The State OF South Carolina
In The Supreme Court

Petition From York County
Court OF Common Pleas
Honorable Daniel D. Hall, Presiding
Cause No. 2018-CP-46-3769
Appellate No. 2020-001116

RECEIVED
SEP 11 2020
S.C. SUPREME COURT

Dennis Rodger Davis Jr.
Petitioner

"VS"

State OF South Carolina
Respondent

Explanation Why This Court Should Entertain Petitioners 2nd PCR Action, And Petition To Be Heard On The Merits

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(Petitioner Pro. Se.)

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(Questions Presented)

(I). Whether it was Improper For The Lower Court To hold That Petitioners Second PCR Application Was Successive ?

(II). Whether it was Improper For The Lower Court To hold That Petitioners Second PCR Application Was Time-Barred ?

(III). Whether This Court Can Entertain And Adjudicate This Case On The Merits Do To Jurisdictional Disputes ?

(Statement Of The Case)

On August 22nd 2013, Petitioner was indicted by The York County Grand Jury for possession of marijuana, 2nd subsequent offense (2013-GS-46-02964), Two Counts of distribution of marijuana within the proximity of a School (2013-GS-46-02966 & 02969), and two Counts of distribution of marijuana, 3rd offense (2013-GS-46-02970 & 02971).

On May 21st 2014, Petitioner appeared before Honorable Judge Edward G. Welmaker, and pleaded guilty to all above Stated Charges. Petitioner was Sentenced to 1 year for possession of marijuana, 5 years each proximity Charge, and 10 years and 5 months for each distribution of marijuana 3rd offense Charges, all of which ran Concurrent to "125 months", thus making Petitioners projected max-out date September 13th, 2019, moreover parole eligible on May 31st, 2016 because he was Sentence to all [N]on-Violent Charges.

Petitioner timely filed a notice of appeal with The S.C. Court of Appeals, However the appeal was dismissed for failure to file a Sufficient explanation for The appeal.

On or about 3/12/2015, Petitioner filed a Post Conviction Relief (PCR) application with The York County Court of Common Pleas. On June 6th, 2016, a Post Conviction Relief (PCR) hearing was held, and after Litigation, Petitioner was denied relief.

Petitioner Timely filed a notice of appeal with [t]his Court, and

While this appeal was pending, and being litigated in this Court, on February 8th, 2017, Classification Case Manager, to wit, Mrs. M. Jackson, who is employed by the S.C. Dept. of Corrections (SCDC), Changed the Petitioners max-out date from September 13th, 2019 to March 24th, 2023, thus [a]dding "4" years to Petitioners Sentence, moreover She revoked his Parole eligibility without a hearing.

Petitioners Contract with the State, and the Court was transmuted predicated on the domestic precedent, to wit, Bolin "vs." S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d. 914 (2015) On October 6th, 2017, this Court denied certiorari, and the Remittitur was issued and filed on October 30th, 2017.

On December 12th, 2018, Petitioner filed a second PCR application. The State made its return on or about September 18th, 2019 requesting that the PCR application be Summarily dismissed as untimely, and Successive to the previous PCR application.
The Court issued a Conditional order of dismissing the PCR action, and Petitioner timely responded to the Conditional order. Likewise the Court did not find a sufficient reason to entertain and adjudicate the PCR action on the merits, and denied and dismissed the application with prejudice on July 1st, 2020. Petitioner timely filed a notice of appeal with this Court, and on August 20th, 2020, this Court requested an explanation as to why the Lower Courts determination was improper, and this brief follows.

(Explanation As To Why The Lower Courts Determination Was Improper, And OFF Point On The Law)

(A). Petitioners Second Post Conviction Relief (PCR) Application Is Not A Successive Application As A Fact of Law:

To begin with, Successive is defined as: "Following in uninterrupted order; Consecutive; Characterized by, or involving Succession (American Heritage College Dictionary). The Law is a profession of words, both Spoken and Written, and words in there proper order are the raw materials of Law. Importantly, Looking at the very essence of the word Successive, "Ex Rigore Juris," it simply don't have no relevance in this Litigation at all. Why not? The answer is elementary.

When Petitioner filed his first PCR action, SCDC had not transmutted his Sentence by adding 4 years to his prison term, and at that time Petitioner was Still parole eligible.
So that nobody misses the point, Mrs. M. Jackson, who is employed by SCDC, did not add 4 years to Petitioners Sentence until February 8th, 2017. On this day, Petitioner was on appeal from his first PCR application, and the factual predicates in the Second PCR application was not Litigated in the first PCR application.
There is no way possible Petitioner could have Litigated that 4 years was added to his sentence, and his parole eligibility was revoked during the 1st PCR application, because the violation had not taken place yet. So the matter can't be Successive because it was only Litigated, or raised "one-time."

Jurisprudentially Speaking, if The doctrine of precedents is regarded as the champion of Stability, and Uniformity in The Law, Stare decisis affirmes my Point here. To be Sure, This Honorable Court only need to review your own precedent, to wit; Tilly "V.S" State, 334, S.C. 24, 511 S.E.2d. 689 (S.C. 1999). In Tilly Supra, This Court recognized that Tilly could not have raised the claim that his [P]arole was taken away from him by (DPPPS), because Tilly did not Know That (DPPPS) had taken his parole until [a]fter it was done. In point of fact, The exact Something was happened in this matter case Sub judice, based on fact That SCDC took Petitioners parole [a]fter Petitioner filed his first PCR application. Likewise, it is of Vital importance for this Honorable Court to develope a clear awareness That "Where There is The Same reason, there is The Same Law, and The Same judgment Should be rendered on Comparable fact, (Ubi Eadem Ratio, Ibi Idem Jus; Et De Similibus Idem Est Judicium) In view of This, it is obvious and unarguable That Petitioners 2nd PCR application is [N]ot Successive as a undisputed fact of Law.

(B). Petitioners Second PCR Application Is Not Time Barred:

This much is certain, We Know Petitioner [C]annot have two PCR actions Legally pending at the Sametime. Noticeable, this Court denied Certiorari on Petitioners "Second" PCR application on October 6th, 2017, and this Court issued the Remittitur on October 30th, 2017, and 365 days from October 30th, 2017 is on or about October 30th, 2018. In view of this, the Lower Court, and the State assumes that because Petitioner filed his Second PCR action on December 12th, 2018, the application is time-barred by two months. Notwithstanding, To every broad rule, there is an exception, and an exception affirms an opposite rule, (Exceptio Firmat Regulam In Contrarium). Unshakable, In Rigore Juris, to wit, S.C. Code Ann. §17-27-20(a)(4) Petitioner can raise Claims that "There is evidence of material facts, not previously presented, and heard that requires Vacation of the Conviction or Sentence in the "interest of Justice," and "That his Sentence has [e]xpired, his probation, parole, or Conditional release was unlawfully revoked, or he is otherwise unlawfully held in Custody or other restraint," S.C. Code Ann. §17-27-20(a)(5). Insofar, the Theme of these Statutes override a time-barr, Exspecially when the diction of "In the interest of Justice" is being so used. In point of fact, Petitioners [S]entence has expired by his orders of Committment of York County, and his [p]arole was arbitrarily taken away from him without a hearing. Which demonstrates unequivocally that Petitioners issues are a Paragon for the Statutes Stated.

To crystalize my point, The S.C. Supreme Court has Stated;

"Finality must be realized at Some point in order to achieve a Semblance of effectiveness in dispensing justice. At Some juncture judicial review must Stop, with only the very rarest of Le Jx ceptions, When The System has Simply failed a defendant, and where to Continue the defendants imprisonment without review would amount to a gross miscarriage of justice"

Aice "vs" State, 305 S.C. 448, 409 S.E. 2d. 392 (S.C. 1991)

Acknowledging This Language, it is accurate to Say That Petitioners factual predicates can be entertained, and adjudicated on The merits under Aice vs State, Supra, Criteria, and jurisprudence, and The Time-Bar gibble is Notwithstanding, predicated on fact That a gross miscarriage of justice is ongoing in This matter Cause Sub judice, and will Continue on "in futuro," if This Court does not act, because Petitioners Sentence ordered by The Court has expired, and he is Still being held in Custody, Which violates The 8th, and 14th Amendments To The U.S. Constitution, and Article I 33 3 and 15 to The S.C. Constitution.

(C). Because There Are Jurisdictional Disputes Present In This Cause, This Court Can Entertain And Adjudicate This Cause On The Merits

Critically Serious, after the careful sifting of the unique facts and circumstances in this matter cause Sub judice, Three (3) jurisdictional disputes are glaring, and the Lower Court could have raised These issues Sua Sponte.

(1). When Petitioner Informed The Lower Court That SCDC Could Not Change His Sentence, He Stated A Jurisdictional Dispute.

Standing alone, When Petitioner duly informed The Lower Court That SCDC could not Change his sentence ordered by The Court, by adding 4 years to his Sentence, a jurisdictional question of Law was born.

Henceforth, [J]Jurisdiction is power to declare The Law, and No Warden, Director, Classification Case manager, ect, has The "Jus Gladii" To Transmute Petitioners Sentence that was ordered by The Court of General Sessions of York County.
Insomuch When I Looked up The definition for The word [O]rder in The Blacks Law dictionary, and in The Barrons Law Dictionary, The diction in both specifically, and unequivocally States that The order of The Court under The Circumstances in This Cause is [F]inal.

Petitioners Sentence was edged in Stone by a judicial act, and under The Corpus Juris it Cannot be abrogated by a [N]on-[J]Judicial act.
Jurisdiction Can be raised at anytime, in any preceeding, Therefore, if The Court pleases, Please entertain This jurisdictional Claim.

(2). Petitioner Received No Notice That His Sentence Was Being Changed:

Well, I guess it's back to basics, [I]This Court has Stated with emphasis, "Due process of Law requires That a person Shall have a reasonable opportunity to be heard before a legally appointed, and qualified impartial tribunal before any binding decree, order, or judgment Can be made affecting his rights to Life, Liberty, or property" State "VS." Brown, 178 S.C. 294, 182 S.E. 838 (S.C. 1935) also See, Simmons "VS" Western Union Tel. Co., 63 S.C. 425 S.E. 521 (S.C. 1902), and Logan "VS" Zimmerman, Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982). Everything Due Process requires, didn't happen in This Case, Petitioner got absolutely nothing he was suppose to get, and to make matters even worse, The State and The Lower Court don't even want him to Litigate This matter.
Let me be pellucid, I reviewed The diction for The definition of [J]Jurisdiction, in The Blacks Law Dictionary, and in The Barrons Law dictionary, and in relevant part The definition States "In addition to The power to adjudicate, a valid exercise of [J]Jurisdiction requires [F]air notice, and an opportunity for The affected parties to be heard"

In This case, Petitioner received no Notice at all That his Sentence was being Transmuted. He was called To The Classification office and asked to Sign a paper, and Thats it, That is not Due Process. In my view, because of This also, No Jurisdiction was present To Transmute Petitioners Sentence, because he received "No Notice at all."

(3). Petitioner Was Denied Counsel, When The U.S. Supreme Court Stated He Was Entitled To Counsel:

Petitioner has no Legal training, he is not a jurist. This Transmutation of his Sentence was much to Complicated For him To handle. To be Sure, The Petitioners Counsel during his guilty Plea, and The Solicitor allowed This mess to happen 4 years after the omnibus Law was passed, and if They Could not handle This issue, Surely The Petitioner Could not handle This matter himself. Petitioner was Sentenced To Non-Violent offenses, and he was parole eligible. However his Parole was revoked, which is defined as - "To void or annul by recalling, withdrawing or reversing." Likewise we Know That any revocation of Parole, must Compert To The jurisprudence of Morrissey vs. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1971). In This Case, Morrissey vs. Brewer, jurisprudence was Squelched. What is more, because This matter is extremely Complicated, Stare decisis informs us That Petitioner Should have been appointed, Counsel. "Gagnon" vs. "Scarpelli, 411 U.S. 778, 92 S.Ct. 1756 (1973)

Some may ask, how can being denied Counsel be a jurisdictional issue in This Case?

I researched, and I got The proposition from The precedent, to wit, Custis "Vs." United States, 511 U.S. 485, 114 S.Ct. 1732 (1994)
In Custis, Supra, The Court Spoke Loudly when it Stated;

"If The accused however is not represented by Counsel, and has not Competently and intelligently waived his Constitutional Right, The 6th Amendment Stands as a [J]Jurisdictional [B]ar to a valid Conviction, and Sentence depriving him of his Life or Liberty, The Judgment of a Conviction pronounced by a Court without jurisdiction is [V]oid."

The way I see it, During a Parole revocation crises thats extremely Complicated, and Counsel is required by Federal Law as determined by The U.S. Supreme Court, and No Counsel is appointed, The 14th Amendment Stands as a jurisdictional bar to a valid revocation of Paroleeligibility.

Insomuch, because No Counsel was appointed during This hypersensitive, Complex Parole Crises, Jurisdiction was In absentia. There is absolutely No way Petitioners Parole was revoked and he was "inops Consilii", during This Complex matter.

(4). A Structual Error is glaring in This Cause.

Getting Straight To The Point, The Petitioners Sentence was Transmuted by a person Not a tribunal, and Petitioner had No Counsel appointed when The U.S. Supreme Court Commanded Counsel. This is a Structual error as defined by U.S. Supreme Court jurisprudence. What is more, No matter what is done, or The proceeding, at The end of The day, if a Structual error is Shown, whatever happened is Constitutionally [V]oid, and require automattic reversal, Brecht "vs" Abrahamson, 507 U.S. 619 (1993)
This case is jurisdictional in Character and nature, So if The Court pleases, entertain This matter on The merits To preserve The judicial economy, and emmancipate Petitioner From his illegal Confinement.

Standing alone, The State of South Carolina on May 21st 2014 Knew or Should have Known about The obnibus Law of 2010. SCDC employees do not have The judicial power to correct errors made by The Solicitor, and This much is Certain, SCDC employees Cannot act as Counsel for The State, or as a Judge, for The State. This incident is do To The ineptitude and Shortcomings of The Solicitor, and The Solicitors Shortcomings Should not be a penalty for The Petitioner. Shockingly, because The State did not raise This issue in 2014, Legally They "waived it," and That's by The Letter of The Law.

(Conclusion)

For the reasons Stated, Petitioner Should be released From his Illegal Confinement, or in the alternative be allowed to Litigate his factual predicates on the merits

Respectfully Submitted
/s/ Dennis Davis

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Date: 9/6/2020

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