

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Maite Murphy, Circuit Court Judge

ABDIYYAH BEN ALKEBULANYAHH,
a/k/a TYREE ROBERTS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2019-000529

MOTION TO HOLD TIME LIMITS IN ABEYANCE

Respondent is in recent of Appellant's August 27, 2019 Motion for Extension of Time to file a Petition for Writ of Certiorari and Appendix in the above matter, as well as the Court's August 30, 2019 Order granting said extension. Respondent hereby moves to all time limits for substantive matters held in abeyance pursuant to SCACR 243(c). The State of South Carolina respectfully shows unto this Court:

1. On November 19, 2018, the Honorable Maite Murphy, serving as PCR Court, heard oral argument on Respondent's Motion for Summary Judgment on the basis of statute of limitations. On January 17, 2019, Judge Murphy granted Respondent's Motion for Summary judgement, agreeing that the action was well beyond the statute of limitations.

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2. Petitioner filed a Rule 59 Motion to Alter or Amend Judgment. In response the PCR Court issued an Order Denying Applicant's Motion to Alter or Amend Judgment so as to grant relief.

3. Judge Murphy acknowledged that the January 17, 2019 Order of Dismissal lacked discussion as to Petitioner's claim for equitable tolling. So as to amend its January 17, 2019 Order of Dismissal, Judge Murphy included within the Order Denying Applicant's Motion to Alter or Amend Judgment a discussion and finding that equitable tolling was not warranted in Petitioner's matter.

4. On March 29, 2019, Petitioner filed a Notice of Appeal to this Court seeking to challenge the summary dismissal of the PCR Court. Pursuant to South Carolina Rule of Appellate Procedure 243(c),

If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice may be dismissed.

5. As part of their Notice of Appeal and pursuant to Rule 243(c), Appellant included argument regarding the statute of limitations determination of the PCR Court. However, there has not yet been a determination as to whether an arguable basis exists to challenge the lower court's ruling as improper.

6. As there has not yet been a determination under Rule 243(c) that the PCR Court's dismissal of the matter on the basis of statute of limitations was in error, the Motion for

Extension of Time was premature. This Court may still dismiss the Notice of Appeal pursuant to Rule 243(c).

WHEREFORE, the State asks this Court to hold all time limits in abeyance until the Appellant's SCACR 243(c) explanation is ruled upon.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 30, 2019.

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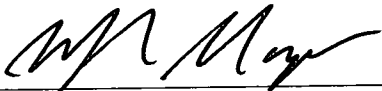
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PROOF OF SERVICE

I, W. Joseph Maye, of counsel for the Respondent, certify that I have served two (2) copies of the motion to hold time limits in abeyance via U.S. mail to Petitioner's attorneys of record, Emily C. Paavola, Esq. and Lindsey S. Vann, Esq., Justice 360, 900 Elmwood Avenue, Suite #200, Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 30th day of August, 2019.



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