

The State of South Carolina
In The Supreme Court

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JUN 13 2019

Appeal From Richland County ^{S.C. SUPREME COURT}
Court of Common Pleas

Honorable Joceyln Newman, Circuit Court Judge

Case No: 2016-CP-400-3852

Maurice A. Kelley, Petitioner

v.

~~State~~ of South Carolina Respondent

Notice of Appeal

Petitioner appeals the Honorable ~~J~~ Joceyln Newman
May 14, 2019, order denying post-conviction relief to
Petitioner. Petitioner received notice of entry of the
order on May 21, 2019.

Other counsel of Record:

Lindsey McCallister Esq.
PCR-Division - Fifth Circuit
P.O. Box 11549
Columbia, S.C. 29211

Respectfully submitted,

Maurice Kelley

Maurice A. Kelley #288629
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386 Redemption Way
McCormick, S.C. 29899

Explanation As Required by Rule 243(c) S.C.R.C.P

Relevant Facts

The Petitioner first (PCR) hearing was held May 19, 2006 and a Final Order of Dismissal was issued by the Honorable Judge Casey L. Manning July 17, 2007. Petitioner never received that order and subsequently filed another (PCR) action in August of 2009. The Chief Administrative Judge Alison R. Lee denied the Petitioner Application but granted an Austin vs state review. The Petitioner received appointed counsel and became aware that the transcripts from the (PCR) hearing were allegedly missing or no longer available. Appointed counsel requested to have the record reconstructed. A reconstruction hearing was held July 16, 2013. The Petitioner explained all of the issues that were brought up at the initial (PCR) hearing but couldn't recall everything because of the time delay. No additional Order was issued by the reconstruction hearing Judge. Appellate Counsel filed a petition for Writ of certiorari but subsequently filed a Johnson Petition asking to be relieved as counsel. I filed a prose petition explaining that Judge Manning 2007 Final Order was void but was advised against having hybrid representation. My Writ of certiorari was denied and this current

(PCR) action ensued.

Issues To Be Raised

- 1) Did the (PCR) Judge err in dismissing Petitioner Application when he alleged specific instances of ineffective assistance of counsel and the record doesn't conclusively refute those allegations.
- 2) Did the Petitioner receive a unfair process because of the procedural irregularities that occurred during his judicial process and should he be entitled to a new trial being he has not received due process of law and equal protection as required by the U.S. Const. 14th Amendment.
- 3) Is the Petitioner entitled to a new trial when court appointed Counsel's work in concert with the state during the (PCR) process depriving petitioner of his one bite at the apple in regards to meritorious issues that will grant him relief and that deprivation is prejudicial and results in a lack of fundamental fairness reaching constitutional dimensions denying petitioner due process of law.
- 4) Is the Petitioner entitled to a new trial when prior (PCR) judge order is not supported by the record and

a reconstruction hearing takes place that stems from petitioner being granted an Austin vs state review and the crafted remedy to correct the unfairness which has already occurred goes uncorrected and the petitioner asserted issues that would have granted him relief but no additional order is issued by the reconstruction Judge and no review into whether the petitioner was prejudiced by the failure to obtain review of a meritorious issue is made as required by the standards of an Austin vs state review.

Explanation OF Facts

The Petitioner filed this current application because he wasn't given the opportunity to have his issues properly addressed that stemmed from his May 19, 2006 initial (Pcr) hearing. He also contends that he presented evidence of material fact that can not be refuted by the record and the (Pcr) judge erred in dismissing his (Pcr) application.

The July 17, 2007 Final Order of Dismissal issued by Judge Manning was not a Final Order of Dismissal consistent with the statute 17-27-80. Petitioner original (PCR) transcripts were lost or destroyed and at the reconstruction hearing held June 16, 2013 the Petitioner raised the issues of 1.) Ineffective assistance of counsel, 2.) Involuntary Guilty Plea and 3.) Conflict of Interest which were issues raised at the initial (PCR) hearing but were not included in the Judge Final Order of Dismissal. The reconstruction hearing ensued from the granting of an Austin vs state review but I was never given the hearing to which Petitioner was entitled to see whether in fact Petitioner requested and was denied an opportunity to seek review and was Petitioner prejudiced by the failure to obtain review of a meritorious issue. Petitioner contends he is entitled to a full and fair opportunity to present claims in one (PCR) action. Petitioner (PCR) counsel was ineffective when he failed to file a motion 59(e) and failed to file a notice of appeal and

Appellate Counsel was ineffective when she asserted my Petition for Writ Certiorari was without merit and was aware that issues which were presented at the initial (PCR) hearing and reconstruction hearing were not addressed in the (PCR) Judge Final Order of Dismissal. Appellate Counsel worked in concert with the state and the procedural irregularities which has occurred in the process of Petitioner adjudicating his case has denied him the protections of the due process clauses of the Constitution of the United States and the State of South Carolina; Its prejudicial and results in a lack of fundamental fairness reaching constitutional dimensions.

Legal Arguments

The state should be ~~be~~ estopped from raising statute of limitations because the state has 1.) shown that the Petitioner was entitled to an Austin vs State appeal. 2.) Destroyed or lost original (PCR) transcripts. 3.) Created an unfair process during the reconstruction hearing by having

appointed counsel work in concert with the state depriving me of a federal cause of action and 4.) deprived me of the right to file a pro se response in regards to appellate counsel's Johnson petition.

PCR counsel was ineffective for 1.) failing to file a motion sales in regards to my conflict of interest and involuntary Guilty Plea and 2.) Failing to file a (PCR) appeal. Petitioner was prejudiced because (PCR) transcripts were destroyed and there is a reasonable probability if he would have filed an appeal that the transcripts would not have been destroyed and I would have obtained relief on both issues. Reconstruction Appellate Counsel was also ineffective for failing to object to the prejudicial and inconclusionary reconstruction hearing to preserve my right to a fair hearing and was ineffective for conspiring with the state and filing a Petition that was contrary to my interest for a new (PCR) hearing. Petitioner was prejudiced because if appellate counsel had objected it's a reasonable probability he would have received a new hearing and gotten his issues properly

heard and granted relief.

When considering the state's motion for summary dismissal of an application for post-conviction relief, where no evidentiary hearing has been held, the judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Code 1976 § 17-27-80. Leamon vs State, 611 SE 2d 494 (2005)

A pre applicant must allege all available grounds for relief in his original application; any grounds not raised in the original application may not be the basis for subsequent applications unless the court finds a ground for relief assert which, for "sufficient reason", was not raised in the original application or at the hearing. S.C. Code Ann § 17-27-90

Where an applicant allege facts that would establish an exception to either the statute of limitations or the prohibition against successive (PCR) applications and those facts are not conclusively refuted by the record before the (PCR)

Court, a question of fact is raised which can only be resolved by a hearing. Delaney vs State, 238 SE2d 679 (1977)

At some juncture judicial review must stop, with only the rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant imprisonment without review would be a gross miscarriage of justice. This is one of those rare exceptions. The Applicant never had the benefit of a direct review, his original (PCR) transcripts were destroyed, the reconstruction hearing was biased and prejudicial and he didn't have all of his issues properly addressed, and he wasn't allowed to file a pro se petition in response to his appellate attorneys request to withdraw as counsel. The Applicant has received an unfair process and because of the many procedural irregularities that has occurred during the course of his judicial process he has not received equal protection and due process of Law. Washington vs State, 478 SE2d 833 (1996)

The Petitioner contends that he has met his burden and the allegations contained within this explanation as required by S.C.R.C.P. 243(c) deals with issues of fact that are not conclusively refuted by the record.

Conclusion

The Petitioner contends that he has not received a fair process during the course of his judicial process and he has presented evidence of material fact that is not conclusively refuted by the record and he prays this Honorable Court will grant his appeal.

6-11-2019

Maurice Kelly

Maurice A. Kelly #288629

F2B 138

Sworn to and subscribed 386 Redemption Way

before me this 11 McCormick S.C. 29899

day of June, 2019

Robert J. Wideman

Notary Public

my commission exp. 9-30-26

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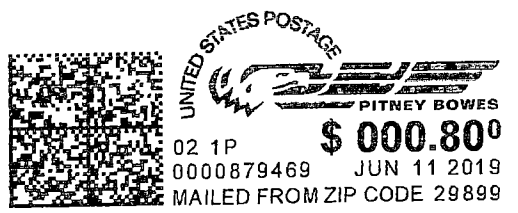
Proof of Service

I, Maurice A. Kelley, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the Attorney General's office, Lindsey McCallister Esq. PCR Division - Fifth Circuit P.O. Box 11549 Columbia, S.C. 29211, I further certify that all ~~papers to~~ required by Rule to be served have been served this 11 day of June 2019.

(11)

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