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S.C. SUPREME COURT

The State of South Carolina
In the Supreme Court

Appeal from Colleton County
Court of Common Pleas
Perry M. Beckner, Circuit Court Judge
Lower Court Case no: 2013-CP-15-0214
Appellate Case: 2017-001915

Walter McQuinn 20002 Appellate

State of South Carolina Respondent

Prolo 243(c)(4)(h) SCAER Petition Review
Petition for Writ of Certiorari under
415 S.C. 438 (2016)

10-15-18

10 S.C. 81

28 U.S.C. § 1746

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3. The PCS Judge abuse its discretion in failing to make specific findings of facts and Conclusions of Law relating to issue Presented

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Question Presented

1. Did the PCR Judge abuse its discretion where its final Order of Dismissal is based on "Procedural History" that is without evidentiary support.

2. Did the Circuit Court abuse its discretion when it addressed the merits of the Objections to Conditional Order of Dismissal without appointment of Counsel for hearing on June 2, 2017.

3. Did the PCR Judge abuse its discretion in failing to make specific findings of facts and Conclusion of Law relating to issue Presented

LEGAL MAIL

Statement of the Case

On August 8, 2007 an Order of Dismissal were filed (App. p. 93-94).
On March 13, 2013 PCR 2013-CP-15-0214 were filed under Martinez v Ryan (March 20, 2012) 17-27-49B; 17-27-90; 1st Amend U.S.C.A. (App. p. 95-102). On April 23, 2014 the application were Award erasing Martinez v Ryan an Amending Brannon v State, 548 S.E.2d 866 (2001) 17-27-45(c); 17-27-90; 1st Amend U.S.C.A. (App. p. 1-4).
On October 23, 2014 the State filed its Return and Motion to Dismiss and Conditional Order of Dismissal (App. p. 5-12). On December 17, 2014 the State issued a Conditional Order of Dismissal (App. p. 13). On March 24, 2016 the State Serve Affidavit of Personal Service upon me (App. p. 14). On April 21, 2016 "Objection to Conditional Order of Dismissal were Mailed U.S. Postage and Certified to Attorney General and Patricia C Grant (App. p. 16-19). On April 16, 2016 Patricia C Grant filed the Objection to Conditional Order of Dismissal (App. p. 20).
On December 12, 2016 Skyler Hutto Conditional Order of Dismissal became final twenty days after it was served (App. p. 21). On April 19, 2017 Chief Justice Beatty answer My Petition for Notice of Appeal stating: "The final Order of Dismissal has been filed in this case (App. p. 27-33)".
On April 21, 2017 the State filed its Return and Motion to Dismiss (App. p. 25-27). On May 2, 2017 Promittitor filed with Circuit Court (App. p. 30) (App. p. 28). On May 26, 2017 I filed Rule 6(d)(3) SCRPC, Extrinsic Fraud Motion with exhibit at (App. p. 14-20) (App. p. 31). On June 7, 2017 this hearing were held in Hampton S.C. (App. p. 32).

LEGAL MAIL

On June 20, 2017 allege Counsel, Daniel Matthew, Esquire acknowledge My objection filed timely (App.p. 33). On September 8, 2017 the state final Order of Dismissal were filed (App.p. 39-47). On August 8, 2017 allege hearing held (App.p. 109-153).

1. ARGUMENT

The PCR Judge abuse its discretion where its final Order of Dismissal is based on "Procedural History" that is without evidentiary Support

The PCR 2013-CP-15-0214 is not successive nor barred by the Statute of Limitation and should not be summarily dismissed because the final Order of Dismissal is based on "Procedural History" that is without evidentiary Support and no protective Valve exist to Support the Post-Conviction-Relief (PCR) Courts findings. see (App.p. 136, line 6-7) "On June 2, 2014 this Court held a hearing to determine whether Applicant's Objection to his COP was timely filed and Meritorious. This Court appointed David Mathew, Esquire to represent applicant" see (App.p. 115, line 17-18) THE COURT: June 2th in Hampton, at which time I appointed Mr. Mathews to represent Mr. McCune... see (App.p. 115, line 11-16) "When I Learned of the date that Mr. McCune was actually served with the Conditional Order of Dismissal, I attempted to immediately even though I had already signed a final Order of dismissal, attempted to schedule a hearing for Mr. McCune. We started that hearing, I believe it was May wasn't it? MR. MATHEWS: June 7th, I believe.

when reviewing the propriety of a Summary Dismissal of an application for Post-Conviction-Relief (PCR), the Supreme Court must view the facts in the light most favorable to the applicant. Leamon v State 363 S.C. 432, 611 S.E.2d 494 (2005)

If evidence of probative value exist on the record, this evidence is sufficient to uphold Post-Conviction-Relief (PCR) Judges findings on appeal Gebbs v State, 408 S.E. 2d 223 (1991)

If no probative value exist to support the Post-Conviction-Relief (PCR) Court findings, the Supreme Court will reverse. McKnight v State, 661 S.E.2d 354 (2008)

Simon v Flowers, 231 S.C. 545 (1957) Error at Law exist (1) when the Circuit Judge, in issuing [the Order], was controlled by some error of Law ... or (2) where the order, base upon factual, as distinguished from legal, considerations, is without adequate evidentiary support.

2. ARGUMENT

The PCB Judge abuse its discretion when it address the merits of the Objection to the Conditional Order of Dismissal without appointment of Counsel for Hearing June 2, 2017.

This PCB 2013-CP-15-0214 is not successive nor barred by the Statute of Limitation and should not be summarily dismissed because the State address the merits of the Objections to the Conditional Order of Dismissal without appointment of Legal Counsel for Hearing June 2, 2017. see (App. p. 156, line 6-12) [I]n June 2, 2017, this Court held a hearing to determine whether applicant's opposition to his COO was timely filed and meritorious. This Court appointed David Matthew, Esq. to represent applicant. On June 8, 2017 by applicant's motion this hearing was continued. On August 8, 2017 this Court held a hearing to determine whether applicant's objection to his COO was timely filed and meritorious. This Court took the testimony of Applicant and heard legal arguments from both parties. This Court finds Applicant has failed to show why this application should not be summarily dismissed for the following reason see (App. p. 11, line 10-16) [I] signed an order in this case, even though we started in Hampton, trying to accommodate Mr. McVine. However, Mr. Matthew's did not feel that he had ~~any~~ enough

information on the file of Mr. McDermott to move forward and asked for a Continuance, therefore, the hearing we started Hampton was continued at Mr. Matthews' request; is that correct Mr. Matthews?

see (App. p. 111, line 17-19)

MR. MATTHEW: It is Your Honor

THE COURT: Is that correct, Mr. Neely?

MR. NEELY: It is, Your Honor.

see (App. p. 115, line 11-19)

When I learned of the date that Mr. McDermott was actually served with the Conditional Order of Dismissal, I attempted to immediately -- even though I had already signed a final Order of Dismissal, attempted to schedule a hearing for Mr. McDermott. We started that hearing, I believe, it was May, wasn't it.

MR. MATTHEW: June 7, I believe

THE COURT: June 7th in Hampton at which time I appointed Mr. Matthews to represent Mr. McDermott and Mr. Matthews asked that the matter be continued

see (App. p. 116, line 10-12)

THE COURT: Never mind, have I accurately started the Summary of the event as far as you recall?

MR. NEELY: Yes Sir, Your Honor.

Pritchland County v South Carolina Department of
Recreation, 2018 WL 11747100, 811 S.F.2d 758 (2018)
(an abuse of discretion arise where the
trial Court was controlled by an error of
Law or where its order is based on factual
conclusion that are without evidentiary
support).

Robertson v State (op no 27691) (2016) Justice
Bratty (We believe it is unreasonable to think
that an indigent PCR applicant who relies
on the State to appoint qualified Counsel
would have the knowledge at the onset of
the proceeding to question Counsel qualification).

S.C. Code Ann § 17-27-60 and Whitehead v State,
310 S.C. 532 (1992) (Held that since trial Court
address the merits of application for Post-Conviction-
Relief hearing, it should have either appointed
Counsel for indigent defendant or obtained
knowingly and intelligent waiver of right to
Counsel from him).

3. ARGUMENT

The Circuit Court abuse its discretion in failing to make specific findings of Facts and Conclusions of Law on the issue Presented.

The PCB 2013-CP-15-0214 is not Successive nor barred by the Statute of Limitation and should not be summarily Dismiss because the Circuit Court did not make specific findings of Facts and Conclusions of Law relating to the issue presented. see (App. 117, line 9-18)

COUNSEL: Thank You, Your Honor, the Crux of his argument is that he was not Competent at the Time of his first PCB hearing and there are findings in the record to that effect. He got a Blair hearing at his first PCB and in that he was found incompetent -- well, not found incompetent, but the doctor says he was incompetent. And yet somehow a Consent Order with his signature as it was presented to give up his right to go forward with the PCB application, so he didn't get a fair bite at the apple.

THE COURT: Are You going to Call Mr. McDone as a Witness? see (App. p. 123, line 23-25, p. 125, line 149)

COUNSEL: Please tell the Court why You did not

feel that you got a fair hearing at either - at the PCR Level, your first PCR, why you did not get a fair bite at the apple the first time.

APPLICANT: The Honorable, Carmen T. Mullen, she erred on August 8, 2007, when she did not conduct an evidentiary hearing with me to establish a record to ascertain whether PCR 2004-CP-15-1002 was knowingly, voluntarily and intelligently deemed with prejudice.

THE COURT: Slow down a little bit, Mr. McQuinn, I'm trying to follow you. Start over again as to why you felt you didn't get a fair hearing at the PCR hearing?

Mr. McQuinn: Because the Honorable, Carmen T. Mullen erred on August 8, 2007.

THE COURT: You're talking about Judge Mullen?

Mr. McQuinn: Yes, Sir.

THE COURT: What about Judge Mullen?

MR. MCQUINN: She did not conduct an evidentiary hearing to ascertain whether PCR 2004-CP-15-1002 was knowingly, voluntarily and intelligently waived under statutory and constitutional right with prejudice under *Brannon v. State*, 548 S.F.2d 866 (2001) in violation of Rule 21.1(F) SCRCP, see (App. p. 1-4)

see (App.p. 140, line 9-23)

THE COURT: And so You say that even though there was more time utilized in the 20 days in my Conditional Order, You think I should Consider the Objection that Mr. McAune raised, his written Objection, to the Conditional Order of Dismissal.

That being that he was incompetent on November 23, 2005 and March 2, 2006 and that Judge mullen was on August 8, 2007 when she did not

Conduct an evidentiary hearing to establish a Complete record to ascertain whether or not his PCB application was knowingly and intelligently being withdrawn with Prejudice. And that this incompetency prevented timely filing and that this Claim could not have been raised

he say, in 2004, because it was not in existence to be discovered or raised until the Judge

signed the Consent Order of Dismissal without issuing the final Order of Dismissal/Judgment, all of which are set forth in his written Objections; do You Understand that?

S.C. Code Ann §17-27-80 (1976) (The Court shall make specific findings of facts, and state expressly its conclusions of Law, relating to each issue presented. This order is a final judgment. Pruitt v State 423 5F2d 127 (1992) (The Supreme Court held that order denying Post-Conviction relief improperly failed to address allegation raised in application for Post-Conviction-Relief)

Conclusion

For the reason stated, Petitioner ask this Court to grant the Petition ~~for~~ for a Writ of Certiorari.

