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S.C. SUPREME COURT

The State of South Carolina  
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

Hon. Eugene C. Griffith, Circuit Court Judge  
Appellate Case No: 2020-001619

Petition FOR WRIT OF CERTIORARI

HERMAN BELTON, #256396  
Alledale CORR. Inst.,  
P.O. Box 1151  
FAIRFAX, SC 29827

DATE: JAN. 28, 2021

PRO-SE

## Questions Presented.

- I. Did the PCR court ERR when it failed to MAKE A FINDING OF FACT AND CONCLUSION OF LAW ON ALL ISSUES THAT WERE RAISED AT THE PCR HEARING?
- II. Should this Petition be granted?

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## Statement of the Case

The petitioner was indicted at the June 2006 term of the Anderson County Grand Jury for trafficking crack cocaine (2006-GS-04-1844). On February 5<sup>th</sup> and 6<sup>th</sup>, 2007 petitioner went to trial and was found guilty as charged. The Honorable Thomas W. Cooper, sentenced petitioner to twenty-five (25) years.

A timely notice of appeal was filed. On Nov. 19, 2009, the S.C. Court of Appeals dismissed petitioner's appeal in an unpublished opinion (2009-UP-526).

On February 24<sup>th</sup>, 2010 petitioner filed application for Post Conviction Relief (PCR). The State filed a return on June 30, 2010. An evidentiary hearing was held on June 8, 2011. The Honorable Alexander S. Macaulay presided. On Nov. 8, 2011 petitioner's PCR application was denied.

On August 6, 2012 Petitioner filed petition for writ of certiorari with the S.C. Supreme Court. Appellate case No. 2011-204374, denied July 3, 2014.

ON JAN. 22, 2015 PETITIONER FILED 28 U.S.C. 2254 WRIT OF HABEAS CORPUS, CASE NO. 6:15-262-JMC-KFM. DISMISSED MARCH 21, 2016.

JANUARY 31, 2017, APPEALED TO THE FOURTH CIRCUIT COURT OF APPEALS. DENIED FEB. 2, 2017, NO: WL-449583.

ON APRIL 19, 2017, PETITIONER FILED APPLICATION FOR WRIT OF STATE HABEAS CORPUS IN RICHLAND COUNTY, CASE NO. 2017 CP 400 2381. ON OCT. 10, 2018 RECEIVED ORDER ENDING JUDGEMENT.

ON FEB. 5, 2019, PETITIONER FILED MOTION S.C.R.C.P. 60(b)(4)(5) IN THE ANDERSON S.C. COURT OF COMMON PLEAS. STATE FILED THE RETURN ON SEPT. 3, 2020. VIRTUAL HEARING WAS HELD ON OCT. 21, 2020 WAS DENIED.

NOTICE OF APPEAL WAS FILED ON DEC. 15, 2020. ON JAN 5, 2021, ASSIGNED APPELLATE CASE NO. 2020-001619 FROM S.C. SUPREME COURT.

## Argument

Did the PCR COURT ERR when it failed to MAKE A FINDING OF FACT AND CONCLUSION OF LAW ON ALL ISSUES THAT WERE RAISED AT THE PCR HEARING?

ACCORDING TO S.C. CODE 17-27-80 (2014) IT IS THE COURT'S DUTY TO MAKE SPECIFIC FINDING OF FACT AND STATE EXPRESSLY IT'S CONCLUSION OF LAW RELATING TO EACH ISSUE PRESENTED.

RESPONDENT(S) IN THEIR RETURN TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI, APPELLATE CASE NO: 2011-204374 APPX PAGE 152, STATES THE FOLLOWING: "THIS ISSUE IS PROCEDURALLY WITHOUT MERIT. THE PCR JUDGE DID NOT MAKE A RULING ON THE ALLEGATION NOW BEFORE THIS COURT REGARDING WHETHER COUNSEL WAS INEFFECTIVE FOR FAILING TO RENEW HIS OBJECTION TO THE ADMISSIBILITY OF THE NARCOTICS DURING TRIAL."

PCR COURT DENIAL OF ALL CLAIMS NOT SPECIFICALLY ADDRESSED IN THE FINAL ORDER DOES NOT CONSTITUTE A SUFFICIENT RULING ON ANY ISSUE SINCE IT DOES NOT SET FORTH SPECIFIC FINDING OF FACT AND CONCLUSION OF LAW. G.C. CODE 17-27-80, SIMMON V. STATE 788 S.E.2D 220. THE PETITIONER RAISED SEVERAL CLAIMS FOR RELIEF IN HIS PCR APPLICATION AND AT THE HEARING. AND PRESENTED EVIDENCE REGARDING THOSE CLAIMS DURING THE PCR HEARING. THE PCR COURT DID NOT ADDRESS ALL THE PETITIONER'S CLAIMS. THE PCR COURT IN ITS ORDER PAGE 126 STATES "THE APPLICANT ASSERTS THAT THE TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INVESTIGATE, PRESENT EVIDENCE, CROSS EXAMINE AND MAKE MOTIONS TO SUPPRESS EVIDENCE;" THE COURT FAILED TO ADDRESS THE FRAUD ON THE COURT, OBSTRUCTION OF JUSTICE, AND THE TAMPERING WITH THE EVIDENCE.

AT THE PCR HEARING ON THE RECORD PAGE 72 L 13-15, PETITIONER REQUESTED THAT HIS TRIAL COUNSEL FILE A 59(E) MOTION TO ADDRESS ALL THE CLAIMS NOT RULED ON. HIS TRIAL COUNSEL PROMISED HE WOULD, AND THE PCR COURT SAID HE WOULD ADDRESS HIS CLAIMS. THE RESPONDENT WOULD ARGUE THAT A 59(E) MOTION SHOULD HAVE BEEN FILED AND PETITIONER REALIZED THAT AND REQUESTED SUCH ON THE RECORD, AND WAS PROMISED THAT. HOWEVER, IT WAS NOT DONE.

Reese v. State, "This court has raised concerns over orders that do not comply with sect. 17-27-80." Reese v. State, 820 S.E.2d 376. Fishburne v. State 832 S.E.2d 584." BECAUSE THE U.S. CONSTITUTION 6<sup>th</sup> AMENDMENT GUARANTEES TO A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS ENGRAINED IN PCR CASES. WE CAN NOT CONTINUE TO PERMIT A PARTY'S PROCEDURAL SHORTCOMING, SUCH AS A FAILURE TO FILE RULE 59(E) MOTION TO PREVENT THIS COURT FROM REMANDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN THE PCR COURT DOES NOT COMPLY WITH SECTION 17-27-80.

This court will take notice that issues were raised at hearing in the PCR court. They are not new. Petitioner requested at the hearing that the correct procedure be followed in making and addressing the court's order and was promised such. The right to seek appellate review of the denial of PCR is expressly authorized by state law, Hollingworth v. State 2015 WL 2231946. Petitioner is entitled to an Austin review of a prior order if there is an affirmative finding that the applicant either.

(1) Requested and was denied an opportunity to seek Appellant Review of the prior PCR Order OR (2) did not knowingly and intelligently waive the right to Appellate Review of the prior PCR Order. King v. State 417 S.E.2d 868.

The Respondent(s) do not deny that the Court failed to address all of the claims that were raised.

## Why This Petition Should be Granted

II ON PAGE <sup>APPX.</sup> 172 OF Respondent(3) RETURN TO Rule 60(b) MOTION FOR RELIEF FROM ORDER OF DISMISSAL. THEY STATE "APPLICANT ALLEGES IN HIS MOTION THAT HE IS ENTITLED TO RELIEF UNDER Rule 60(b) SCRCP BECAUSE THERE HAS OCCURRED "FRAUD ON THE COURT, ALSO OBSTRUCTION OF JUSTICE, AND/OR TAMPERING WITH EVIDENCE (ON THE STATE)." PETITIONER IS ENTITLED TO RELIEF UNDER SCRCP Rule 60(b)(4), BECAUSE THE ORDER FILED BY THE PCR COURT IS A VOID JUDGEMENT AS A MATTER OF LAW. SECTION 17-27-80 IS CLEAR ON WHAT IS REQUIRED OF A PCR ORDER. THIS IS AN ESSENTIAL FACT THAT ENTITLES PETITIONER TO RELIEF. BOWERS V. BOWERS 304 S.E.2d 129, 129.

THE COURT IN DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGEMENT ON PAGE APPX. 180 OF THAT ORDER RELYS ON HENDRICK V. STATE 692 S.E. 2d 892, THAT CITE DOES NOT APPLY BECAUSE HENDRICK ARGUES THAT A NEW SUBSTANTIVE CONSTITUTIONAL STANDARD SHOULD HAVE BEEN APPLIED RETROACTIVELY.

That is not the case here Sect. 17-27-80 is not new and it is clear. The Court on page APPX 181 of the ORDER denying motion states, "Applicant is trying to have a two for one action in which he rehashes trial issues, PCR issues he believes should have been addressed by Judge McCAULAY and the Appellate Courts and a new overarching PCR issue that concern his PCR attorney."

This is far from the truth. All Petitioner wants and is entitled is his one complete "bite of the apple." Finding of facts and conclusions of law on each issue.

The Respondents and the Court argue that the amount of time that has passed since the PCR Court ruled and now is an unreasonable amount for the purpose of this motion. One can only be in one court at a time on the same case. As stated in the statement of the case, from 2011 until today, Petitioner has engaged the court(s) trying to show that he is "not guilty" as charged.

This claim is timely and was raised in a reasonable time. There is no standard that says that a 60(b) motion must be filed before others. And to try to interject that logic without support at this time is unjust.

Remand was required for trial court to make finding of facts and conclusion of law on duly raised post conviction claims, *MARLAR V. STATE*, 653 S.E.2d 266, and *HUMBERT V. STATE*, 548 S.E.2d 862. U.S. Constitution Amendment 6<sup>th</sup>, S.C. Code Ann. 17-27-80, S.C.R. Civ. P 52(A), PCR courts denial of all claims not specifically addressed in the order does not constitute a sufficient ruling on any issues since it does not set forth specific finding of fact and conclusions of law. *SIMMONS V. STATE*, 788 S.E.2d 220. The court in *SIMMONS V. STATE* ruled that although the applicant failed to file a Rule 59(e) motion to request a ruling on the summarily denied issues. We note that although the state is technically correct, we also believe dismissing the writ of certiorari would be fundamentally contrary to the interest of justice.

HOWEVER, UNLIKE SIMMONS THE PETITIONER REQUESTED AT THE PCR HEARING ON THE RECORD FOR A 59(E) MOTION TO BE FILED APPX. P-72-L13-15. EXTRAORDINARY ACTION OF REMANDING DEFENDANT(S) APPLICATION FOR PCR WAS WARRANTED EVEN THOUGH DEFENDANT FAILED TO PRESERVE FOR APPEAL ISSUE OF PCR'S COURT'S FAILURE TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW BY FILING 59(E) MOTION. SIMMONS V. STATE 788 S.E.2D 220, FISHBURNE V. STATE 832 S.E.2D 584, MARLAR V. STATE 653 S.E.2D 266, PRUITT V. STATE 423 S.E.2D 127, MCCRAY V. STATE 408 S.E.2D 241.

IN REESE V. STATE 820 S.E.2D 376 "COURT HAS RAISED CONCERNS OVER ORDERS THAT DO NOT COMPLY WITH SECT. 17-27-80." TO DENY PETITIONER AN ORDER THAT ADDRESS(S) ALL ISSUES RAISED WITH A FINDING OF FACT(S) AND CONCLUSION(S) OF LAW IS DENYING HIM HIS PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHT(S) UNDER THE FEDERAL AND STATE CONSTITUTIONS. LOOKING AT THE ISSUES THAT WAS NOT ADDRESSED AND REMEMBERING THAT THIS IS NOT A "GUILTY PLEA", ONE CAN SEE WHY THERE MUST BE A REMAND.

## CONCLUSION

IN South CAROLINA THE Post Conviction Relief Act AFFORDS this Petitioner ONE complete "bitz of the apple", AND A FINAL ORDER FROM THE PCR COURT THAT COMPLIES WITH sect. 17-2780. TO DATE Petitioner HAS NOT BEEN AFFORDED his ~~QUARANTEED~~ RIGHTS. Petitioner PRAY(S) THAT this COURT WILL REMAND this CASE BACK TO THE PCR COURT FOR AN ORDER THAT COMPLIES WITH THE STATUTE.