Joseph Golson, #266765
Lieber Correction Institution
P.O. Box 205
Ridgeville, SC 29472

Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Date: February 21, 2020

Re: Joseph Golson v. State of South Carolina
2020-000156

Dear Sir,
Please find enclosed for filing-purposes:

Appellant's Response To
The Court's Rule 243(c), SCACR
Letter of Explanation and
Certificate of Service

On behalf of the above-referenced Appellant.

Thanking you in advance,

Joseph Golson

Joseph Golson, #266765

cc: Dean Grigg, Assistant Attorney General

RECEIVED
FEB 27 2020
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Common Pleas
2018-CP-32-02234
Honorable Alison R. Lee, Chief Administrative Judge

2020-000156

Joseph Golson, ... Appellant,

V.

State of South Carolina ..... Respondent.

APPELLANT'S RESPONSE TO
THE COURT'S Rule 243(c), SCACR
Letter of Explanation

Joseph Golson, #266765
Lieber Correction Institution
P. O. Box 205
Ridgeville, SC 29472

Pro Se
Appellant/Applicant

Other Counsel of Record:

Lillian Loch Meadows, Esquire
(Assistant Attorney General)

Taylor Zane Smith, Esquire
(Post-Conviction Relief Counsel)

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S.C. SUPREME COURT

STATEMENT OF ISSUES ON APPEAL

I. Did the lower court err in finding that Appellant's Application for Post-Conviction Relief was time-barred by the Statute of Limitations?

II. Did the lower court err in finding that Appellant's Application for Post-Conviction Relief was successive where Appellant has never received the benefit of a "full bite of the apple" during previous applications?

STATEMENT OF FACTS

Appellant was indicted at the 1999 term of the Grand Jury for Lexington County for murder (99-GS-32-00625). He was represented by J. Stephen Welch, Esquire. On June 2, 2000, Appellant proceeded to trial after which he was found guilty. He was sentenced by Honorable Gary Clary to confinement for life. A timely notice of appeal was filed and appeal was perfected. The South Carolina Court of Appeals affirmed Appellant's Conviction and Sentence on May 27, 2002. Appellant filed a Petition for Writ of Certiorai with the Supreme Court which was denied on October 23, 2002. Appellant filed an Application for Post-Conviction Relief in Lexington County on December 30, 2002. alleging (1) Ineffective Assistance of Counsel, based on counsel's failure to investigate and failure to prepare and present a particular defense; and (2) Lack of Subject-Matter Jurisdiction. On April 1st, 2006, Appellant filed an amended application for post-conviction relief alleging (3) counsel was ineffective for failing to call expert witnesses at trial to rebut the State's expert testimony and (4) failing to challenge the accuracy and sufficiency of the evidence. The State filed a return and motion to dismiss dated June 14, 2005. Thereafter, Appellant filed several amendments and supplements, including (5) that counsel was ineffective for failing to submit to the jury exculpatory evidence of a 911 tape recording of a call Appellant made after the incident resulting in the charges being filed. The State filed an Amended Return. On October 9, 2007, a hearing was convened at the Lexington County Court of Common Pleas on Appellant's allegations before the Honorable William T. Keesley. Appellant was represented by Carol McCurry, Esquire, and the State was represented by Daniel E. Grigg, Esquire. On October 22, 2007, Judge Keesley issued a Memorandum Order denying relief which was signed October 18, 2007. No other lower court pleadings occurred. Timely notice of appeal was filed to the

Court of Appeals. On February 3, 2020, the case was transferred to the Supreme Court by V. Claire Allen, Deputy Clerk for the Court of Appeals, pursuant to Rule 204(a), SCACR. The application currently in question was filed June 29, 2018, and alleges

1. Ineffective Assistance of Counsel.
2. Newly Discovered Evidence.
3. Prosecutorial Misconduct; and
4. Constitutional Violations

The State filed a Return and Motion to Dismiss dated January 30, 2019. and some question exists whether this pleading was filed on April 9, 2018. A conditional order of dismissal was issued on February 8, 2019 which became final on October 16, 2019 by way of the Order signed by Honorable Alison R. Lee, Chief Administrative Judge. Appellant file a timely notice of appeal, after receiving notice of entry of the order on January 27, 2020 according to Lieber Correction Institution mailroom records. On February 3, 2020, the Deputy Clerk for the Court of Appeals transferred the case to this court. By way of a letter of explanation pursuant to Rule 243(c), SCACR, Appellant was advised to make a showing that the lower Court's rulings were improper, and show why he should not be prohibited from further filings without permission, to the lower circuit court if this Court determines the lower court rulings were not in error. This letter was dated February 5, 2020, and received by Appellant on the date of February 7, 2020.

ARGUMENT

In the matter before this Court, the lower court ruled that:

1. Applicant's allegation of ineffective assistance of counsel does not fall within any exception to the rule barring claims related to PCR Counsel.
2. That Applicant's response wholly fails to set forth any reason why he could not have raised the remaining allegations in his previous action for post-conviction relief.
3. That before the Court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief and Applicant has failed to make such a showing.

A. The lower court erred in finding the application was successive pertaining to Appellant's claim of Newly-Discovered Evidence

The Uniform Post-Conviction Relief Act (PCR Act) requires applicants to assert "all grounds for relief [available] in the original application. S.C. Code, Ann. §17-27-90 (2003) A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. The Act provides a narrow exception to allow a successive PCR application where the applicant can provide a "sufficient reason" why the ground was [not] asserted or was [inadequately] raised in the original application. §17-27-90.

Here, there is no record before the Court, and the rule related to the letter of explanation, Rule 243(c), SCACR makes it impossible to effectively support arguments based on references to the record. However, the following facts provide an arguable basis for showing the lower court erred in finding Appellant's Newly-Discovered Evidence claim fit within an exception to the rule prohibiting successive PCR applications.

The record below, shows affirmatively that the newly-discovered evidence had never been disclosed to Appellant and related to two (2) items of evidence.

1. The 911 Tape recording. and
2. The complete AUDIO portion of the Video tape from Deputy Snead's patrol car.

At the trial of this case the defense asserted a claim of accident as the cause of victims death, and during an argument Appellant and victim were tussling over a gun. Tr. 243, Line 9-21 Shortly, thereafter the gun went off ~~fatally~~ wounding the victim. The record shows Appellant immediately called 911. Tr. 344, Line 8-24 Later, after law officers arrived, Appellant was placed in the back of Deputy Snead's patrol car which was equipped with a video camera system also capable of recording audio. Tr. 382, Line 11-22 While Appellant was in the patrol car, he was emotionally upset and at times rambling, having testified at trial that he was "out of my mind". Tr. 345, Line 6-8. The contents of these two items of evidence were not wholly presented to the Jury, nor released to Appellant. They were withheld.

At the evidentiary hearing at the Lexington County Courthouse on October 9, 2007, Appellant's Counsel argued that counsel was ineffective because "He failed to [obtain] the 911 tape and utilize information regarding the 911 tape that could have bolstered his case." Appendix Vol. II, Pg. 512 Line 11-20 Appellant's trial counsel testified that he only played portions of the tapes at trial. and did not review the entire tape. Appendix, Vol. II, Pg. 551, L 18-20

Appellant testified that he never heard any of the portions of the tapes, prior to the time his jury trial commenced. Appendix, Vol. II, Pg 527, Line 12-17. Trial counsel testified that Appellant did not even remember being inside the patrol car. Appendix, Vol. II, Pg. 552, Line 1-5 He further testified that the entire tape was not played for the jury. Appendix, Vol. II, Pg. 552, Line 14-18 The record thus demonstrate Appellant never by exercise of due diligence could not have discovered these item of exculpatory evidence prior to his third PCR application.

Furthermore, the record shows that the jury requested to hear the entire 911 tape during their deliberations, but were denied. As to both these tapes, Appellant was denied the exculpatory portions of the tapes, up to this present day, hence the third PCR Application being filed.

A long-standing exception to both the Statute of limitations, and the ~~Successive~~ application rule, is an allegation of Newly-discovered Evidence. The lower court erred in application of this exception.

The PCR Act states, in pertinent the following:

> [i]f the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the actual discovery of the facts by the applicant or after the date when the facts should have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. §17-27-45(C) (2003).

This exception is commonly called the "discovery rule" and fits the case at bar on all fours because of the above facts and applicable laws. Aside from the two statutory exceptions, there are situations, as here, which may equitably toll the statute of limitations.

Because neither the jury, nor the Appellant has never heard the exculpatory evidence contained in these two (2) audio tape recordings, and Appellant has been denied access to the un-played portions of these tapes, it becomes abundantly clear that Appellant never has been afforded a "full bite of the apple".

In Wilson v. State, the court explained:

> A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application.

Clearly, the newly-discovered evidence at issue in this case constitutes "evidence of material facts" not previously presented as the jury was deprived of that opportunity. See: S.C. Code Ann. §17-27-45(C) (2003)

Moreover, because this evidence would have bolstered the asserted defense of accidental death, it follows that if the jury had been permitted to hear this evidence, there is more than a reasonable doubt as to whether Appellant acted with the requisite Malice aforethought to support a charge of murder. thus requiring vaction of both the sentence and conviction. Id.

Thus, Appellant respectfully submits the lower Court finding that Applicant's application is successive and time-barred by the statute of limitation is clearly erroneous or based upon the erroneous application of applicable law. or otherwise not supported by any evidence in the record.

B. Appellant Should Not Be Prohibited From Further Filings In the Circuit Court Without Permission First Sought

Accordingly, for the reasons set forth above, and supporting arguments this Court should conclude that the lower Court's ruling was improper, as the Appellant did present an "arguable basis" as well as a prima facie showing of newly-discovered evidence".

Moreover, because Appellant has met his burdens not filing prohibition should be imposed.

Conclusion

Wherefore, having set forth the foregoing matters, Appellant respectfully moves that the matter be remanded to the lower Court for and evidentiary heard, or in the alternative proceed in this Court with full briefing of the issues.

Respectfully Submitted,

Joseph Golson

Date: February 21, 2022

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Certificate Of Service

I certify that I have this day served a copy of the foregoing Appellant's Response To the Court's Rule 243(c), SCACR Letter of Explanation, upon the South Carolina Attorney General's office, located the below address by depositing a copy of same in the United States Mail addressed as follows:

DEAN GRIGG
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

Date: February 21, 2020
Ridgeville, South Carolina

Joseph Golson

Joseph Golson, #266765
Lieber Correction Institution
P. O. Box 205
Ridgeville, SC 29472

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