

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.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

State of South Carolina)
Respondent Defendant.)

Plaintiff's Attorney: <u>Applicant PROSB.</u> <u>Roderick McRae</u> , Bar No. _____	Defendant's Attorney: <u>Respondent</u> <u>Kelly Oppenheimer</u> , Bar No. _____
Address: <u>MCCX</u> <u>386 Redemption way, McCormick, S.C.</u>	Address: <u>P.O. Box 11549</u>
Phone: <u>N/A</u> Fax <u>N/A</u>	Phone: _____ Fax _____
E-mail: <u>N/A</u> Other: <u>N/A</u>	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 Signature of Attorney for Plaintiff / Defendant Date submitted 2018

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, SCRCP)
 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-ep-37-100

V.

State of South Carolina
Respondent

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

Presiding Judge: Honorable
R. Lawton McInosh

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).

LEGAL MAIL
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 STATE 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), Mayke 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 BY ANY TIME S.C.R. CIV. PROC. 15(b). S.C. Code 17-27-90 THIS PCR SHOULDNT BE CONSIDERED AS Successive (2 OF 5)

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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 (SEREP 11) 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 OUTCOME 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 OUTCOME ^{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), UNDER PRESUMPTION OF CORRECTNESS, AND FACT FINDING PROCEDURE 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)

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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~~ case in good faith and not to prejudice 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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