Rule 243(c) SCACR now follows:

III

ARGUMENT # 1.

THE LOWER COURT ERRED FOR DISMISSING THE PCR APPLICATION WITHOUT A HEARING WHEN THERE WAS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE PCR APPLICATION IS SUCCESSIVE AND TIME BARRED.

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1. Successiveness

In the instant case, although the psychiatrist revealed in the medical records that petitioner was suffering from Psychomotor Retardation, the Psychiatrist never made mention in the records that he informed petitioner of the condition, nor did the records reveal that petitioner was treated for the condition. The medical records clearly shows that petitioner was admitted and treated only for crack cocaine addiction, anxiety and suicidal thoughts in a 3 day detoxification program. **Exh 5 / (response to conditional order p.3) / (59(e) motion p.3)**

When petitioner newly discovered in June 2015 that he was suffering from Psychomotor Retardation, petitioner subsequently submitted a (PCR) application pursuant to §17-27-45(c) alleging that: he is entitled to the vacation of his conviction and sentence to raise the defense of insanity in a new trial where newly discovered evidence reveals that at the time of the crime, not only was he suffering from a mental defect, the mental defect was exacerbated by his drug use causing insanity to be permanent and irreversible. **(PCR applcation and memorandum in support)**

However, the (PCR) court concluded in it's Conditional Order that petitioner could have raised this allegation in his original application for Post Conviction Relief, and that he failed to show a sufficient reason why this allegation could not have been raised. **(conditional order p.5,6)**

The court based it's conclusion on Statute law §17-27-90, which states that all grounds for relief available to an application under this chapter must be raised in his original , supplemental or amended application..... unless the court finds a ground for relief asserted which for sufficient reason was not asserted in the original, supplemental or amended application. **S.C. Code Ann. §17-27-90 / (conditional order p.5,6)**

The court went on to conclude that since petitioner could have raised this allegation in his original (PCR) application, and the fact that he failed to show a sufficient reason why this issue could not have been raised in the original application, this application is successive and barred under 17-27-90. **(conditional order p.5.6)**

Petitioner argues that his original (PCR) application was filed on May 13, 1999. The new evidence was discovered in June 2015 and was raised in a (PCR) application pursuant to §17-27-45(c). Statute law §17-27-45(c) permits (PCR) applications based on new evidence claims and allows for applications to be filed within 1 year after the discovery of the new evidence. **(response to conditional order p.2) / (59(e) motion p.4) / McCoy v. State 401 S.C. 363,368-69, 737 SE2d 623,626 (2013)**

Therefore, since it is clear that petitioner could not have known that he was suffering from Psychomotor Retardation before June 2015, petitioner could not have raised this new evidence in the May 13, 1999 original application. **(response to conditional order p.3) / (59(e) motion p.4)**

Not only has petitioner properly raised this new evidence claim in a (PCR) application pursuant to §17-27-45(c), petitioner has given a sufficient reason under §17-27-90 why this new evidence could not have been raised in the May 13, 1999 original (PCR) application. **(PCR application/memorandum in support) / (response to conditional order p.3,4) / (59(e) motion p.3,4,) / McCoy v. State 401 S.C. at 369, 737 SE2d at 627 (2013)**

The S.C. Supreme Court has ruled that the findings of the Post Conviction relief court will be upheld if there is any evidence of probative value to support them. However, the findings of a Post Conviction Relief court will not be upheld if no probative evidence supports those findings. **Rutland v. State 415 S.C. 570,576, 785 SE2d 350,353 (2016)**

Petitioner asserts that not only is the lower court's findings on the successiveness clause not supported by any evidence of probative value **(response to conditional order p.3,5) / (59(e) motion p.5)**, there exist a genuine issue of material fact as to whether petitioner's claim is successive. **(response to conditional order p.1) / (59(e) motion p.1,5) / McCoy 401 S.C. at 370, 737 SE2d at 627 (2013)**

2. Statute Of Limitations

On the Statute Of Limitation issue, the court further concluded that since petitioner was convicted and sentenced on November 16, 1998, petitioner had until November 16, 1999 (one year later) to submit the current (PCR) application. **(conditional order p.6) / (see sentencing sheet-Exhibit 3)**

The court based it's conclusion on Statute law §17-27-45(a), which states that an application for relief filed pursuant to this chapter must be filed within 1 year after entry of Judgment of conviction.....**S.C. Code Ann. §17-27-45(a) / (conditional order p.6)**

The court went on to conclude that since petitioner failed to file the current application within 1 year of his conviction pursuant to §17-27-45(a), the application is time barred and must be summarily dismissed. **(conditional order p.6,7)**

Petitioner argues that there is an exception to the 1 year Statute Of Limitation clause under §17-27-45(a). That exception is §17-27-45(c). Statute law §17-27-45(c) permits (PCR) applications based on new evidence claims and allows for the application to be filed within 1 year after the discovery of the new evidence. **(response to conditional order p.3) / (59(e) motion p.5) / McCoy 401 S.C. at 369-70, 737 SE2d at 626-27 (2013)**

Petitioner further argues that since he discovered the new evidence in June 2015 and subsequently submitted a (PCR) application within 1 year pursuant to §17-27-45(c), the court's findings on the Statute of limitation clause is not supported by evidence of probative value. **(response to conditional order p.3,5) / (59(e) motion p.6) / Rutland v. State 415 S.C. at 576, 785 SE2d at 553 (2016)**

Thus said, there exist a genuine issue of material fact as to whether petitioner's claim is time barred. **(response to conditional order p.1) / (59(e) motion p.1,6) / McCoy 401 S.C. at 372, 737 SE2d at 628 (2013)**

ARGUMENT # 2.

THE LOWER COURT ERRED WHEN THE CONDITIONAL AND FINAL ORDERS DISMISSING PETITIONER'S (PCR) APPLICATION WAS ISSUED BY ONE CIRCUIT COURT JUDGE AND THE ORDER SUBSEQUENTLY DENYING PETITIONER'S MOTION TO RECONSIDER WAS ISSUED BY ANOTHER CIRCUIT COURT JUDGE.

Petitioner asserts that it was Judge Kristi L. Harrington who issued the Conditional and Final Orders for the lower court in this (PCR) matter. However, when petitioner submitted his Rule 59(e) motion challenging Judge Harrington's Final Order, Judge Robert M. Young Jr. issued the order dismissing the 59(e) motion.

In denying the 59(e) motion, Judge Young specifically stated in the Order that he has reviewed petitioner's 59(e) motion along with the entire record. He also concluded in the Order that he is affirming the court's prior Orders in the matter. **(see 59(e) Order pg.2)**

Petitioner argues that it was improper for Judge Young to issue an Order denying his 59(e) motion in this matter, because not only did Judge Young made findings about a pleading that he never read, examined nor adjudicated on, he erroneously **AFFIRMED** Judge Harrington's Conditional and Final Orders.

It is settled law that one circuit court Judge does not have the power to review, modify, affirm or reverse the findings of another circuit court Judge. **STATE ex rel Medlock v. Love Shop Ltd 286 S.C. 486,488, 334 SE2d 528,529 (1985)**

Therefore, since Judge Young never read or examined the 59(e) motion nor the record in this (PCR) matter, and the fact that he erroneously affirmed Judge Harrington's Orders, was not only an error but was prejudicial to petitioner's pleadings before the lower and appellate courts.

To further this discussion, had Judge Young read and examined the proposed Order dismissing the 59(e) motion, Judge Young would have discovered that petitioner's case was never before him.

This also puts into question whether Judge Harrington actually read and examined the entire (PCR) record as she declared in her Conditional and Final Orders. It must be noted that every inmate who choose to challenge their conviction and sentence under the Post Conviction Relief Act, has one bite at the apple. Any subsequent (PCR) applications are deemed successive and will be dismissed in accordance to the same verbatim fact finding and conclusion of law drafted by the applicant's adversary (The S.C. Attorney General's Office) and adopted by the courts.

Although each Conditional Order Of Dismissal contains a different inmate's name and a different set of facts, the same fact finding and conclusions of law is repeatedly reproduced verbatim in every inmate's Conditional Order. **(see petitioner's Conditional Order)**

Therefore in the instant case, who's to say Judge Harrington actually did what she declared in her Conditional Order, being that both the Conditional and Final Orders were pre-drafted proposed Orders prepared by the Attorney General's Office before they were signed by Judge Harrington.

Also, how can Judge Harrington in her Conditional Order delegate a specific fact finding and conclusion of law to this specific case when that same fact finding and conclusion of law is, has been, and will be repeatedly reproduced verbatim in every Conditional Order in the State Of South Carolina by the S.C. Attorney General's Office?

Therefore, how can there be any truth to whether Judge Harrington did what is declared in her Orders? And even if Judge Harrington did what is declared in her Order, how can the Order be legitimate when the same fact finding and conclusion of law is used verbatim in every proposed Conditional Order in the State?

Petitioner argues that because of this type of practice, a Judge will inadvertently develop a habit of signing every proposed Conditional and Final Orders that come across their desk without ever doing what is declared in the Order they sign.

In other words, a Judge will simply sign whatever proposed Order the Attorney General places before them without ever doing anything to or about the case that is before them. **(Judge Young's 59(e) Order is a prime example)**

Therefore, along with addressing Judge Young's 59(e) Order, petitioner ask that this court to revisit the practice of attorneys drafting proposed Orders for Judges.

IV

CONCLUSION

Petitioner lastly asserts that since he has alleged facts that establishes an exception to the Statue of limitation and the successiveness clause, and that those facts are not conclusively refuted by the record **(response p.3,5)**, a question of fact raised can only be resolve by a hearing on the merits. **(59(e) motion p.6) / McCoy v. State 401 S.C. 363,369 737 SE2d 623,625 (2013)**

Finally, since it is settled law that one circuit court Judge does not have the power to review, modify, affirm or reverse the findings of another circuit court Judge, not only was it improper for Judge Young to issue an Order denying petitioner's 59(e) motion, Judge Young was in error for affirming Judge Harrington's Conditional and Final Orders. **State ex rel Medlock v. Love Shop Ltd. 286 S.C. 486,488 334 SE2d 528,529 (1985)**

Wherefore, petitioner Sidney Fields now pray that this Honorable court Vacate the lower court's Final Order and Remand for a hearing on the merits of the application. In the alternative, this court has petitioner's blessing to proceed on it's own motion to render the appropriate relief the court deems proper for this matter. If not, please refer to the appellate defence office for representation if this appeal is allowed to proceed.

Respectfully Submitted,

Sidney Fields

Date September 18, 2018

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