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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal Case No. 2020-001617

State of South Carolina.....Respondent

v.

Eugene Thomas.....Appellant

MOTION FOR REHEARING

Where the applicant alleges facts that would established an exception to either the statute of limitation or the prohibition against successive PCR application and those facts are not conclusively refuted by record before the PCR court a question of fact is raised which can only be resolve by a hearing. McCoy v. State, 737 S.E.2d 623 (S.C. 2013)(quoting Delaney v. State, 230 S.E.2d 679 (1971).

## THE GREAT SEAL

The Applicant alleges his conviction is unconstitutionally invalid because there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184, 1995 Act No. 7. The Respondent alleges this allegation is without merit, as our Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Citing Smith v Jennings 45 S.E.2d 821, 824 (1903). This (1903) hold that while the constitutional provisions as to form of enacting clause is mandatory that a substantial compliance with the mandate will be sufficient. We cannot bring mind to hold an absolutely literal compliance with the form prescribed is essential to valid legislation. There must be, however, an enacting clause in appropriate words importing the same as the phraseology prescribed. We are not without authority in this state for such view. In this case of state v manson, ... the court sustained an indictment which concluded with the words "against peace and dignity of the state" as required by the mandatory provision of 5 § 31, of the present constitution, following ... This case is about indictment and its form, applicant case is about the plain language of Art 3 section 18 of the S.C. Constitution, and the force of law which provides, No bill or Joint Resolution Shall have the force of law until it shall have been read three times

and on three several days in each house, has had the Great Seal of the State affixed to it ... No court in South Carolina have rule on the Constitution as to the facts in this case. See exhibit (1). Applicant must make a prima facie showing he is entitled to relief. Welch v. MacDougall, 143 S.E.2d 455 (1965). In the rehearing applicant have shown he is entitled to an hearing on the Great Seal.

#### SUCCESSIVE

In the matter of the Great Seal the applicant contends that this matter was discovered and filed March 15, 2019, and the Respondent states Applicant discovery of the missing Great Seal under Article III, Section 18 does not constitute newly discovered evidence and went on to say this evidence was discovered <sup>\*</sup> prior to his direct appeal and PCR action, but don't give dates when he discover them, his office had already lied about Smith v. Jennings now has a story to tell about when the Great Seal issues were discovered. The court said, Petitioner's PCR claims may be ultimately prove untimely, successive or perhaps unsuccessful on the merit, the PCR Judge erred in granting the State's motion for summary judgment because a genuine issue of material fact exist as to whether Petitioner's PCR Claim is successive or untimely. See Leamon 611 S.E.2d at 495 citing S.C. Code Ann. 17-27-70(b) holding summary of dismissal of a PCR application without a hearing is appropriate only when it

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Letter from Archives & History dated 22 October 2018.

is apparent on the face of the application that (1) there is no reason for a hearing to develop any facts and (2) the applicant is not entitled to relief. In a case raising a novel issue of law, the appellate court is free to decide the question of law with no particular deference to the trial court. Osprey, Inc. v. Cabana Ltd. Partnership 532 S.E.2d 269, 272 (2000); I, On, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716, 718 (2000). The court will reverse PCR judge's decision when its control by an error of law. Sheppard v. State 594 S.E.2d 462 (S.C. 2004). The Great Seal claim was discovered October 22, 2018 and he filed March 15, 2019, within one year of discovery of the facts.

#### STATUE OF LIMITATIONS

If the applicant contends there is evidence of material fact not previously presented, the PCR application must be filed 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 reasonable diligence. The Respondent would have you believe that this facts were discovered prior to Applicant's direct appeal and PCR actions. See exhibit (2).

#### CONCLUSION

Petitioner prays for a hearing on the claim of the missing Great Seal.

The Appellate court will reverse a post conviction decision when

it is controlled by an error of law. Sheppard v. State, 594 S.E.2d 462 (S.C. 2004). Applicant's first PCR was decided and ruled on and dismissed on an error of law. See exhibit (3). He received no reversal and is due an Austin review. The error of law is in 17-27-80 S.C. Code Ann. which provides, the court shall make specific finding of fact and state expressly its conclusion of law, relating to each issue presented. The order is a final judgment. The first PCR Order states, wherefore I find applicant has not proved by a preponderance of evidence that trial counsel was ineffective on any grounds presented by Applicant at the post-conviction relief hearing. Therefore, Applicant's application for Post Conviction Relief is denied and dismissed with prejudice. See McCullough v State, 464 S.E.2d 340 (S.C. 2007) the court said, although the error was not raised to and ruled upon by the PCR judge, we find it necessary to vacate the order and remand to the circuit court to issue an order addressing its decision to dismissed ... second PCR as successive. See McCray v State, 408 S.E.2d 241 (1991)(orders in a PCR proceeding shall address all issues properly raised at the hearing). The Respondent should be estopped from making a defense in this matter since she requested the order.

#### CONCLUSION

The Applicant is entitle to a hearing.