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In the Court of Common Pleas for the
State of South Carolina, County of Anderson

Case No.: 2010CP040678

Herman Belton,
Plaintiff(s),

vs.

Transcript of Record

State of South Carolina,
Defendant(s).

ORIGINAL

HEARING HELD VIA WEBEX VIDEO

October 21, 2020

BEFORE:

The Honorable Eugene C. Griffith

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APPEARANCES

REPRESENTING THE PLAINTIFF:

Herman Belton, Pro Se
Allendale Correctional F3-B10
1057 Revolutionary Trail
Fairfax, SC 29827

REPRESENTING THE STATE:

Taylor Smith, Esquire
Lillian Meadows, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

ALSO PRESENT:

Richard Shirley, Anderson County Clerk

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PROCEEDING

THE COURT: I want us to put the case name on the record, but I would like to know, procedurally, what we are hearing today. I have tried to identify that. Fred -- I have read the entire transcript of the trial. But what is before me? Because I'm struggling trying to determine what I'm hearing.

So, Lauren, start the recording. And I guess, Mr. Smith, that is my question to you is: What do you believe is being presented for me to hear today? What am I listening for?

MR. SMITH: Yes, Judge. And I'll just say very quickly that I did send over a packet of all of that information, the same things that we sent to Mr. Belton I think last week. I was trying to send over a copy of the State's return to his motion separately, but I'm having some computer trouble right now, and it is not working.

But to just kind of tell you where we are. Mr. Belton was convicted of trafficking back in 2007 before Judge Cooper and sentenced to prison for 25 years. His direct appeal was denied. Then he filed an application for post-conviction relief. That was heard by Judge Macaulay, who denied that,

1 back in 2011. And Mr. Belton appealed from that
2 too. And the Court of Appeals denied his petition
3 for writ of cert.

4 After that time, Mr. Belton filed a motion for
5 relief from Judge Macaulay's order denying his
6 application for PCR citing Rule 60(b) of the South
7 Carolina Rules of Civil Procedure. And we did file
8 a return to that motion.

9 So basically this is -- he's asking to be
10 heard on his rule 60(b) motion, basically asking
11 for Judge Macaulay's order denying his application
12 to be voided out. And, so that is what we are here
13 about today. And we have -- you know, we can get
14 into the substantive argument too, but I think that
15 there are some serious procedural bars to this.

16 But I want to also throw in, before we get
17 into any of that, Mr. Belton is pro se because
18 his -- you know, he's been through the PCR appeals
19 process and all of his attorneys have been
20 relieved. And, you know, at this point I kind of
21 question whether he needs to have counsel appointed
22 or either needs to waive that right before we
23 begin.

24 It is a little unusual situation because,
25 although there is case law saying that, you know,

1 PCR applicants have to waive the right, statutory
2 right, to appointed counsel if they are going to a
3 hearing.

4 Those cases address situations where he would
5 have been in front of Judge Macaulay. So, there is
6 no real case law on the point about what to do in
7 sort of a post-trial hearing. Although I think
8 that we definitely are, you know, being heard on a
9 60(b) motion, there definitely are questions of law
10 and fact that it looks like he intends to present.

11 So, that is just the first initial I will
12 bring your attention to, is to look into that and
13 see if you believe that Mr. Belton needs to be
14 represented to even make his argument today.

15 THE COURT: All right. So, I'm going to try
16 to cut to the very end. So this is a 60(b) motion
17 filed by Mr. Belton asking that he be granted
18 relief under 60(b) from the order denying
19 post-conviction relief after it has been up to the
20 Court of Appeals, heard, sent back down, and more
21 or less the application denial was affirmed by the
22 Court of Appeals; is that correct?

23 MR. SMITH: That's correct.

24 THE COURT: All right. Mr. Belton, I am going
25 to ask you, is that what you believe is to be heard

1 today?

2 MR. BELTON: Judge, Your Honor, in reference
3 to the order of dismissal, except it is not a final
4 order because he didn't -- the Judge didn't rule on
5 all of my issues. He addressed them on record, but
6 he refused to rule on them in the order.

7 And I wasn't as up-to-date in law as I am now,
8 which I don't claim to be no lawyer, but I
9 constantly stay in the law libraries researching my
10 case. And I fought on through the writ of
11 certiorari, South Carolina Supreme Court, era paid
12 (phonetic), and I even filed -- it may be mistake,
13 but I filed a state ~~case~~ ^{HABEAS}. I filed it in the
14 district in which I was incarcerated. I didn't
15 file it in the original jurisdiction.

16 And now I am filing the 60(b) in reference to
17 four and five. The judgment is void because ¹⁷⁻²⁷⁻⁸⁰ 172780
18 clearly states that the Judge ~~here finds the~~ ^{Court shall make specific findings}
19 ~~statement of testimony fact (audio breaking up)~~ ^{of fact, and state expressly its conclusions of law relating to each issue}
20 the Judge refused, he refused to do that.

21 THE COURT REPORTER: Sir, is there any way you
22 could pull your mask down? I mean, it is not
23 covering your nose anyway. No, I mean, pull it
24 down so that I can hear you. Thank you. And if
25 you could repeat that little last part that you had

1 said.

2 MR. BELTON: I forget where we was at.

3 THE COURT: You were talking about the order.
4 You said Judge Macaulay's order denying your relief
5 on the post-conviction relief, you believe the
6 order was not full and complete because he didn't
7 address all of the issues you raised, I think is
8 what you were saying. He did on the record, but
9 not in the order; is that correct?

10 MR. BELTON: The order itself is not a final
11 order, according to State versus Austin, if all of
12 my issues, and in State versus Austin, the final
13 order -- it is not a final order, not unless he
14 states findings of fact and conclusions of law on
15 each and every issue raised. Clearly it was before
16 the Court, because it is on my memorandum.

17 At this point I am alleging ineffective
18 assistance of counsel as a result of -- and I'm
19 charging fraud on the Court, tampering with
20 evidence, and --

21 MR. SMITH: I object.

22 MR. BELTON: -- on the Court.

23 THE COURT: That is not -- that was not my
24 question. That is what you want to get into. Now,
25 when Judge Macaulay issued his final order under

1 the post-conviction relief act denying your relief
2 under post-conviction relief, he filed an order.
3 And that is the order that you are trying to have
4 set aside; is that correct?

5 MR. BELTON: Yes, it is.

6 THE COURT: Okay. Now, you had an attorney
7 representing you during the post-conviction relief
8 action; did you not?

9 MR. BELTON: Yes, I did.

10 THE COURT: Now, did your lawyer file a motion
11 under Rule 59(e) to reconsider or address any
12 issues which weren't addressed in the orders. That
13 would be the proper motion then. And then, once
14 those issues are addressed, then that order can be
15 appealed to the Court of Appeals. But you first
16 got to file a Motion to Reconsider Unaddressed
17 Issues. Did you do that?

18 MR. BELTON: No. My, my PCR lawyer did not do
19 that. But it was specifically stated on record
20 that I asked my PCR lawyer to file a 59(e) on my
21 behalf to make sure that all of the issues that I
22 raised be ruled upon. And my PCR refused to do
23 that after Judge Macaulay refused to address all of
24 the issues, address and rule on all of the issues.
25 They have manipulated the system and sabotage the

1 process ever since -- from the very beginning.

2 THE COURT: But did you ask the Court of
3 Appeals to send it back to Judge Macaulay for
4 addressing the issues not addressed in the order?

5 MR. BELTON: The Court of Appeals just denied
6 it.

7 THE COURT: Yeah.

8 MR. BELTON: And their argument was, simply by
9 simply filing a 59(e), the issues would have been
10 heard. But then the time had ran out. And my
11 lawyer hadn't filed a 59(e). So, from that point
12 on, when I fought on through the courts, all they
13 do, did was deny, dismiss and deny. Deny and
14 dismiss.

15 THE COURT: Well, if you didn't ask Judge
16 Macaulay to reconsider it, how do you get relief
17 now for saying that he didn't address it? Is that
18 question clear? Do you want me to rephrase it?

19 MR. BELTON: Yeah.

20 THE COURT: If you didn't ask Judge Macaulay
21 to please reconsider any wrong rulings or address
22 any issues which weren't ruled on but were raised,
23 how do you now get a motion to set aside that order
24 when it's been up to the Court of Appeals and back?

25 MR. BELTON: Well, since Judge Macaulay did

1 not rule on all of the issues, purposely did not
2 rule on all of the issues that was raised and I --
3 and my lawyer, my PCR lawyer, didn't file a 59(e)
4 like I requested on record, and I fought on through
5 the courts and it took years to fight on through
6 the courts.

7 So, now that I have exhausted all of my
8 remedies, I fall back down to filing a 60(b) motion
9 in reference to the fact that there is no ~~such~~ ^{statute of}
10 limitation on four and five if the Judge hadn't
11 ruled on all of my issues. There's no ~~such~~ ^{statute of}
12 limitations on it.

13 And it is some serious issues, and they was
14 there from the very beginning. It was just a
15 matter of the State was manipulating the system and
16 sabotaging the process and not addressing the
17 issues. Because if the State had did what they
18 should have did from the very beginning, I would
19 have never been in incarceration to begin with.

20 Because when it all -- my direct appeal lawyer
21 briefed my direct appeal brief on the Anders brief,
22 due to the fact the trial lawyer refused to simply
23 object to some alleged drugs that was obtained in
24 violation of my fourth amendment.

25 And I am convicted here for constructive

1 possession of some alleged drugs that I know
2 nothing about, simply because he didn't object.
3 And the trial judge, he granted the motion to
4 suppress everything they got out of my pocket,
5 which was what I had, I had that. That was only
6 drug paraphernalia.

7 I am -- I was a drug addict. And I only had
8 drug paraphernalia. They tried to tie some alleged
9 drugs to me by means of constructive possession.
10 And the paperwork that, the police report and the
11 chain of custody clearly showed that the alleged
12 drugs was, obviously, in the State's possession
13 before I was arrested.

14 The police report states that the, the
15 evidence custodian of Anderson Police Department
16 logged some alleged drugs into SLED and released
17 them to Karonda Williams 5-11-2005/40606901. That
18 is not my case number and I wasn't even arrested in
19 2005. I got arrested in 2006. Karonda Williams
20 was not even employed at SLED in 2005. She started
21 working to SLED in 2006. So, if the information on
22 the paperwork is wrong, obviously the conviction is
23 wrong.

24 I pled not guilty to an all-white jury trial
25 in an all-white courtroom only to be made guilty

1 and given 25 years. I was offered a possible seven
2 years. I turned down seven years, a possible seven
3 years, because I'm not guilty. I didn't have no
4 drugs.

5 And how can you prove -- and the whole
6 indictment itself, the heading clearly states that
7 a term of general sessions court, rubber stamped
8 June 27, 2006, I proved by means of a court
9 administration certified true copy calendar clearly
10 shows that there wasn't no general sessions court
11 in session at the time that my indictment was
12 rubber stamped.

13 The body states that Herman Belton, on or
14 about May 3rd, Herman Belton was knowingly and
15 unlawfully in possession of more than 100 but less
16 than 200 grams of crack. That is also false
17 evidence. The paperwork that, which was written by
18 the arresting officers, clearly states that they
19 logged the drugs into SLED in 2005. So the head
20 and the body of that indictment, I think, is false.

21 The whole indictment itself is false because
22 there was no -- and your fifth amendment says no
23 person shall be (inaudible) by a grand jury. That
24 is a lawfully convened grand jury. So, no grand
25 jury convened on June 27th as alleged.

1 THE COURT: All right. You are getting a
2 little farther afield than what my question was.
3 Your whole, your whole premise of your argument is
4 focused on Judge Macaulay's order, yes?

5 MR. BELTON: Pretty much, yes, sir. Yes, sir.

6 THE COURT: Well, Rule 60(b) requires that
7 under subpart 1, that it be filed within one year.
8 And under subpart 2, it be filed within a
9 reasonable time. How long ago was Judge Macaulay's
10 order issued before you filed your Rule 60(b)
11 motion? How long has that been? If you don't
12 know, I am going to ask Mr. Smith to look it up
13 because he may have a better filing system. How
14 far -- how long ago in time was that 60(b) motion
15 made?

16 MR. BELTON: I think from the return on the
17 Attorney General's Office, it was five or six or
18 six or seven years, but I am not arguing 60(b)1, 2,
19 or 3. And if you do the research, it shows that
20 there is no statute of limitations -- there is a
21 one-year statute of limitations on 1, 2, and 3.
22 There is no statute of limitations on 4 and 5.

23 THE COURT: Are you arguing that Judge
24 Macaulay's order is void?

25 MR. BELTON: It is void and null. Because he

1 didn't do his job. His job is to rule on every
2 issue raised, and he refused to do that.

3 THE COURT: I think he did what he was asked
4 to do. Now, Mr. Smith, I will come back and ask
5 you the same or similar question. Is that, from
6 your understanding of the Rule 60(b) motion; is
7 that the order which he wants relief from, is Judge
8 Macaulay's order?

9 MR. SMITH: That's correct, Your Honor. There
10 are two shorter time limits in 60(b)1 that says
11 that it has to be made within one year. And I will
12 say that Judge Macaulay's order was issued over
13 seven years before Mr. Belton filed this motion.
14 If you look at the second --

15 THE COURT: I have already read those. I
16 ain't worried about the time, I just wanted to know
17 when. But do you have knowledge of when Judge
18 Macaulay's order was issued? That was appealed to
19 the Court of Appeals but they didn't grant cert
20 here. They appealed -- they issued a summary and
21 opinion denying relief on appeal.

22 MR. SMITH: The appeal from Judge Macaulay's
23 order was a merits appeal, it was not a Johnson
24 petition. And the Court dismissed it, dismissed it
25 outright, denied the petition for writ of cert.

1 THE COURT: So, that is the law of the case?

2 MR. SMITH: It is, Your Honor.

3 THE COURT: So, was a petition for cert filed
4 on the Court of Appeals merits order, the
5 unpublished one?

6 MR. SMITH: Well, it was filed in the Supreme
7 Court, and the Supreme Court transferred it to the
8 Court of Appeals. And the Court of Appeals denied
9 the petition for writ of cert. And it was a merits
10 petition.

11 THE COURT: Okay, that is what my question
12 was.

13 All right. Mr. Belton, I think that you are
14 kind of hung on or stuck with Judge Macaulay's
15 order. I don't think relief under 60(b) is
16 appropriate. I don't think you get relief under
17 there.

18 I just lost my video. It is coming back. Can
19 everybody still see the video now? Mine went away
20 for a minute when I was speaking, so I stopped.
21 Can you still hear me, Mr. Belton?

22 MR. BELTON: Yes, sir, I can hear you.

23 THE COURT: Okay. I'm just not certain that
24 you are allowed relief from Judge Macaulay's order
25 under Rule 60(b). Even if you were time -- even if

1 you filed it very quickly.

2 MR. BELTON: Judge, Your Honor --

3 THE COURT: Uh-huh. (Indicating
4 affirmatively.)

5 MR. BELTON: You all is stuck on something
6 about 60(b) 1, 2, and 3. My argument is not 60(b)
7 1, 2, and 3, it's 4 and 5. If you clearly read the
8 rules under 60(b) it tells you there is no statute
9 of limitations on 4 and 5. And if they didn't rule
10 on all, I'm entitled to having all of my issues
11 ruled upon. That is entitled to me.

12 And to even put things in perspective, the
13 stop itself was without reasonable suspicion.

14 THE COURT: See now that -- I read that
15 portion of your transcript very thoroughly, because
16 your lawyer, Mr. Tavernier, raised that issue on
17 whether or not there was probable cause or
18 articulable suspicion to stop you on your bicycle
19 that night. And two police officers testified that
20 they knew you, they knew of trafficking in the
21 area, and they knew of complaints of the house
22 where they saw a bicycle leaned up against the
23 house under a street lamp. They saw that. And
24 that caused them, you know, to ride around.

25 But Judge Cooper was very thorough in the

1 police officers knowing you by name, seeing you
2 riding your bike, calling you by your name and you
3 kind of ignored them. And then, come here, I want
4 to talk to you, and you took off. And they
5 observed something in your hand. But then the
6 complaints about the drug trafficking and -- it was
7 three houses down.

8 The officer approaching you seen something in
9 your hand, in time and proximity to seeing the bike
10 at the house, and then your running, all of that
11 coupled together continued to increase the
12 suspicion. And for that reason, Judge Cooper said
13 that there was an articulable suspicion on behalf
14 of the two police officers. And so he went through
15 a thorough, thorough analysis of that.

16 I know that you disagreed with him. And it is
17 a close call, but that was the crux of your entire
18 case. If they could stop you, you ran, they found
19 the drugs in proximity of where you stopped near
20 the thorn bush, and that is the constructive
21 possession that you are talking about. But then he
22 suppressed the scales in your pocket. They didn't
23 see the scales in your pocket. They found them
24 after they had detained you; am I right?

25 MR. BELTON: What you said is what they said,

1 but Judge, Your Honor, if it pleases the Court, may
2 I say something?

3 THE COURT: Sure.

4 MR. BELTON: What they said was based upon a
5 lie to begin with. They never seen nothing in my
6 hand other than the handle bars to my bike. I
7 never ran. They intentionally -- I was riding my
8 bike down the street, I had done nothing. I pull
9 up on four police officers sitting in a car on the
10 side of the street. I'm riding down the middle of
11 the street on my beach cruiser bike with some high
12 rise handle bars. When I approached the ~~direct~~^{BACK} end
13 of the car, the car pulls out.

14 Now I'm looking in the car sideways, because
15 they have pulled out from being parked straight
16 back. I thought they were going on down the
17 street. They intentionally forced me in, forced me
18 to the opposite side of the street to the curb.

19 THE COURT: Okay.

20 MR. BELTON: They tried -- in fact, for fourth
21 amendment purposes, I was already seized when they
22 intentionally forced me to the opposite side of the
23 street and then blocked my pathway and I couldn't
24 continue on my way. For the fourth amendment
25 purposes. What those police officers said, I said

1 was a lie, I said, to start with. Those police
2 officers never seen nothing in my hand, because I
3 never had nothing in my hand other than the
4 handlebars to my bike. What other color do you
5 think handlebars to my bicycle is, but other than
6 shiny metallic object?

7 THE COURT: Shouldn't all of that been raised
8 in the trial?

9 MR. BELTON: Sir?

10 THE COURT: Shouldn't all of that been raised
11 in the trial?

12 MR. BELTON: Well, I said it. I told it, I
13 said it in trial. But at a trial, you know, the --
14 a trial is just for, to paint whatever picture you
15 want to paint. Because my lawyer did nothing to
16 subject the prosecutor's case to any meaningful
17 adversarial testing, he just let the prosecutor
18 have his way.

19 The prosecutor knew that the evidence that
20 they was convicting me of was false. Because the
21 trial lawyer said he had talked to the solicitor
22 about the dates, the 2005 dates, and the other
23 chain of custody that is notarized before I was
24 arrested and everything, that he had talked to
25 Scott McCallahan about that. He had talked to the

1 police officers and he was pretty much aware of
2 what they was going to testify to.

3 Judge, Lawyer Tavernier never asked me one
4 time, what happened that night. And he
5 specifically instructed me, said, Now, I want you
6 to answer just what they ask you and nothing else.
7 And if I had of known I was coming up here, I had
8 my file there in the room put together, because I
9 thought that I was going to be seeing you, you
10 know, like face to face. I had a bunch of
11 documents that I wanted to show you that I can show
12 you that the whole thing I said was false or
13 fabricated.

14 Those two police officers who --

15 THE COURT: Well, see, here is the thing, I
16 have got only to consider the motion before me, and
17 that is the motion under Rule 60(b). If you are
18 granted a new trial, then you present all of what
19 you are discussing there. I can't retry the case on
20 a Rule 60(b) motion. Rule 60(b) means, is the
21 order valid and does it need to be set aside or
22 not. Not can I -- if I'm under a Rule 60(b)
23 motion, try the entire case again, you know, on a
24 factual finding mission, I can't do that.

25 MR. BELTON: Okay. Well under --

1 THE COURT: All right. Let's discuss one
2 other thing. You -- I'm very impressed with your
3 knowledge of the procedure, particular Rule 59(e)
4 and also 60(b) and knowing the subparts 1, 2, and 3
5 are one-year statute of limitations. You obviously
6 have been studying quite a good bit. The
7 prosecutor, Mr. Smith, the Attorney General,
8 mentioned early on, what was it, that we needed to
9 address whether or not you not having an attorney
10 helping you was an issue for you. I know that you
11 haven't had counsel file this Rule 60(b) motion,
12 but did you want counsel to help you with that?

13 MR. BELTON: Sir, I need something. Because I
14 have done been incarcerated for 14 years for an
15 alleged crime that I know nothing about. And I'm
16 tired. And I got family out there that loves me
17 just like --

18 THE COURT: I think that you are about to get
19 out, aren't you?

20 MR. BELTON: What are you talking about?

21 THE COURT: I was thinking that those drug
22 laws were not all 85 percent violent, I thought
23 they were something less than 85 percent. Am I
24 wrong?

25 MR. BELTON: I have been down 14 years, and if

1 nothing changes I have got seven years to go. I'm
2 71 years old now. They have already taken 14 years
3 of my life from me for absolutely nothing. Because
4 how is it possible for me to obtain the drugs when
5 the paperwork that they wrote say that they had
6 them and logged them into SLED in 2005; how could I
7 have had them? Those two police officers have
8 since been forced to resign because they both have
9 gotten -- been caught up in filing other false
10 paperwork.

11 THE COURT: That is still not before me. I
12 have to determine whether or not a Rule 60(b)
13 motion is a proper motion and can it be utilized to
14 grant you relief from Judge Macaulay's order. That
15 is the issue before me, nothing else right now.

16 MR. SMITH: Judge, can I make a brief point on
17 that?

18 THE COURT: Sure.

19 MR. SMITH: I think, essentially, Mr. Belton
20 is rehashing issues that were brought up in his
21 PCR. And he's also upset that some issues were not
22 addressed that he felt should have been addressed.
23 The problem is, is that he's essentially making an
24 argument that his PCR attorney was ineffective for
25 not arguing the things he wanted brought. Now

1 that, as a PCR claim, is normally brought in a
2 second PCR.

3 Now, obviously there are procedural bars to a
4 successive PCR. And the problem is, is that if the
5 Court grants Mr. Belton relief on a 60(b) motion,
6 it is essentially allowing him to make a successive
7 PCR case out of a motion without letting the State
8 put forward those procedural arguments. So, it's
9 essentially skirting the bars that are in the PCR
10 statute.

11 THE COURT: Yes, I was aware that that was
12 kind of a collateral action on a collateral action.

13 MR. SMITH: I can cite a case for the Court
14 where the Supreme Court has looked at a 60(b)
15 motion in the PCR context. The case is Hendricks V
16 State. Citation is 387 S.C. 221. That is a 2010
17 case. And the Supreme Courts essentially says that
18 the 60(b) motion should be treated as an
19 application instead of as a 60(b) motion.

20 THE COURT: I'm going to read that case real
21 quick. Hang on. I do like having the State
22 Reporter in my chambers a lot.

23 (Pause.)

24 THE COURT: All right. I have read that case.

25 MR. SMITH: And I'll just add, Judge, that I

1 think for Mr. Belton to properly have before the
2 Court what he wants before the Court, he would need
3 to file a successive PCR application. Now, of
4 course the State is going to move to dismiss that
5 on procedural grounds, but that is the proper
6 avenue for relief for him at this point, not a
7 60(b) motion.

8 THE COURT: I tend to agree with you.

9 Mr. Belton, this is what this case says -- and
10 you are free to read it and see if I'm wrong -- but
11 what I believe is your motion under 60(b) 4 or 5,
12 it doesn't matter, either one, in this case was
13 considered by the Supreme Court to be more or less
14 a successive PCR application. And so they remanded
15 it back to the trial court as consideration for a
16 second PCR in that case.

17 But what I believe you are not entitled to a
18 second PCR action, or you may be entitled to a
19 second PCR action, but you are still going to be
20 confined by the statutory requirements of the act
21 for post-conviction relief. Meaning, when is the
22 post-conviction relief action filed? The statute
23 of limitations may apply. All of those sort of
24 things, and whether or not the issues which you
25 raised in your second PCR have already been

1 addressed in your first PCR.

2 So, here is what I'm going to direct. I'm
3 going to deny your motion for relief under 60(b)
4 period. I'm going to suggest to you that if you
5 want to file another post-conviction relief action,
6 that you do so and get counsel appointed. The
7 State is very likely going to read your second PCR
8 application and ask the Courts to not grant relief
9 because of the procedures in the PCR Act.

10 The PCR Act has specific procedures which
11 overrule or are applied first, as opposed to the
12 general rules of the Rules of Civil Procedure. And
13 that is what this case, State V Hendricks, says.
14 It says this in particular -- I will let you read
15 it. I mean, you get a chance, do it. It says, The
16 statutory provision and the rules provision are
17 inconsistent in the motion. General assembly right
18 is specific procedure to be filed in PCR cases, and
19 those methods are inconsistent with the more
20 general procedures of the Rules of Procedure. The
21 statutory procedure must be followed.

22 So, you have got to follow the statute. The
23 rules doesn't trump the statute. You have got to
24 follow the statute. The rules don't trump the
25 statute. The post-conviction relief statute is

1 what you have got to go by. And if you are
2 entitled to relief on a second application, so be
3 it. If you are not and the statute of PCR doesn't
4 grant it, then so be it. But Rule 60(b) doesn't
5 let you leap frog into a second PCR application.
6 You understand?

7 MR. BELTON: No, I don't, but I guess that I
8 have to accept what you said.

9 THE COURT: Well, go read that case. He
10 called the cite out. It is State V. Hendricks,
11 which is -- very end is I-C-K-S, so
12 H-E-N-D-R-I-C-K-S, Hendricks, 387 S.C. Page 221.
13 That is the case that I was reading. And it says,
14 The Post-conviction Relief Act must be followed in
15 lieu of going to the general procedures of the
16 Rules of Civil Procedure. So, you follow the act
17 first.

18 Now, you have got to file a second
19 post-conviction relief act if you are entitled to
20 relief at all. Okay? I'm not saying that you are
21 wrong, I'm just saying that you are doing it the
22 wrong way.

23 MR. BELTON: A second PCR on -- off of direct
24 appeal?

25 THE COURT: That is why I'm appointing you

1 counsel. You decide how you want to characterize
2 your PCR application number two. What is the
3 procedure, Mr. Smith, for him getting appointed
4 counsel on this sort of thing?

5 MR. SMITH: Your Honor, there is a standing
6 Supreme Court order, I believe it was from Chief
7 Justice Toal, saying that it's our responsibility
8 to request that counsel be appointed if we believe
9 that he has an arguable basis, and there are sort
10 of different considerations in there. But I will
11 say, if Your Honor asks us to, we will request that
12 counsel be appointed if he files it.

13 THE COURT: Okay. If you file a
14 post-conviction relief action before it gets filed
15 it can be amended, but you are going to get
16 appointed counsel from my denying relief under
17 60(b). So, yes, I am going to direct the AG to do
18 that, if necessary, if he files a subsequent PCR
19 action. All right?

20 MR. BELTON: Well, Judge, Your Honor.

21 THE COURT: Yes, sir.

22 MR. BELTON: My direct appeal lawyer, LaNelle
23 DuRant, she briefed -- she filed -- she briefed my
24 direct appeal brief under Anders. She was asking
25 that the sentence and conviction be vacated because

1 there was no probable cause for the stop to begin
2 with. Even if I had a had the drugs in my alleged
3 possession, the case of State versus ~~Skylar~~ **FOWLER**
4 (phonetic) is very much a mirror reflection of
5 mine. And if they suppressed the drugs in his
6 case, surely they should have suppressed the drugs
7 in mine because the magistrate was given a false
8 magistrate report.

9 Somewhere in my fight between the district
10 court and Federal ~~Hayes~~ **HABAS**, whatever it is, I objected
11 to the magistrate's report. They said, We adopt
12 the magistrate's report. Well, the magistrate
13 report is wrong. We can never have ~~two judges~~ **TRUE JUSTICE**
14 without ~~two~~ **TRUE** information.

15 THE COURT: Okay. Well, you are still arguing
16 back on the trial level. You have got to decide
17 whether or not your lawyer was effective or
18 ineffective, not whether the magistrate made a
19 proper finding or whether Judge Cooper made a
20 proper finding that there was an articulable
21 suspicion in the suppression motion. You keep
22 going back to that. And that is not what is before
23 me.

24 I don't believe 60(b) is proper. I think you
25 have got to file a second post-conviction relief

1 action, if you are entitled to it. And if you are,
2 then you are going to get appointed counsel to
3 assist you with it.

4 Mr. Smith, can you prepare me an order to that
5 effect?

6 MR. SMITH: I will do that, Judge.

7 THE COURT: Okay. All right. Well, I believe
8 that's all I need to hear. I have ruled on the
9 Rule 60(b) motion. All right.

10 MR. SMITH: Thank you, Judge.

11 THE COURT: All right. Good luck to everyone.

12 (Whereupon, the hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:
COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of September, 2021..

Mona L. Manley /s/
MONA L. MANLEY
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