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SC Court of Appeals

**FILED**

STATE OF SOUTH CAROLINA )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

2018 SEP 10 PM 12:39

Joseph H. Gibbs, #185709, )  
Applicant, )

2012-CP-27-0691

v. )

**ORDER DENYING APPLICANT'S  
MOTION TO ALTER OR AMEND  
JUDGMENT AND REHEARING**

State of South Carolina, )  
Respondent. )

This matter comes before the Court by way of Applicant's "Motion to Amend/Alter Judgment and Rehearing," filed July 27, 2018, in Jasper County. On November 7, 2012, Applicant filed a document entitled "nunc pro tunc Writ of Habeas Corpus ad subjiciendum" seeking writ of habeas corpus in the circuit court. By an order filed July 6, 2018, Applicant's motion was dismissed by this Court without prejudice to the filing of an action in the original jurisdiction of the South Carolina Supreme Court. Subsequently, Applicant filed a motion for extension of time to file his response on July 19, 2018. This Court now addresses Applicant's current filing, the motion to amend or alter judgment and for rehearing.

In Applicant's current filing, Applicant notes additional details regarding his prior post-conviction relief actions, erroneously alleges this Court did not in fact review prior filings, and again argues his petition for habeas corpus should not be dismissed for lack of subject matter jurisdiction. Applicant therefore requests this court to alter or amend its judgment and grant a hearing on issues not adjudicated. This Court notes again the Circuit Court shall make no findings or conclusions as to the merits of the claims raised as it lacks authority to do so. The allegations and arguments raised in Applicant's current filing do not excuse him from the procedural bar enumerated by this Court's original order of dismissal. This Court notes, as the order of dismissal enumerated, since 1998, it has been consistently held that "[a] person is

procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id. The soundness of this conclusion should be clear. The Uniform Post-conviction Relief Act provided the statutory remedy for the circuit courts to address issues related to South Carolina convictions. As the Supreme Court stated:

Section 17-27-20(b) states that the Act “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence,” and provides the Act “shall be used exclusively in place of them.” We acknowledge we have stated that habeas corpus is available once the petitioner has exhausted all post-conviction remedies. Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994); Slack v. State, 311 S.C. 415, 429 S.E.2d 801 (1993). In Tyler v. State, 247 S.C. 34, 145 S.E.2d 434 (1965), however, this Court stated that habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors for which a criminal defendant had an opportunity to avail himself. Because we believe the rule in Tyler is the appropriate rule, we now hold that a matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.<sup>4</sup> See Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998).

Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998).

As the original order of dismissal set forth, and evidence has not contradicted, Applicant still cannot file such a petition in the circuit court, but rather must do so in the original jurisdiction of the South Carolina Supreme Court.

This Court has reviewed the records before it and closely reviewed Applicant’s motion to amend or alter judgment and for rehearing. Based upon careful consideration, this Court is not persuaded to alter or amend the judgment. Therefore, this Court finds the order of dismissal filed July 6, 2018, shall stand as it was written. This Court also finds no grounds on which to grant a

rehearing. Accordingly, Applicant's motion to alter amend the judgment and for a rehearing is respectfully denied.

AND IT IS SO ORDERED this 27 day of August, 2018.



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Carmen T. Mullen  
Chief Administrative Judge  
Fourteenth Judicial Circuit

Blanford, South Carolina