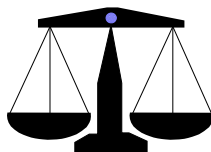


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February 25, 2021

**RECEIVED**

**Feb 26 2021**

**S.C. SUPREME COURT**

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Donald Scott Jones v. State of South Carolina; Appellate Case No. 2021- 000024;  
Rule 243 (c) , SCRAP, Letter of Explanation.

Dear Mr. Shearouse:

I previously submitted a letter partially addressing the reasons why the PCR Appeal in the above captioned matter should be allowed to move forward. At that time, I asked to submit an additional letter more fully addressing the claims that warrant this PCR appeal being heard. I apologize for not getting this letter out to the Court sooner, however, I have been tied up with urgent issues in a homicide case I recently became involved in, as well as other pending matters.

Since that first letter, I have been able to determine that the allegations raised by Petitioner *pro se* in his second PCR Application on these same judgments and sentences, all hinge on claims of ineffective assistance of his lawyer in his first action; an allegation which our Supreme Court has consistently said may not be the sole basis for a successive PCR action. There is however, one issue which I firmly believe warrants the remand of this matter to the lower court for a hearing on either the most current PCR, or the previous one, on these same judgments and sentences, docketed at 2012-CP-11-0574.

This case involved an allegation of sexual assault on Petitioner's Aunt. Applicant testified in the evidentiary hearing on his first PCR Application that his Aunt began having sex with him when he was fifteen years old and that the sexual relationship between the two continued up through the night of the events which lead to these charges. As of the date of this correspondence the Petitioner is 52 years old. He was indicted on the charges related to this incident in 2009. At the PCR hearing on Petitioner's

initial PCR Application on these charges, he was represented by Shawn M. Campbell, of the Spartanburg County Bar. Near the end of the evidentiary hearing, the Honorable Robin B. Stillwell, presiding PCR judge, noted that during a bench conference, off the record, *“there is a note from the victim’s son, which calls into question the Victim’s credibility.”* The Court noted that Applicant had asked to introduce that note in evidence. While noting that he had found the note to be inadmissible inasmuch as the author was not available for cross-examination, the Judge Stillwell noted that in such proceedings, particularly where a life without parole sentence was involved, he tended to be liberal in allowing the Applicant to present evidence. Judge Stillwell noted that he was going to hold the record open for ten (10) days *“so that the witness’s testimony can be taken de bene esse and could be presented for his consideration and made part of the record.”* Petitioner acknowledges that that the Court indicated that it was, *“a strict ten days.”* App.p. 453, lines 6-24. In the Order of Dismissal on that application, docketed at 2012-CP-11-0574, found in the Appendix to the PCR appeal from that Order, the Court notes that the deposition was scheduled and the witness did not show up. The record does not reflect how the Court came to know this information.

Undersigned Counsel has now had the opportunity to discuss this matter with PCR counsel from that first action; Shawn M. Campbell, of the Spartanburg County Bar. From that discussion she has been able to determine that PCR Counsel *did not subpoena this witness to the deposition.* Rather, he sent a letter to his *“last known address.”* PCR counsel apparently did not get any kind of confirmation that the letter was received, however, he set up the deposition. The witness did not show up for the deposition, however, PCR Counsel has acknowledged that he had no way of knowing whether the witness ever got the letter advising him of the deposition or the date and time it was to be held. Even if this witness received the letter in question, that correspondence would not have compelled the witness to submit himself for deposition.

Undersigned Counsel has it on information and belief that the witness in question was himself in custody at the time of the scheduled deposition. This issue is further complicated by the fact that PCR Counsel reports that he has now destroyed his file and further advises undersigned counsel that the only thing on his computer concerning this case is the Order of Dismissal. PCR Counsel has agreed to provide undersigned counsel with an affidavit addressing the information provided herein.

Several other points are worthy of note. Counsel is advised that the *“note”* in question was returned to PCR Counsel after it was ruled to be inadmissible. Petition advises that PCR Counsel returned with it in his hand after the bench conference in question. The record reflects that PCR Counsel did not ask that the note be introduced as a Court’s Exhibit. The record in fact does not even preserve the name of the witness in question, but rather simply references him as the Victim’s son. Undersigned Counsel is in the process of determining the full name of that witness and obtaining documentation relevant to whether he was in fact in detention at the time of the November 15, 2013 hearing. While the record of that proceeding does not specifically state that this witness was not present at that hearing, it is obviously fair to infer he was not since Judge Stillwell saw fit to permit a deposition of this witness at a later date. Trial counsel offered no explanation on the record for why he was attempting to introduce a *“note”* from this critical witness in lieu of live testimony.

There is nothing in the record, or the Order of Dismissal, offering any explanation for PCR Counsel's failure to subpoena this witness for the PCR hearing held on November 11, 2013. Furthermore, particularly in light of the tight ten (10) day time period allowed by Judge Stillwell, PCR Counsel's failure to have a subpoena served by hand is difficult to understand. The questionable reliability of the postal system, and the fact that even if the deposition had been taken by the middle of the ten (10) day period allowed, it would still have been questionable whether the transcript of the deposition could have been obtained in time to comply with the Order of the Court concerning this deposition, make it highly unlikely Petitioner ever had any chance to meet the deadline set by the PCR Court. Petitioner submits, however, that if proof could have been provided to the Court that the deposition had been taken within that time frame allowed, PCR Counsel could have requested additional time to have the transcript produced and submitted to the Court.

In light of the above, Petitioner asserts that he has not had his one full and fair bite at the apple. He now asks that undersigned counsel be given a reasonable time period to draft and have PCR Counsel's affidavit executed, to obtain confirmation of the full name of this witness and information concerning where he was residing at the time of the PCR hearing held on held on November 15, 2013 and the ten days following that hearing. Petitioner respectfully submits that this information will demonstrate that he was denied a full and fair hearing on his first PCR Application. Upon submission of this material, Petition will file a Petition with this Court asks for remand for further proceedings. Given the serious nature of the charges for which he was convicted, and the life without parole sentence he received, Petitioner prays for the latitude to enable him time to present necessary evidence demonstrating the facts asserted herein. Petitioner realizes that his *pro se* attempt to solve this problem with a second PCR Application may have been misguided, however, where PCR Counsel had not done anything to address this issue, he did the only thing he, as a lay person, knew to do.

Thank you, as always, for your kind attention in this matter. I remain,

Sincerely,

*Tara Dawn Shurling*

Tara Dawn Shurling  
Attorney at Law

TDS/ts

Cc: Chelsey F. Marto, Assistant Attorney General (by email)  
Donald Scott Jones, SCDC No. 336980 (to be provided by mail 3/1/2021)