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AUG 19 2021

S.C. SUPREME COURT

THE SUPREME COURT OF SOUTH CAROLINA

Mansa M.Y. Banshi, SCDC#73461,)
)
 Petitioner,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

Appellate Case No.2021-000799

**OPPOSITION
TO
THE LOWER COURT RULING**

The petitioner respectfully argues that in this particular instance the Lower Court Ruling is not proper where no Evidentiary Hearing has not been held to adjudicate. He further argues dismissal at this juncture without a judicial review of the allegations being presented is totally improper when the Court has held that such are true and must be viewed in the light most favorable to the Applicant. See Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005)(citing S.C. Code Ann. §17-27-80).

The petitioner argues that the allegations raised in this action are not successive nor should be barred by **res judicata** they have not been any adjudicated previously. The petitioner would acknowledge that the first PCR Application filed for the April 1987 convictions for relief was denied. A writ of Certiorari resulted in a reversed conviction by the South Carolina Supreme Court on June 8, 1992.

The petitioner argues that the second PCR was not and Application filed by him initially it was the Court who recharacterized his Petition for Writ of Habeas Corpus as such in Case No.98-CP-40-0045.

The petitioner argues that the current PCR Application could not have been raised in the previous applications because he had no knowledge that (1) the

Great Seal of South Carolina was not affixed upon the law of murder/homicide that he was convicted of, (2) that this in-conjunction with Prosecutorial misconduct, fraud upon the court, ineffective assistance counsel newly discovered evidence, (3) Change in parole eligibility Ex post facto violation, (4) Expired sentence and, (5) being restrained unlawfully and being denied procedural due process. These allegations should not be overlooked because of the Lower Court overlooking the discovery rule in Section 17-27-45(c), which allows one year after the discovery of "material facts not previously presented and heard that require vacation of conviction and or such relief the Court would deem appropriate. The petitioner argues that he did file this current PCR application immediately upon discovery up the above claims.

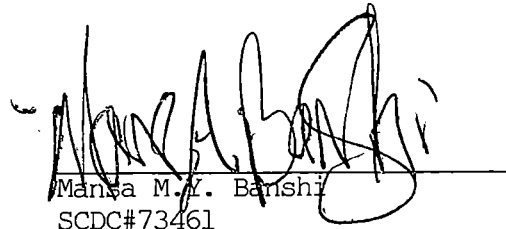
The petitioner thus alleges facts that should establish an exception to either the statute of limitations or the prohibition against successive PCR Applications and because these facts have not been refuted by record from a PCR Court, the questions of facts which are raised can only be resolved by an Evidentiary Hearing, cf. Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977); Rogers v. State, 261 S.C. 288, 199 S.E.(2d) 1973; Chambers v. State, 262 S.C.202, 203 S.E. (2d) 426 (1974); Coard v. State, 263 S.C. 493, 206 S.E.2d 264 (1974). The petitioner contends that he's entitled to the benefit of the discovery rule and the Court would err by denying him the right to proceed when he has demonstrated a sufficient reason why his claims were not presented in the previous PCR Applications.

The petitioner contends that this Court should grant him an exception. See e.

e.g., Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982). The petitioner humbly asks this Court here to carve out an exception that well may swallow Rule 50(3). It should be troubling to this Court that the Lower Court has simply failed to maintain a semblance of effectiveness in dispensing justice by denying an Evidentiary Hearing when the petitioner has presented claims if gone unresolved without judicial review would amount to a gross miscarriage of justice. See Butler v. State, 387 S.E.2d 87 (S.C.1990).

Finally, the petitioner argues that he seeks review of the Lower Court Ruling of his PCR Application pursuant to his State law rights as set forth in S.C. Code Ann. §17-27-100 and in Supreme Court Rule 50(9), for the appointment of counsel to an indigent pursuant to Supreme Court Rule (50)(6). And that this Honorable Court "contemplate an adjudication on the merits of this PCR Application, one bite at the apple as it were." Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1984).

Dated: August 14, 2021



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