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S.C. SUPREME COURT

South Carolina Supreme Court

Greenville County

Court of Common Pleas

C/A #2019-CP-23-0816

PERRY H. GRAVELY, Circuit Court Judge

Anthony MAURICE Lounds, #227456
APPELLANT

VS.

STATE of South Carolina
RESPONDENT

Rule 243(c) EXPLANATION

NOW COMES THE APPELLANT Anthony Lounds, #227456 in
THE ABOVE ENTITLED CASE, RESPECTFULLY MOVES THIS HONORABLE
COURT WITH PRIMA FACIE SHOWING THAT THE PCR COURT ERR
BY NOT GRANTING A PCR HEARING, AND THAT HE IS ENTITLED
TO RELIEF.

~~(1 OF 1)~~ (1 OF 1)

Procedural History

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's order of Commitment. The Greenville County Grand Jury indicted the Applicant At the November 2009 term of General Sessions for Armed Robbery (2009-GS-23-10155, Count 1) and possession of a weapon during Commission of a Violent Crime (2009-GS-23-10155, Count 2) Scott Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2011, the Honorable C. Victor Pyle Jr. sentenced the Applicant to life without parole for Armed Robbery and five years for possession of a weapon during the Commission of a Violent Crime.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on indigent defense, Division of Appellate defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentence. The remittitur was sent on July 17, 2013. Applicant filed per with the Greenville County Clerk of Court on July 11, 2013, State made its return April 8, 2014 requesting an evidentiary hearing which was held on October 21, 2014.

NOW COMES THE APPELLANT ANTHONY LOUNDS #227456 IN THE ABOVE ENTITLED CASE, RESPECTFULLY MOVE THIS HONORABLE COURT WITH A SHOWING THAT THE STATUTE OF LIMITATION AND SUCCESSIVENESS DOES NOT APPLY TO HIS PCR APPLICATION.

THIS MATTER COMES BEFORE THE COURT BY WAY OF APPLICATION FOR POST-CONVICTION RELIEF FILED BY THE APPLICANT ON FEBRUARY 18, 2019 IN THE GREENVILLE COUNTY CLERK OF COURT OFFICE. RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS ON OR ABOUT SEPT. 12, 2019, REQUESTING THAT THE APPLICATION BE SUMMARILY DISMISSED. APPLICANT RETAINED COUNSEL MS. SUSANNAH ROSS ESQUIRE WHOM FILED A REPLY TO THE DISMISSAL. ON JUNE 26, 2021 THE HONORABLE PERRY H. GREAVELY RULED ON HEARING IS NECESSARY ON THE 59(E) FILED BY MS. SUSANNAH ROSS ESQUIRE. RETAINED COUNSEL FILED NOTICE OF APPEAL WITH THE SOUTH CAROLINA SUPREME COURT, AND APPELLATE DEFENSE TO ASSIST WITH THE APPEAL. COURT RULED PCR APPLICATION WAS BARRIED AND SUCCESSIVE 243(C) EXPLANATION WAS ISSUED BY THE CLERK OF THE SOUTH CAROLINA SUPREME COURT. RETAINED COUNSEL FILED EXPLANATION, AND INFORMED APPELLANT THAT HE HAD 20 DAYS TO FILE PRO-SE EXPLANATION AS TO WHY APPELLANT SHOULD NOT BE BARRIED FROM FUTURE CHALLENGE TO HIS CONVICTION AND SENTENCE UNLESS APPELLANT RECEIVES PERMISSION FROM THE SUPREME COURT.

~~(227456)~~ (3 OF 12)

The Honorable Patricia A Howard
Clerk of The South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C.
29211

RE: Anthony M. Lounds v. STATE of South Carolina

Dear Ms. Howard;

By way of explanation pursuant to rule 243(c) SCACR Applicant appeals the order of dismissal of his PCR action and the denial of his motion to alter and amend because there exist sufficient reason to proceed because the allegations he presents were not asserted or were inadequately raised in his original PCR proceeding.

The Applicant alleges that Counsel was unconstitutionally ineffective for failing to inform the Applicant of a plea offer.

SEE DAVIE V. STATE, 675 S.E.2d 416, 381 S.C. 601 (S.C. 2009)

Applicant admits that the allegations could have been raised at his prior PCR hearing and was, in fact, argued by Mr. Lounds at his one prior PCR hearing before Judge Vredin. Mr. Lounds offered letters into evidence from Assistant Solicitor George Campbell to appellate Counsel, Susan Hackett, saying that he had extended plea offers to Nihar Patel. Mr. Patel was the Applicant's public defender and was relieved of representation when Scott Robinson was retained. Mr. Lounds testified that he did not receive any plea offer prior to

his trial where he was sentenced to life under §17-25-45. Scott Robinson testified at the PCR that he did not recall any plea offer. He said he spoke to Assistant Solicitor Sloan Ellis who was second chair at the trial and was told there was no plea offer. This statement could not at the time have been disputed because the rebuttal evidence was not yet discovered by the applicant. Mr. Lounds filed this most recent application after learning that Assistant Solicitor Sloan Ellis told applicant's family members that as second chair at the applicant's trial, he would not be in position to know if a plea offer had been extended in the case. Mr. Ellis confirmed this to the undersigned counsel. This is relevant newly discovered evidence which brings into question whether trial counsel communicated the applicant's plea offer to him creating a genuine issue of material fact.

Appellate Counsel argued the issue in the petition for Cert. from Mr. Lounds initial PCR, but Cert. was denied after the state argued that the allegation was not preserved because the 2014 order of dismissal fails to address the allegation and there was no 59(E) motion to preserve the issue. The evidence that Sloan Ellis was not in a position to know of or discuss a plea offer with trial counsel in the case is newly discovered evidence supporting Mr. Lounds argument that he did not receive a plea offer. This allegation had never been addressed or waived because it was inadequately raised and not preserved at the initial PCR hearing.

MR. Lounds' PCR Application Also Asserts That his Sentence Exceeds the Maximum, Because he Was Not Properly Placed on Notice in Accordance with 17-25-45 (H) And That There Were Discrepancies in the Indictment Where the Indictment Was Impermissibly Altered.

Also for the Court's Consideration is the Applicant's Subject Matter Jurisdiction Claim, he submits that he was served a "true" Billed Indictment with a prefixed docket number of "2009-GS-23-010155" which charged him in Court one with "Armed Robbery" and in Court two with "possession of a weapon during the Commission of a violent crime." SEE indictment

However, contrary to the "prefixed 2009" date listed on the face of Applicant's indictment, the body of his indictment includes a November 23, 2010 date for when the grand Jury convened to present his indictment. SEE body of the Applicant's indictment

Nevertheless, for a resolution of the Applicant's indictment date, it should be judicially noted by the Court that officer Alvin King of the Greenville County Sheriff's office appeared before the grand Jury as a witness to present evidence on 10-1-2009 for the grand Jury to "true bill" his indictment. SEE face of Applicant's indictment.

As a threshold matter, it should be judicially noted by the Court that someone attempted to cross out the

"2009" date on the face of Applicant's indictment to write in its place a "2010 date" in the "Court of General Sessions" section. This attempt is obviously disputed by the "2009-GS-23" prefixed docket number listed on the face of the indictment.

Accordingly, as a threshold matter, the S.C. Constitution and statutory laws mandates that no person may be held to answer for any crime except upon a presentment of an indictment by a grand jury, S.C. Const. Art. I, § 11; S.C. Code § 17-19-10. Here, a review of the face of Applicant's "Armed Robbery and possession of a weapon during the commission of a violent crime", indictment lists (1) a 2009-GS-23-010155 docket number, (2) Alvin King as the Greenville County Sheriff's officer as a witness before the grand jury "true billed" his indictment. See Applicant's indictment.

Here, the indictment error clearly shows that the grand jury did not convene on "November 23, 2010," to present the Applicant's indictment, he submits that the court lacked subject-matter jurisdiction to convict him of the state's Armed Robbery and possession of a weapon during the commission of a violent crime offense.

Finally, with regards to the state's failure to lawfully indict the Applicant, both the South Carolina and the U.S. Supreme Courts have held that the court's lack of subject matter jurisdiction to convict a defendant may be raised at any time, see Anderson v. State, 527 S.E.2d 398 (S.C. App. 2000); U.S. v. Cotton, 122 S.Ct. 1781 (2005).

THESE ISSUES AGAIN WERE NOT ASSERTED OR WERE INADEQUATELY RAISED IN HIS ORIGINAL PCR PROCEEDING. THEREFORE, HE SHOULD NOT BE PROHIBIT FROM FILING FURTHER PCR APPLICATIONS, HABEAS CORPUS ACTIONS OR ANY OTHER ACTION CHALLENGING HIS SENTENCE OR CONVICTION WITHOUT OBTAINING THE PERMISSION OF THE COURT.

POST CONVICTION STATUTE 17-27-20, STATES PERSONS WHO MAY INSTITUTE PROCEEDINGS; EXCESSIVENESS OF REMEDY, (A) ANY PERSON WHO HAS BEEN CONVICTED OF, OR SENTENCED FOR A CRIME AND WHO CLAIMS:

1) THE CONVICTION OR SENTENCE WAS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR LAWS OF THE STATES;

2) THE COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE;

3) THE SENTENCE EXCEEDS THE MAXIMUM AUTHORIZED BY LAW;

4) THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRE VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST OF JUSTICE;

IT WOULD BE A DENIAL OF DUE PROCESS TO NOT GIVE THE APPELLANT AN EVIDENTIARY HEARING ON THE ABOVE CLAIMS. THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE U.S. CONSTITUTION IS BINDING UPON STATE COURTS FOR CITIZENS AGAINST STATE ACTION, THROUGH THE SUPREMACY CLAUSE, SEE HENRY V. CITY OF ROCK HILL, 376 U.S. 776, 54 S.Ct. 1042,

Our Supreme Court has made it abundantly clear that a PCR proceeding is still a constitutionally protected and statutorily provided mechanism to address a denial of fundamental fairness shocking to the universal sense of justice.

As a threshold matter, the procedure allowed by this Court denied appellant an opportunity to have his post conviction relief claims adjudicated by a judicial officer, S.C. 17-27-80 (1976) require the PCR court to make specific finding of fact and state expressly its conclusion of law relating to each issue presented, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991) and Pewitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992)

The PCR Court did not do that, but rather delegated that responsibility to the attorney general's office. The reasoning in the order is entirely that of an advocate and not an independent judicial officer, which violates the separations of powers, S.C. Const. § 8.

APPLICANT Filed in his PCR Application he was not properly served with NOTICE TO SEEK LIFE WITH OUT PAROLE 17-25-45(H) AS the notice reference to unknown indictments, Applicant was never convicted for indictments NOTICE reference to PLEASE SEE: NOTICE TO SEEK LIFE WITH OUT PAROLE. Applicant asked his PCR Counsel to amend the issue to his application in October 21, 2014, AS this issue was never in the applicant's application, AS PCR Counsel informed Applicant it was not an issue. Applicant's PCR attorney Mr. Mills Ariel informed Applicant were going in with what can be proved at this hearing October 21, 2014. 17-27-20 PCR Statute protects the Applicant in this regard, Court was without authority to impose the sentence of LIFE WITH OUT PAROLE, and the sentence exceed the Court's Sentencing authority. Applicant never testify at his first PCR hearing that his sentence exceeded the maximum, and Court was without authority to impose LIFE WITH OUT PAROLE sentence, AS this issue was inadequately raised and not preserved at the initial PCR held in October 21, 2014. The issue had never been addressed or waived because it was inadequately raised. The issue is also an cognizable claim, which vacate the Applicant's sentence per 17-27-20(A) (1-5) APPLICANT ASK THIS COURT TO HONOR THIS STATUE WHICH PROTECTS HIS 14TH AMENDMENT FIGHT TO FUNDAMENTAL FAIRNESS WITH ALL DUE RESPECT.