

ORIGINAL

RECEIVED
AUG 01 2016
S.C. SUPREME COURT

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.
(2014-CP-32-01397)

Joshua Lamar Forrest,.....Appellant

v.

State of South Carolina,..... Respondent.

Rule 203(d)(1)(B)(iv) Explanation

This appeal is from an Order dismissing Appellant’s application for Post-Conviction Relief. The Honorable Perry H. Gravely dismissed Appellant’s PCR without a hearing, in part, because Judge Gravely found Appellant’s application was barred by the one- year “Statute of Limitations” applicable to PCR applications (S.C. Code Ann. §17-27-45(a)).

While the application was certainly filed well after one (1) year, Appellant’s position is that the holdings in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) and Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002) render the Statute of Limitations inapplicable in this matter. (See attached Exhibits A & B). The Wilson case specifically states that “Austin’s policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.” Wilson, at 218. It is clear in Appellant’s plea transcript (attached as Exhibit C) that he was not advised of the dangers of self-

representation at his plea, as required by Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). (See attached Exhibit D). Therefore, he was improperly proceeding without counsel, in contravention to his Sixth Amendment right to assistance of counsel. Had Appellant challenged this by appeal, he would have had a meritorious issue requiring the overturning of his plea.

Judge Gravely states in his Order that the Faretta claim need not be considered because “the cast at hand is distinct from Wilson.” (See attached Order, p. 6, attached as Exhibit E). Briefly put, Judge Gravely states that Appellant’s failure to receive a direct appeal “was not due to ineffective counsel, but due to his own inaction.” (See attached Order, p. 7). Judge Gravely also states in footnote 1 of his Order that Appellant received a full PCR hearing on the same indictment “as is now at issue.” (See attached Order, p. 6).

Appellant submits that being denied one’s right to assistance of counsel under the Sixth Amendment is tantamount to “ineffective assistance of counsel” as contemplated in the Wilson holding, and therefore, Appellant’s case is *on all fours* with Wilson. Appellant further submits that his prior PCR hearing did not address the merits of his underlying plea, but rather, a probation violation that occurred later. While it is true that Applicant’s initial PCR application lists the indictment number of the underlying plea, the allegations of the Amended Application clearly show Appellant (and his PCR counsel) were collaterally attacking various arising out of Appellant’s probation revocation hearing (not his plea). (See attached Amended Application, as Exhibit F). The witnesses called at this hearing were Appellant’s probation revocation lawyer and probation agent, and the transcript introduced at this hearing was the probation revocation hearing transcript, not the transcript of the guilty plea Appellant challenges in this action. (See attached Order of Dismissal, attached as Exhibit G).

While Appellant believes it is clear on its face that his case is due to “ineffective assistance of counsel” and that the prior PCR hearing examined the merits of a different proceeding than that which is challenged here, these facts must be construed in Appellant’s favor for the purposes of a hearing to summarily dismiss his PCR based on the Statute of Limitations. “When considering the State’s motion for summary dismissal of an application for PCR, a judge must assume facts presented by applicant are true and view those facts in the light most favorable to the applicant.” Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000).

THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Appellant
3241 P.O. Box (29171)
519 Meeting Street
West Columbia, SC 29169
(803) 764-2328
(803) 764-2548 (fax)

West Columbia, South Carolina
July 27, 2016



Kellum W. Allen, Esq.*
Kellum@TheAllenLawFirm.org

David K. Allen, Esq.
David@TheAllenLawFirm.org

Mailing Address:
P.O. Box 3241
West Columbia, SC 29171

Physical Address:
519 Meeting Street
West Columbia, SC 29169

Office: (803) 764-2328
Toll Free: (844) 839-5170
Fax: (803) 764-2548

July 6, 2016

RECEIVED

AUG 01 2016

S.C. SUPREME COURT

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

Re: Rule 203(d)(1)(B)(iv) Explanation
Joshua Lamar Forrest, #274525, v. State of South Carolina;
Case Number: 2014-CP-32-1397

Dear Sir or Madam:

Please find the enclosed Explanation pursuant to Rule 203(d)(1)(B)(iv) of the S.C. Appellate Court Rules, as requested in your letter dated July 22, 2016. Also enclosed is a copy which I respectfully ask you to stamp as "filed" and return to me in the enclosed stamped envelope.

I am hereby serving same on opposing counsel, Johanna C. Valenzuela, Esq.

Thank you for your assistance.

Sincerely:


David K. Allen, Esq.

DKA/idi
Enclosures

cc: Mr. Joshua Lamar Forrest
Johanna C. Valenzuela, Esq.

David K. Allen, Esquire
The Allen Law Firm, P.A.
PO Box 3241
West Columbia, SC 29171

CPU U.S. POSTAGE
PB 1P 000
3661375
PRML
0024
\$ 6.800
MAILED JUL 27 2016
29169



The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

EXPECTED DELIVERY DAY: 07/29/2016

USPS TRACKING NUMBER



9505 5214 6821 6209 0001 20

PRIORITY MAIL ★

PRIORITY MAIL ★

VISIT US AT USPS.COM®
Label 106, July 2013

UNITED STATES POSTAL SERVICE®

This label is not for resale. This product is for use with Priority Mail®. This label is not for resale. This product is for use with Priority Mail®. This label is not for resale. This product is for use with Priority Mail®.