

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

ALONZO COLUMBUS JETER, III,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2018-001471

PETITION FOR WRIT OF CERTIORARI

ALONZO COLUMBUS JETER, III

Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

PETITIONER

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S.C. SUPREME COURT

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The PCR court erred in not finding that plea counsel was ineffective for allowing Petitioner to sign two separate sentencing sheets when plea counsel, the State, and Petitioner agreed to merge the two charges for possession of less than one gram of crack first offense a one single conviction and plea counsel failed to secure that this agreement was in writing on the sentencing sheet which would remove and prevent any future discrepancy.....4.

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ISSUE PRESENTED

Did the PCR court err in not finding that plea counsel was ineffective for allowing Petitioner to sign two separate sentencing sheets when plea counsel, the State, and Petitioner agreed to merge the two charges for possession of less than one gram of crack first offense as one single conviction and plea counsel failed to secure that this agreement was in writing on the sentencing sheet which would remove and prevent any future discrepancy?

STATEMENT

On October 12, 2004, Petitioner Jeter appeared before the Honorable Roger Couch and entered a guilty plea to the charges of possession of crack 1st offense and possession of crack 1st offense. Petitioner waived presentment to the grand jury. Petitioner was represented by Public Defender Donald Thompson and the state was represented by

The judge sentenced Petitioner to a sentence of 3 years probation and stated "if you are convicted of drugs again it will be your 2nd offense". Jeter did not appeal his guilty plea, convictions nor sentences.

On May 1, 2017, a 'Motion To Reopen Record' in regards of another PCR matter was filed. App. P. 124. (This was in regards of the Petitioner's new convictions which he was convicted of in 2015, however, this motion is relevant to the issue presented in this instance.) Attached to this motion were two sentencing sheets from Petitioner Jeter's 2004 guilty plea. The motion was granted by the PCR court on June 30, 2017. It was deemed at that time the State would choose to unmerge his prior conviction and count it as two separate convictions for enhancing purposes.

On June 19, 2017, Petitioner Jeter filed an application for post-conviction relief (PCR) after realizing that the 'Motion to Reopen Record' was based on the two sentencing sheets from his 2004 guilty plea and not based on how many convictions were on his criminal background record and SLED NCIC report. App. P. 1. The state filed a Return and Motion to Dismiss on or about December 1, 2017. App. P. 23. Petitioner filed a Memorandum In Support of Post-Conviction Relief Hearing on December 8, 2017. App. P. 34. A Conditional Order of Dismissal was filed on December 11, 2017. App. P. 40.

Petitioner filed an Amendment to Post-Conviction Relief Application on December 18, 2017. App. P. 54. Petitioner's response to Conditional Order of Dismissal was filed on December 27, 2017. App. P. 57. Petitioner also filed and provided for the record, his city and county criminal background reports, his SLED NCIC report, Court Transcripts from a July 16, 2015 proceeding regarding another matter (but is relevant in this PCR matter also) and an Affidavit of Authentication which certified that all submitted records and reports were true copies of records and reports from the agencies. All was filed together on January 5, 2018. App. P. 72.

Petitioner filed an objection to final order of dismissal on July 9, 2018 (App. P. 96) and also a corrected/amended version on July 18, 2018. App. P. 102. No evidentiary hearing was held and the Honorable R. Keith Kelly dismissed the Petitioner's PCR application by signing and filing a final order

of dismissal on August 2, 2018. App. P. 112. Petitioner Jeter filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in not finding that plea counsel was ineffective for allowing Petitioner to sign two separate sentencing sheets when plea counsel, the State, and Petitioner agreed to merge the two charges for possession of less than one gram of crack first offense as one single conviction and plea counsel failed to secure that this agreement was in writing on the sentencing sheet which would remove and prevent any future discrepancy.

Failure to state a claim

The PCR court erred in its finding and conclusion of law that Petitioner did not raise a cognizable claim for an evidentiary hearing. The record clearly shows this court that the Petitioner claimed ineffective assistance of counsel. Petitioner filed an amendment to his post-conviction relief application on March 20, 2018 to state this claim. See App. P. 93. Petitioner also adds that he commences his post-conviction relief action on the grounds that there exists evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence in the interest of justice and that the conviction or sentence is otherwise subject to collateral attack upon a ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

Petitioner has continually requested that the Honorable Court construe his pleading liberally and that he be held to less stringent standards than formal pleadings drafted by lawyers as he is unlearned in the law and court procedure and etiquette. Petitioner's case/claims should not be summarily dismissed because of unfamiliarity with pleading requirements.

Petitioner's plea counsel was ineffective for allowing Petitioner to sign two separate sentencing sheets when plea counsel, the State, and Petitioner agreed to merge the two charges for possession of less than one gram of crack first offense as one single conviction and plea counsel failed to secure that this agreement was in writing on the sentencing sheet which would remove and prevent any future discrepancy.

Petitioner has never been appointed an attorney to assist him in this PCR matter and is an indigent prisoner. Therefore Petitioner has not had the opportunity to present his case/claims to a competent attorney who would have ensured that Petitioner stated his claims in such a manner that the court could clearly understand. Petitioner has asked that the court would appoint an attorney to assist him in this filing and claiming of this action.

The court in the interest of justice, should appoint counsel to represent

Petitioner in this case. See Gary v State, 557 se2d 662 (2001)- In the interest of fairness, counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under S.C. Code Ann. 17-27-45(A) and the PCR applicant raises an issue of material fact regarding the applicability of the one-year limitation.

When considering the State's motion for summary dismissal of an application for post-conviction relief, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Pelzer v State, 662 se2d 618 (2008).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v American Tel. and Tel. Co. 306 S.C. 101, 410 se2d 537 (1991)

Statute of limitations

The PCR court erred in its finding and conclusion of law that Petitioner's claim was barred by the statute of limitations. The PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. 17-25-45

Petitioner would show the court that only one prior conviction has been reflected on his criminal background records from 2004 until present. See App. P. 72. This was in agreement with the Petitioner's 2004 plea. There was no way of knowing that the courts would be confused in 2017 and then count the conviction as two separate convictions. See also App. P. 80 where Petitioner has submitted a portion of his court transcripts from his plea of his current charges where the solicitor proves that there was only one prior conviction.

The Petitioner's claim was discovered between May 1, 2017 when a 'Motion To Reopen Record' in regards of another PCR matter was filed (See App. P. 124). Attached to this motion were two sentencing sheets from Petitioner's 2004 guilty plea. This motion was granted by the PCR court on June 30, 2017, and it was found that the State would in fact choose to unmerge Petitioner's conviction and count them as two separate convictions for enhancement purposes. The Petitioner has filed his application for post-conviction relief well within the year timeline and statute of limitations set for newly/after discovered evidence. Therefore, this claim/case should not be have been summarily dismissed.

Where an applicant for PCR alleges in his application that results of his prior conviction still persist, even though sentence has been fully served, he is entitled to an evidentiary hearing to determine whether he has been prejudiced. McDuffie v State 277 se2d 595 (1981)

The Petitioner would show the court that results of his prior conviction does still persist and that his current convictions has been enhanced based on his past conviction and plea counsel's ineffectiveness in being sure that the plea agreement was written on the sentencing sheets and furthermore allowing the Petitioner to sign two sentencing sheets.

The PCR court's decision was an unreasonable determination of the facts in light of the evidence submitted.

The applicant must show that there is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Smith v State, 369 S.C. 135, 138, 631 se2d 260, 261 (2006); Hill v Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985)

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v State, 300 S.C. 117-118, 386 se2d 624 (1989)

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v State, 286 S.C. 441, 334 se2d 813 (1985).

Petitioner was prejudiced by plea counsel allowing him to sign two separate sentencing sheets when plea counsel, the State, and Petitioner agreed that the charges would merge into one conviction for possession of less than one gram of crack first offense.

Petitioner was also prejudiced when plea counsel failed to secure that this agreement was in writing on the sentencing sheet which would remove and prevent any future discrepancy.

The fact the Petitioner was given probation on the charges was not significant to the offenses plead to as even if Petitioner was sentenced straight up to a second offense of possession of less than one gram of crack, he


would have been allowed to receive a sentence of probation. This shows that it was indeed more to the plea agreement and negotiations.

The PCR court erred in finding that Petitioner failed to state a claim and that Petitioner was barred by the statute of limitations.

Pursuant to Austin v State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Therefore, Petitioner requests that counsel be appointed to assist him in this matter.

CONCLUSION

Based on the above, certiorari should be granted, case remanded and Petitioner's convictions and sentences reversed.



Alonzo C. Jeter, III
PETITIONER

This 19th day of September, 2018.

The Supreme Court of South Carolina
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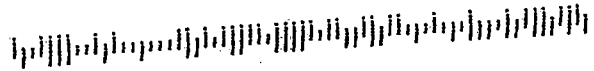
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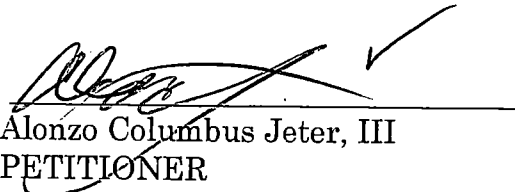
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2018-001471

CERTIFICATE OF SERVICE

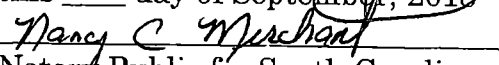
I, Alonzo C. Jeter, III, #282902, hereby certify that I have served the Appendix and Petition for Writ of Certiorari on Respondent by depositing a copy of the same in the United States Mail, postage prepaid, by and through the interagency mailroom at Perry Correctional Institution this 19th day of September 2018, addressed to Jordan Adraine Cox, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211.



Alonzo Columbus Jeter, III
PETITIONER

Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SWORN and Subscribed before me
this 19th day of September, 2018



Nancy C. Merchant
Notary Public for South Carolina

My Commission Expires: 1-23-2023