

STATE OF SOUTH CAROLINA
In The Supreme Court

James L. Burnett, 171713,
(Petitioner)

v.
STATE OF SOUTH CAROLINA
(Defendant)

Petitioner's
Rule 243(c)
Explanation

App. Case No: 2020-000558

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S.C. SUPREME COURT

WHEREBY:

Petitioner, James L. Burnett, 171713,
hereby provides explanation why the Lower
Court's determination to bar his Post-
Conviction Relief (P.C.R.) Application as
successive and/or untimely was improper.

Petitioner asserts that his
conviction and sentence were brought about
improperly and unjustly under the Law.
The State subverted Mandatory Legislative
procedures in violation of the Rule Of Law,
as explained in his Opposition to Summary
Dismissal filed on September 18, 2019.

Petitioner further contends
that his claims are meritorious and
must be ruled upon by the court,

and given due consideration as provided by Law. ^{1.}

As the Lower Court's Order is a final judgment dismissing petitioner's claims for procedural default, as successive and untimely, petitioner reminds the Court: "It is the Policy of the Law to favor the trial of cases on the merits over securing default by slight technicalities". ^{2.}

And the Court's discretion to do so should be exercised liberally so as to promote justice and dispose of cases on their merits. ^{3.}

^{1.} S.C. Code Ann. § 17-27-70(b), (Disposition on the pleadings and record is not proper if there exists a material issue of fact.).

^{2.} Petty v. Weyerhaeuser Co., 272 S.C. 282, 251 S.E.2d 735 (1979); quoting, A. Sanders and J.S. Nicholas, Trial Handbook for South Carolina Lawyers, Fifth Ed., p. 258-§ 4:9, (2016-2017).

^{3.} Em-Co Metal Products, Inc. v. Great Atlantic and Pacific Tea Co., Inc., 280 S.C. 107, 311 S.E.2d 83 (Ct.App. 1984); see also, Rochester v. Holiday Magic Inc., 253 S.C. 147, 169 S.E.2d 387 (1969); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct.App. 1985).

As petitioner has asserted Newly Discovered Evidence, and has provided demonstrative evidence⁴. In support, petitioner contends that the P.C.R. Court's Order is Controlled by an abuse of discretion having no evidentiary support.⁵

Also, as petitioner's Motion in Opposition to set aside summary default was denied, the Law makes clear that the party may appeal that Order.⁶

4. see, March 02, 2019 Letter from Mr. Steven D. Tuttle, S.C. Dept. of Archives History, (Pet's Exhibit B).

5. Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 399 S.E.2d 779 (1990); see also, British and American Mortg. Co. v. Strait, 84 S.C. 141, 65 S.E. 1038 (1909) (default judgment set aside on grounds of after-discovered evidence, where defaulting party did not know of any defense until discovery of the evidence.).

6. Winesett v. Winesett, 287 S.C. 332, 338 S.E.2d 340 (1985) (An order entering default judgment is not immediately appealable; the defaulting party must first move to set aside the default judgment under Rule 60(b). If the Motion to set aside the judgment is denied, the party may appeal that Order.)

Petitioner's claim of Newly Discovered Evidence is encompassed within ineffective assistance of trial counsel, for counsel's failure to properly research the law pertaining to petitioner's charges, and "should invariably qualify as a 'sufficient reason' permitting a successive petition."⁷

Petitioner has established that his current claim "could not have been raised"⁸ in his previous applications due entirely to the ineffective assistance of trial counsel, where counsel is tasked with the responsibility to have 'Legal knowledge and skill' as well as 'thoroughness and preparation'.⁹

⁷ SC. Code Ann. § 17-27-45(C); quoting, J. H. Blume and E. C. Paavola, A Reintroduction: Survival Skills For Post-Conviction Practice in South Carolina, Vol. 4, Winter 2010, No. 2, Charleston L. Rev., p. 274, n. 295, (2010).

⁸ Odom v. State, 523 S.E.2d 753, 755 (S.C. 1999); Tilley v. State, 511 S.E.2d 689, 691 (S.C. 1999); SC. Code Ann. § 17-27-90.

⁹ see, SC. Rules of Professional Conduct, Rule 407, (1.1) (competence), notes (1) and (5) "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem..."; Nance v. OZMINT, 626 S.E.2d 878 (S.C. 2006).

Had trial Counsel been thorough and prepared, he would have discovered the irregularity with the statute, and could have made the strategic determination to move to quash the indictments and charges, due to a lack of subject matter jurisdiction,^{10.} saving petitioner an erroneous conviction conviction and a life sentence.

At least, Counsel could have requested a continuance to better prepare a meaningful defense^{11.}; as petitioner would have insisted on going to trial had he known he would be receiving a life sentence for pleading guilty, and there is a reasonable probability that the outcome of trial or sentencing would have been different, where petitioner could have received a lesser included offense and/or a lesser sentence.^{12.}

^{10.} Knight Pub. Co. v. University of South Carolina, 295 S.C. 31, 367 S.E.2d 20, 46 Ed. Law Rep. 834 (1988) (The lack of subject matter jurisdiction may be raised at any time.).

^{11.} Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) (trial counsel found ineffective for failing to investigate, plan and present a defense.).

^{12.} Stevens v. State, 365 S.C. 309, 617 S.E.2d 366 (2005) (Counsel ineffective in plea for failing to investigate and research, where client would not have plead and may have received lighter sentence.).

For the facts and law as stated above, petitioner requests this Court allow his case to proceed on appeal, and to have competent counsel appointed to prepare and file his appeal.

Respectfully Submitted,

S/

James L. Bennett, 171713
McCormick C.I., FIA-186
386 Redemption Way
McCormick, SC. 29899
Petitioner Pro Se