

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Case No.: 2020-000900

Weldon Stewart Appellant,

vs.

State of South Carolina,Respondent.

EXPLANATION PURUSANT TO RULE 243 (c)

PROCEDURAL HISTORY

The Appellant filed an Application for Post Conviction Relief *pro se* on June 5, 2018. In this Application, the Appellant alleged newly discovered evidence, due process violation and newly discovered evidence of a Brady violation. That early in 2019, the Appellant retained counsel to represent him in his Post Conviction Relief Action, specifically regarding a retained private pathologist who had undertaken an initial evaluation of the forensic evidence. This pathologist is Dr. J. C. Upshaw Downs.

That Dr. Downs initial findings are substantially different from what was testified at trial. These findings are a result of a review of the file and/or new scientific technology. These findings are material and may have a significant impact upon the

conviction of the Appellant. However, in order for Dr. Downs to complete his evaluation, certain documents are needed from the autopsy. This information is currently being housed at the Medical University of South Carolina in Charleston.

On February 26, 2019, a Motion for Discovery was filed by counsel. The Respondent made it's Return and Motion to Dismiss on or about July 9, 2019. The Lower Court convened a hearing into the matter on August 22, 2019 in Chesterfield County. The Appellant was present at this hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James, Jr. and Donald J. Zelenka, Esq. of the South Carolina Attorney General's Office represented the Respondent. No testimony was taken at the hearing, but attorneys for both parties argued the Motion before the Court.

The Court had before it Applicant's record from the South Carolina Department of Corrections, the records from the Marlboro County Clerk of Court, Appellant's Direct Appeal records, the Appendix from the Appeal of Applicant's prior Post Conviction Relief action including the original trial transcript and the prior PCR transcript. A transcript of the hearing on Appellant's Motion in General Sessions for a new trial, May 26, 2016 and the filings in this present action.

ARGUMENT

The Appellant contends that there are substantial issues that were presented to the Lower Court that require a ruling by this Court. These issues are as follows:

1. That the Court erred in hearing the Post Conviction Relief action on its merits at this hearing. There was a Motion for Discovery pending regarding potentially newly discovered evidence. There is initial evidence to indicate that there was a substantial error in the testimony and evidence presented at

trial by the State's pathologist. That due to new scientific technology and also through the initial investigation, that the results of the autopsy and cause of death are incorrect. However, before the pathologist can make a final decision regarding this evidence, it would be necessary for Dr. Downs to review the evidence that is in the possession of the Medical University of South Carolina in Charleston. The Appellant argues that it is premature for the Lower Court to proceed with the Post Conviction Relief action regarding after discovered evidence without first having granted the request for discovery. Until such time as the discovery is granted, the Appellant is unable to conclusively prove that Dr. Down's initial findings are correct. That until such time as discovery is received and a final decision is made by the pathologist, the Appellant is unable to prove after discovered evidence. That the Court's denial of this discovery Motion is an action by the State preventing the Appellant from exploring an issue of potential after discovered evidence which could have a significant impact upon his conviction.

Therefore, the Appellant is informed and believes that the Court was in error with its failure to grant the after discovery Motion and proceeding to hear the Post Conviction Relief action.

The Applicant raises the following issues in his 2018 Application for Post Conviction Relief:

1. The issue regarding Dr. Downs' need of the evidence currently held at MUSC; and

2. Newly discovered evidence that the Appellant believes is a Brady violation and more specifically the suppression of certain South Carolina Law Enforcement Division files that were favorable to Appellant. This information was obtained from SLED in June, 2017.

The Court's review of those issues presented in the Application for Post Conviction Relief, is in error.

The Court concludes that the Appellant has not established any reason that would require the Court to grant his Motion for Discovery or Delay a ruling upon the State's Motion to Dismiss. The Court denied Applicant's Motion for Discovery and granted Respondent's Motion to Dismiss. The Court Dismisses the Application as successive to the Appellant's previous PCR Application. The Court further dismisses the Post Conviction as barred by the equitable doctrine of laches and also for failure to comply with the filing procedure of the Uniform Post Conviction Procedural Act regarding the Statute of Limitations.

The Appellant would assert that this Appeal should proceed and the Court should render an opinion regarding these issues. The Appellant was prejudiced and prevented from seeking a determination regarding after discovered evidence. Given the fact that the initial findings by Dr. Downs indicate that there could be a significant miscarriage of justice regarding scientific forensic evidence. This initial evidence is material to the case and the Appellant is prevented through State action from making a final conclusion regarding this potential after discovered evidence.

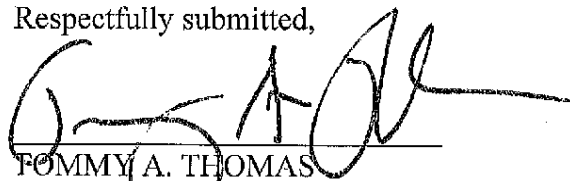
In addition, the Court erred in proceeding to hear arguments regarding the Post Conviction Relief action itself. These issues were not ripe for argument or consideration

by the Court. The proper procedure would have been for the Court to grant the request for discovery and only after the evaluation was completed, that an evidentiary hearing regarding the after discovered evidence and the previously filed Post Conviction Relief Action could be heard.

This appeal is filed with the Supreme Court because the PCR court summarily dismissed Appellant's PCR application as being successive and untimely. Appellant believes this ruling is improper because Appellant asserted that his PCR claims fall within exceptions to the bar against untimely and successive applications. Specifically, Appellant invoked the discovery rule by claiming that the evidence supporting the second PCR application was not discovered until after the original PCR application had been filed and ruled upon. Appellant further asserted that this evidence was unavailable to him at the time of the filing of his original PCR application due to the fact that the State committed Brady violations. Therefore, genuine issues of material facts exists as to whether the second PCR application is successive or untimely and a full evidentiary hearing is warranted in this matter as pursuant to this Court's rulings in McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (S.C. 2013) and Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016).

THEREFORE, the Appellant is informed and believes that he is entitled under Rule 243 (c) for this case to proceed on Appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

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