

The State of South Carolina

In The Supreme Court

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Appel from Florence County
Court of Common Pleas

S.C. SUPREME COURT

William H. Seel, Sr., Chief Justice Administrative Judge

Case No.: 2018-CP-21-02097 and 2019-CP-21-00279

Jeremiah T. Durant, # 347662 - - - - - Appellant

-V-

State of South Carolina - - - - - Respondent

Rule 227 (c) Explanation

JEREMIAH T. DURANT ("Mr. Durant"), by and through his undersigned pro se and in compliance with Rule 227 (c) of the South Carolina Appellate Court Rules, respectfully submits the following Explanation as to why the lower court erred in holding that his February 23, 2020 Application ("The Application") for Post-conviction Relief was barred as being untimely under the statute of limitations. Furthermore, Mr. Durant respectfully submits that the lower court erred in dismissing his Post-conviction Relief docket February 13, 2019, the lower court operated outside color of the law, by allowing the state to proceed, Applicant PER Application filed November 20, 2019 as being barred as a successive application under the statute of limitations.

Facts

Mr. Durant was indicted in October 2009 term of the Florence County Grand Jury for Murder (2009-GS-21-1580), Appellant Pleaded Guilty to Murder before Judge Michael G. Neill's sentence Appellant to serve forty-three years imprisonment. Mr. Durant was represented at trial by Gregory A. Smith Esquire.

Subsequently, Mr. Durant filed an Application for Post-conviction relief on February 1, 2012 (2012-CP-21-385). In this action, Appellant alleged ineffective assistance of counsel. Charles T. Brook, Esquire, represented Appellant on October 12, 2012; the Honorable Thomas A. Bragg, denied and dismissed Appellant's PCR Application with prejudice. Appellant's PCR Counsel filed a notice of intent to appeal on November 5, 2012. On April 23, 2013, Appellant Defendant Susan B. Huskett file a Johnson's Petition for a writ of Certiorari.

Subsequently Mr. Durant filed the Application on August 3, 2018 in which he raised the following grounds for relief: 1) Counsel failed to properly question witnesses; 2) Counsel failed to consult with Appellant of his right to testify; and 3) Counsel failed to inform the Plea Court of the proper deal. Judge Brown issued a Conditional order of Dismissal on January 25, 2019. Appellant was served the Conditional order of Dismissal of February 19, 2019.

Subsequently, Mr. Durant filed an Application on February 1, 2019 in which he raised the following grounds for relief: Lack of Subject Matter Jurisdiction and Appellant involuntarily waived his right to a direct appeal. To the extent that it was no evidentiary hearing was convened to address relevant facts in PCR Application.

Subsequently Mr. Durant filed the Application on November 20, 2019. Appellant file the Application along with a document entitled "Memorandum of Law in support of Post-conviction Relief and violation of civil Rights" the Clerk of Court operated outside color of the law by failure to process PCR Application pursuant to Uniform Post-conviction Procedure Act. that set forth in S.C. Code Ann. § 17-27-40.

Legal Arguments

A. The Clerk of Court operated outside color of the law, by failure to process PCR Application, pursuant to S.C. Code Ann. § 17-27-40.

SUPPORTING FACTS:

The Appellant contends it is well established by S.C. Code Ann. § 17-27-40, ~~the clerk shall~~ the clerk shall ~~docket the application upon its receipt.~~

and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.

That at all times relevant hereto, the Clerk abuse the discretized discretionary authority by having acted arbitrarily, capriciously and not in accordance with law. It is also important to note that Clerk of Court instructed Mr. Duran that he must file his Applications under one of Penders case numbers. See Father Exhibit [A] attached to the Extension, to the extent that Appellant was denied "Access of Court" by failure of "Clerk" to Process PCR Applications. See MORAN v. GOMEZ, 150 F.3d 1038 (9th Cir. 1998). Appellant possess right of access to the court not only to pursue appeals from criminal conviction, but also to resist civil rights actions. To the extent that the effect Father Exhibit [A] will prove beyond a reasonable doubt, that "Clerk of Court" operated outside color of the law. See also, FERRIS v. Allen County Indiana, 312 F.3d 895 (7th Cir. 2002). Mr. Duran seeks to vindicate his rights in court enjoy a constitutional right of access to courts and state actor may not impede his efforts to pursue legal claims.

Inasmuch, the statute create a liberty interest, the "mandatory language" was the word "shall", to the extent that the Clerk "shall" docket the application upon its receipt. In order to understand the meaning of any statute or phrase of law, it is necessary to determine meaning of the language as it is used in the particular context. Robinson v. Shell Oil Company, 117 S.Ct. 843 (1997). Article 12 Section 2 Utilizes the words, "shall provide". In this context, "shall" is mandatory. See United States v. Moore, 106 F.3d 936, 941 (CA 10 1997). It is basic canon of statutory construction that use of word "shall" indicates mandatory intent.

With this legal framework in the place the Appellate further contends, pursuant to Rule 71c Post-conviction Relief Actions in section (c) Independent Actions. An application filed under the Act is an independent civil action which should be separately filed and indexed by the Clerk of Court. To the extent that the Clerk of Court lack subject matter jurisdiction to process a prior PCR Application to a newly file PCR Application.

Inasmuch, the issue has so far beyond that of dealing with clerk processing the PCR Application, it constitutes a abuse of authority, these issues secured and protected by the constitution and Bill of Protection of law. See Central Air Lines, Inc. v. US, 138 F.3d 333 (8th Cir. 1998), to the extent that equal protection clause prohibits clerk

of Court from selectivity applying law in discriminator ways.

Inasmuch, clerk of Court action constitutes a neglect of duty, pursuant to S.C. Code Ann. § 8-1-60, neglect of duty, to evade Statute Clerk of the Court of common pleas and general sessions, Sheriff, Judge of Probate or Register at Meigs Conferences in this State who shall willfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to their liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the discretion of the Court, not exceeding five hundred dollars.

Inasmuch, the Attach Exhibit (A) will prove beyond a reasonable doubt, that the clerk of the Court action constitutes a neglect of duty. As such, the clerk has a specific duty that they are plainly obligated to carry out. Thus, clerk of Court action constitutes a obstructing of legal process.

B. The Lower Court erred in denying the Appellant's of his due process, by Merge & Prior Court order into the Appellant PCR action, the PCR Application was file under Tiller v. State,

Supporting Facts:

The Appellant contends that Judge Seals, operated outside color of the law, by Merge & Prior "Conditional Order of Dismissal" that was file with the court on January 25, 2019, into Appellant PCR that was filed November 20, 2018.

Inasmuch, the Court Merge & Prior PCR action, with current PCR Appellant that was filed November 20, 2018. Per Judge Seals (since an applicant is not generally allowed to have two PCR actions in regards to the same convictions, the State Moved to have the two proceedings merged and that the PCR action filed February 11, 2019 (2019-CR-21-0279) be considered a response to the Conditional order of dismissal filed on January 25, 2019. As mentioned above, Appellant's February 11, 2019 PCR action and his November 20, 2018 filing shall be treated as responses to the conditional order of dismissal issued January 25, 2019.) To the extent that Judge Seals comment and Ruling are contrary to South Carolina Ruling set forth in Tiller v. State, 334 S.C. 24, 511 S.E.2d 688 (1999) -

The S.C. Supreme Court held that: (1) inmate's fourth PCR application was not successive and (2) PCR Court properly ordered sentences to be served in particular sequence.

The plain and unambiguous language of 317-27-45(c) Fla. Stat. allows an applicant to file a PCR application "within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of due diligence."

The South Carolina Supreme Court held:

- "If the applicant contends that there is evidence of material facts not previously presented and facts that required vacation of the conviction and sentence the application must be filed . . . within one year after the date of actual discovery of facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

Coates v. State, 575 S.E.2d 557 (S.C. 2003).

In Coates, the PCR application did not have to be filed within one year after the conviction, rather it was to be filed within one year after the date of actual discovery of facts. In Coates, once the petitioner learned the correct information regarding his parole, he simultaneously learned that he had a claim of ineffective assistance of counsel. Id. As a result, the Coates Court held that the petitioner's claim fell within the rule providing that a second PCR application is permissible and not successive when there is evidence of material facts not previously presented. Id.

In the present case, Mr. Derab discovered certain material facts supporting his claim for post-conviction relief only after the 2019 application was filed and ruled upon February 23, 2020. Mr. Derab filed the application on November 20, 2019, which falls comfortably within the appropriate one year time frame contained within the statute.

But to reiterate a critical point, PCR Court went outside color of the law, by failure to address issue set forth in PCR application by a brief of fact.

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C. Mr Duval Number 20/2019 PCR Application Was Not
Impermissibly Successive Under S.C. Code Ann. § 17-27-45 (2003)

Supporting Facts:

In his 2019 Application, Mr Duval alleged that the trial judge went outside color of the law, by the oral pronouncement of the sentence from the bench, the trial judge sentence Appellant to a period of 43 years, outside color of the law.

The Appellant contends it is well established by the S.C. Code Ann. 16-3-20 (A) reads as follows:

- "(A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for ~~three~~ years to life.

Inasmuch, the issues here General Assembly has not statutorily authorized the courts to supersede statute set forth in 16-3-20 (A). There is simply no language in the statute which implies it excludes a 43 years sentence. To the extent that if the legislature had intended a mandatory minimum term of imprisonment for forty-three years to life, it could have included such language in the statute. Estate of Guide v. Sporer, 318 S.C. 335, 457 S. Ct. 906 623 (Ch. App. 1995) (If Legislature intended statute to apply to certain proceedings, it could have done so by including such language).

Inasmuch, the trial judge abused the described discretion authority by having acted arbitrarily, capriciously, or not in accordance with law. As such, the trial judge abuse his authority, by failure to perform their [Ministerial Duty] accordance with statutory laws. The attack further exhibits will prove beyond a reasonable doubt, to the extent that the trial court to abide cases by their Ministerial Duty, the trial court deprived Appellant of his Due Process and equal protection of law.

Inasmuch, the Application was not successful because it was based on substantially different grounds which were unknown by Mr. Dewart until after the 2019 Application was denied. Upon discovery of additional material facts, Mr. Dewart filed the Application and made his representations accordingly. The material facts also include a civil rights violation, by means mentioned on a illegally sentenced.

Based on the discovery of Mr. Dewart's application for post conviction relief should be granted. He has set forth a sufficient reason establishing new grounds for relief that could not be raised in prior PCR Application. Because the evidence presented raises a genuine issue of material fact, order for Reversal & Final order of Dismissal was inappropriate.

The Supreme Court of South Carolina has ruled that every PCR Applicant is entitled to complete access to the courts of which Mr. Dewart was denied for his third PCR Application.

D. Mr. Dewart's alleges S.C. Code Ann. § 17-27-45 (c) & (e) are Unconstitutional.

Supporting Facts:

Moreover, the language of S.C. Code Ann. § 17-27-45 (c) & (e) violate the Fourteenth Amendment, inasmuch, the U.S. Constitutional amendment that forbids the states from enforcing laws that "abridge the privileges and immunities" of U.S. citizens forbids the states from depriving any person of due process or equal protection of law. The General Assembly enacted in 17-27-45 (c) & (e), that enforces must file their PCR Application within one year after the date of judgment of conviction. In addition, in the Constitution there is no provision that limit filing a PCR Application, or Petition with the court within one year. To the effect that U.S. Supreme Court has—

stated: "It is now established beyond doubt that Prisoners have a constitutional right of access to the Courts. The Courts have cited the Due Process Clause, the Equal Protection Clause, the First Amendment, and the Privileges and Immunities Clause of Article IV of the Constitution as the bases for the right.

Things much, all categories of prisoners are entitled to court access, and the right extends to post conviction proceedings such as habeas corpus petitions, civil rights action, and other civil proceedings.

With respect for decades the officials in South Carolina from Attorney General office has abused S.C. Code Ann. § 17-27-45 (C) to denied or make access to the Court, in denying the PCR Application without holding an evidentiary hearing as required by Appellate. Here, the Appellate did provide substantial evidentiary support for his claim. Thus, in the interests of justice S.C. Code Ann. § 17-27-45 (C) as a matter of law should be repealed by the Court.

In the case of Ben, when constitutionality of statute is asserted, in an action objecting the constitutionality of a state statute. In addition, the United States Supreme Court has repeatedly affirmed that at the fundamental rights within the due process clause of the Fourteenth Amendment includes the right of access to the Courts essential to the concept of due process of law is the right of an individual to have "an opportunity created of a meaningful time and in a meaningful manner," for [a] hearing appropriate to the nature of the case." See Armstrong v. Mayo, 95 S.Ct. 1187 (1983). Thus, an inmate or Appellant has a fundamental requirement of due process is the opportunity to be heard; it is an opportunity which must be created of a meaningful time and in a meaningful manner. See also Cox v. Harris, 284 U.S. 385, 394, 34 S.Ct. 779, 783.

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Inasmuch, these very issues were at the heart of the matter that existed in Volcom v. Pub during the time of Cress v. Georgia, 428 U.S. 153 (1976). The unconstitutional statutes such as § 818b - Statute disadvantage and not merely procedural disadvantage and not merely procedural disadvantage to the Appellate and other that are incarcerated that are seeking justice in lower courts. As related to their Rights of Due Process, it became obvious that intent of General Assembly when enacting Statute 17-22-45 (a) to hinder those or incarcerated depriving access to the courts. Therefore, Prisoners have a fundamental right to adequate, effective, and meaningful access to courts to challenge violation of their Constitutional rights. See Boards v. Smith, 430 U.S. 871, 52 L. Ed. 721, 97 S.Ct. 1491 (1977) and Ex Parte Hall, 312 U.S. 548, 85 L. Ed. 1034, 61 S.Ct. 540 (1941).

Finally, the state constitution or US constitution implement no provision within constitution gives General Assembly the authority to impose any limitations on those that exercise their constitution and statute of limitation are unconstitutional.

CONCLUSION

Based on the foregoing reasons, Appellate Jeremy T. Durant respectfully requests that this Court reverse lower Court Rulings and vacate the conviction and sentence as a matter of law.

Jeremy Durant # 347062
Jeremy T. Durant # 347062

This was fax of April 1, 2020