

Quincy McCoy, prose petitioner
P.O. Box 2039
Ridgeland SC, 29936

RECEIVED
FEB 12 2019
S.C. SUPREME COURT


February 06, 2019

Honorable Daniel E. Shearhouse
P.O. Box 11330
Columbia SC, 29211

RE: Quincy McCoy v. State
Appellate case no. 2019-000016
Lower Court case No. 2014CP320445Z

Dear Mr. Shearhouse:

Enclosed is a original copy of my Appellate Brief/
Explanation required by Rule 243(c), SCACR along with reasons why
prohibition should not be imposed on future filings by me in the circuit
court. I was not able to obtain a proof of service showing a copy of
the notice of Appeal has been served on the counsel for the state
because I have not received correspondence back from the Lexington
County Clerk of court from a letter I provided asking for the copy
that is clock stamped and filed. I was in jeopardy of the 20 day
expiration so I am filing my brief with you before time expires.
However if I need to serve the state counsel with another I
will do so,

Thank you,


THE STATE OF SOUTH CAROLINA

In the Court of Appeals

[In the Supreme Court]

RECEIVED

FEB 12 2019

S.C. SUPREME COURT

Appeal from Lexington County
Court of Common Pleas

The Honorable Alison R. Lee, Presiding Judge

CASE NO. 2019-000016

State of South Carolina

v.

Quincy McCoy, SCDC # 301045

BRIEF OF APPELLANT

Quincy McCoy, pro se

P.O. Box 2039

Ridgeland SC, 29936

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- ① The statute of limitations should not have been a valid argument used by the State (Respondent) to dismiss Appellants fourth PCR action due to the facts presented by Austin v State 305 S.C. 453, 409 SE2d 395 (1991). S.C. code Ann § 17-27-100 and 17-27-45(a)
- ② The Appellant is entitled to a belated appeal and or direct Appeal pursuant to extraordinary reasons notice to show cause to grant PCR hearing. S.C. code Ann § 17-27-45(c)
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ODOM V. STATE 337 S.C. 256, 263; 523 SE2d 753, 756
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McCoy v. State Appellate case no 2010-178927
Whitehead v. State 352 S.C. 215; 574 SE2d 200
Harry Fitzgerald Wilson v. State 348 S.C. 215

Statutes / code Ann §

17-27-100
17-27-45(a)
17-27-45(c)

Rules / other authorities

Rule 71.1(g) SCRPC
Rule 203 SCACR
Rule 243 SCACR
Criminal Law Key 1668(9)

Statement of Issues ON APPEAL

1. Does the statute of limitations for Post-Conviction-Relief Applications, S.C. code Ann § 17-27-45 (a) apply to applications filed pursuant to Austin v. State?
2. Did PCR Court Err in dismissing PCR application as successive in light of Extraordinary reasons motion filed by Petitioner?
3. Does the Appellant have a Right of Direct Appeal because of reasons set forth in his "Reasons Prohibition Should not be imposed on future filings by appellant in this court?"

STATEMENT OF CASE

Applicant is presently confined in the South Carolina dept. of Corrections pursuant to orders of commitment of the Lexington County clerk of court. The Appellant was indicted by the Lexington County Grand Jury for murder (2003-gs-32-1987), attempted armed robbery (2003-gs-32-1983), criminal conspiracy (2003-~~gs~~ 32-1984), and possession of a weapon in the commission of a violent crime (2003-gs-32-1985). Appellant was represented by Stephen R. Soltis, Esquire. On Oct. 20, 2003 Appellant was erroneously advised to plea guilty to a lesser included offense of voluntary manslaughter and as indicted to the rest of the offenses before the honorable William P. Keesley. On April 6, 2004 the applicant was scheduled to be sentenced by the Honorable Marc H. Westbrook. Before sentence was imposed the Appellant objected to his plea of guilty on the record and informed the Honorable Marc H. Westbrook that Appellants plea of guilty was unknowing and involuntary. The Judge ultimately sentenced the Appellant to 30 years imprisonment. The Appellants Attorney did not appeal Appellants conviction or sentence despite Appellants strong wishes to do so, even after Appellant expressed that he wanted to withdraw his guilty plea in the first place. Thus violating his 6th and 14th amendment rights of the Constitution of the United States.

Applicant filed his first PCR application for post-conviction-relief on August 31, 2004, alleging the following grounds for relief:

- a) ineffective assistance of counsel;
 - i. Failure to investigate;
 - ii. Failure to advise Applicant of his defenses
 - iii. Failure to advise Applicant to plead guilty;
 - iiii. Involuntary guilty plea

An evidentiary hearing was held at the Lexington County Courthouse on June 27, 2006. Appellant was present and represented by Heath P. Taylor, Esquire. Sabrina Todd, Esquire of the South Carolina Attorney Generals office represented respondent. The Honorable Alexander S. Macaulay denied and dismissed the application in written order dated September 26, 2006.

A timely notice of appeal and petition were filed on Appellants behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Appellant filed a pro se response to the petition. On June 26, 2008, the Supreme Court of South Carolina denied the Petition.

Federal Habeas: 0:08-cv-03747-HMH-PJL

Appellant next filed a Petition for writ of Habeas Corpus under 28 U.S.C. § 2255 in the United States District Court on September 26, 2002. In his petition, Appellant set forth the following grounds for relief:

1. Ineffective assistance of counsel;
2. Unintelligent, unknowing, involuntary guilty plea;
3. Denied 14th Amendment right of Due Process by violating the 11th rule of Federal rules of Criminal Procedure.

Respondents moved for Summary Judgement. Appellant filed a memorandum in opposition. The Magistrate's Report and Recommendation dated January 8, 2010, recommended that the motion for Summary Judgement be granted for failure to show counsel's performance fell below an objective standard of reasonableness in light of the PCR courts reasonable findings. In an order dated February 24, 2010, The Honorable Henry M. Herlong, Jr., accepted the Magistrate Judge's report, overruled the petitioners objections, granted Respondents motion for summary Judgement, and dismissed the petition. Judge Herlong also denied a certificate of Appealability.

Second PCR Application

2011-CP-32-413

Appellant filed his second Application for Post-conviction relief on February 2, 2011. Respondent ~~filed~~ a return and motion to dismiss. A motions hearing was held on August 18, 2011 at the Lexington County Courthouse. Appellant was present and was represented by Arie D. Bax, Esquire. Respondent was represented by Kaelon May, Esquire, of the South Carolina Attorney General's office. Appellant alleged his Conviction was unlawful for the following reasons:

- a. Newly discovered evidence;
 - i. "Counsel failed to make Applicant aware of an applicable defense of duress just recently discovered by Applicant."
- b. Ineffective assistance of Counsel;
 - i. Failure to investigate and negotiate a plea deal with the Solicitors office;
- c. Involuntary guilty plea;
 - i. Failure to advise Applicant he could withdraw his guilty plea.

In an order dated January 3, 2013, the Honorable Jeffrey Young granted the states motion to dismiss Appellants application for post conviction relief on the grounds that it was untimely and successive. Appellant did not Appeal Judge Youngs order.

Third PCR Application

Appellant filed his third application for post-conviction relief on April 22, 2013. Appellant alleged he was being held unlawfully for the following reasons:

- a. Ineffective assistance of PCR counsel;
 - i. "failure to investigate newly discovered evidence claim."

- b. Time reduction under amended section ~~19-25-65~~(b)(1)(4);
 - i. "saved officers life in aid of SCDC Employee."

Current Application being Appealed

Appellant filed his fourth and current application on Dec 8, 2014, alleging: PCR case counsel Failed to file belated Appeal 2011-cp-3200-413." (2014 Application p. 3). In support of his Allegation, Applicant Cites to Austin v. State, 305 S.C. 453, 409 S.E2d 395 (1991) (2014 Application p. 3).

This Appeal follows:

ARGUMENT

- ①. The statute of limitations should not have been a issue used by the State to dismiss Appellants Fourth PCR action due to facts presented by Austin v. STATE 305 S.C. 453, 409 SE2d 395 (1991). S.C. Code Ann § 17-27-100 / 17-27-45(a)

In support of this Argument the Appellant brings ~~to~~ this Courts attention that pursuant to Second PCR Case no. 2011-CP-32-00413 Appellant had legal counsel handling his second PCR Application and Counsel did not Appeal Judge youngs orders, And once Legal Counsel has been appointed to Appellant PCR application, and once the app~~ellant~~ had received a copy of the order of dismissal the Appellant had request for PCR counsel to prepare Notice of Appeal to entitle the Appellant a review and seek appellate Counsel pursuant to his 2011-CP-32-413. Appellants PCR counsel failed to file Notice of Appeal. Appellant contends that his PCR counsel did not comply with Rules 203 and 243 of the SCACR. (This court notes that PCR Counsel must advise the applicant of the right to seek appellate review of a PCR order.) Also Appellant has a right to seek review of a denial of Post Conviction Relief Rule 71.1(g) SCRPC, Provides that if the applicant wishes to seek Appellate review, "Post Conviction Relief Counsel must serve and file a Notice of Appeal on Applicants behalf." Appellant contends that he trusted his attorney to do so and therefore did not know he had a Right to appeal and attorney did not appeal the Judgment of his Second PCR

application when he filed his third PCR Application and therefore could not raise the issue that PCR Counsel failed to file notice of appeal / belated appeal on his third PCR application because he had only found out that he didn't ^{file appeal} when the remittitur was sent to him December 2014 in which he filed his fourth PCR application 2014-CP-32-4452; Austin v. STATE 305 S.C. 453, 409, 5E2d 395. In which Appellant filed his fourth PCR under clearly makes available that the one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to Austin v. State, ODOM v. State, 337, S.C. 256, 263, 523 SE2d 753, 756. The Respondent recognizes this caselaw and adopted this caselaw on pg. 6 of 7 in the final order of dismissal but yet and still improperly dismissed Appellant's PCR application as successive.

② The Appellant is entitled to a belated direct/appeal pursuant to ~~Extraordinary~~ reasons notice to show cause to grant PCR hearing. 17-27-45(c)-(S.C. code Ann §)

Appellant contends that the extraordinary reasons provided by notice to show cause pursuant to extraordinary reasons to grant PCR hearing; Counsel never advise the applicant that he had a right to file appeal pursuant to his successive PCR application, and was never advised by the PCR Judge he had a right to appeal nor did Appellant Attorney advise Appellant that the PCR Judge signed the final order of dismissal. And the Appellant advise PCR Counsel that he wish to file a notice of Appeal After his second PCR hearing was over and PCR counsel failed

To comply to Appellate Court rules. This court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within (30) days after receipt by counsel of notice of entry of this order.

See rules 203 and 243 of the SCACR. This court notes that Post-Conviction Relief Counsel must advise an applicant of the right to seek Appellate Review of a post-conviction relief order, see cite at State v. Bray 366, S.C. 137, 620 SE2d 743 also pursuant to Austin v. State 305 S.C. 453; 409 SE2d 395

"An applicant has right to an appellate counsels assistance in seeking review of of the denial of Post-Conviction Relief rule 71.1(g) SCRCP, provides that if the applicant wishes to seek appellate review, Post-Conviction-Relief Counsel must serve and file A Notice of Appeal on an Applicant Behalf.

In addition the Appellant contends that PCR Counsel failed to file appeal pursuant to my 2011-CP-3200413 to entitle Appellant to appeal once Appellant had request for PCR counsel to file appeal, see cite at Williams v. Lockhart 849 F2d 1134, 1137-38; (8th cir 1988) (Defendant entitled to evidentiary hearing on ineffective assistance when claimed she asked trial counsel to file Notice of Appeal and counsel did not). Also see similar McCoy v. State (SC 2002) S.C. 352, 215, 574 SE2d 200 (Whitehead v. State) Criminal Law Key 1668 (9) State waived right to raise laches to defendants second PCR application assessing austin claim that his first PCR counsel was ineffective for failing to seek review

to seek review of denial of first post-conviction-relief application, despite defendant's timely request where state neither raised laches in its return to defendant's second PCR application nor in state motion to dismiss such application. Curing any successive claims by the respondent because of extraordinary circumstances.

Reasons Prohibition should not
be imposed on future filings by
Appellant in the Circuit Court

① Citing Harry Fitzgerald Wilson, Petitioner v. STATE OF SOUTH
Carolina, Respondent 348 S.C. 215;

After Defendant was convicted of Armed Robbery he petitioned for Post-Conviction-Relief. The circuit court, Georgetown County, Paula M. Thomas, J., dismissed the Petition, Defendant appealed. The Supreme Court, Toal, C.J., held that (1) defendant was entitled to an evidentiary hearing on the issue of whether he voluntarily waived his right to a direct appeal. and (2) one-year limitations in which to file a petition for PCR did not apply where defendant was denied a direct appeal of his conviction due to ineffective assistance of counsel.

Whereas the same is here in McLoy v. State appellate case No. 2019-000016 - (2011 CP3204452 Lower court case no.)

Appellant raised and reserved this issue at Motions hearing held August 7, 2018. Appellant never had a direct Appeal never knew he had a right to direct Appeal. Trial attorney or Sentencing Judge never advised him he had a right of Direct appeal, which denies him his full bite at the apple which is a very good reason Prohibition should not be imposed on future filings.

Conclusion

In conclusion it is axiomatic that the Appellant shall be entitled to a belated Appeal / Direct Appeal due to the Aforementioned Statement of Issues, Argument, case law, and Statutes and SCACR mentioned in this Brief.

02/01/2019

Jurney McCoy
pro se (Appellant)
P.O. Box 2039
Ridgeland SC, 29936

State of South Carolina
In the Supreme Court of
South Carolina Court of
Appeals.

Quincy McCoy, #301045

Applicant,

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FEB 12 2019

v.

State of South Carolina,

Respondent.

S.C. SUPREME COURT

Certificate of Service

The undersigned hereby certifies that a true copy of Appellants explanation Brief required by rule 243(c) SCACR has been served upon Respondent / Honorable Daniel E Shearhouse, Clerk of Court by mailing 1 copy in the United States mail postage prepaid, addressed to:

Honorable Daniel E. Shearhouse
P.O. Box 11330
Columbia SC, 29211

This _____ day of February, 2019

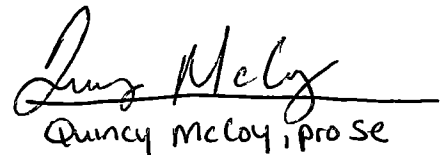
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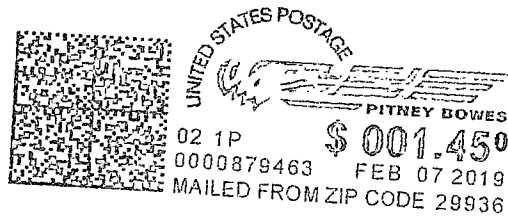
THIS 6 DAY OF Feb.

2019 Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2021


Quincy McCoy, pro se



Honorable Daniel E. Shearhouse,
Clerk of Court

P.O. Box 11330

Columbia SC, 29211

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