

In The Supreme Court of South Carolina

Appellate case No. 2021-000474

**RECEIVED**

MAY 27 2021

Marco Bates . . . . . Petitioner,

S.C. SUPREME COURT

VS

State of South Carolina . . . . . Respondent.

Pro, se written Explanation Rule 243(c)

SCACR

The Pro, se Petitioner makes this written explanation to support his Notice of Appeal and the denial of his P.C.R. Application based on After-Discovered Evidence pursuant to S.C. Code of Law ANN. §17-27-45(c). An appellate court must affirm the factual findings of the PCR court if they are supported by any probative evidence in the record. (See Hyman v. State, 723 S.E.2d 375, 378 (2012). "However, reversal is appropriate where the PCR court's decision is controlled by an error of law.")

Law/Analysis

Did the PCR court error by overlooking the statute S.C. Code of Law ANN. §17-27-45(c) after discovered evidence by making a final ruling that Petitioner's PCR application is a successive PCR Application that is barred by the statute of limitation?

Applicant contends pursuant to S.C. Code of Law ANN. §17-27-45(C)...  
"If the Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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".

### Facts of After-Discovered Evidence

Applicant contends that he made his after-discovered evidence by receiving a reply from Tanya Camp, Court Supervisor from the Spartanburg County Clerk of Court's office on March 5, 2020, from a letter that Applicant wrote to the Spartanburg County Clerk of Court's office on Feb. 5, 2020. In Applicant's letter dated Feb. 5, 2020, he asked Tanya Camp, Court Supervisor to explain in more detail in reference to "no documentation being found, not finding any documentation authorizing funds for an expert." On March 5, 2020, Tanya Camp, Court Supervisor replied and said, "that after looking through your files, we did not find a documents that requests funds for an expert." (see exhibit (A)).

Applicant included that this 2004 PCR hearing for Applicant, where his court-appointed trial attorney gave testimony that he hired a forensic expert Don Gurnt stated, "our office (Spartanburg County Public Defender's Office) has a, has an expert witness fund that is available to hire experts, and that's where the money came from to hire Mr. Gurnt." (see exhibit (B))... shows where court-appointed trial attorney Mike Bartosh is committing Fraud upon the court.

There's no documentation that authorize funds for expert services

in Applicant's file or on record to substantiate court-appointed trial attorney's asserted testimony that he consulted and hired a forensic expert for Applicant's defense. "Counsel has a duty to make reasonable investigations"... Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052.

The Applicant included exhibit (C)... shows court-appointed trial attorney's testimony admitting to having no investigation, he testified that he did not have a investigation that would establish that the bullet either did or did not kill the victim.

The Applicant included exhibit (D)... shows court-appointed trial attorney testimony of him admitting he had no independent testing. "At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case". Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

"The United States Supreme Court has held that the defendant must have a fair opportunity to present his defense; thereby requiring the State to provide the 'basic tools' for an adequate defense to an indigent defendant." Bailey v. State, 309 S.C. 455, 459; 424 S.E.2d 503, 506 (1992), quoting Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985).

### CONCLUSION

Wherefore, the pro se petitioner's written explanation should be granted and schedule a hearing in the PCR court based on After-discovered Evidence.

Dated: 5-25, 2021

Respectfully Submitted,  
St Marco Bates  
Marco Bates