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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE S.C. COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HON. EUGENE C. GRIFFITH, Circuit Court Judge
APPELLATE CASE No. 2020-001619

HERMAN BELTON v. — Appellant
STATE OF SOUTH CAROLINA — Respondent(s)

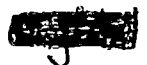
Initial Brief

Herman Belton #256396
HERMAN BELTON #256396
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PRO-SE

Date: Oct 18, 2021

Original



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Questions Presented

- I. Did the PCR Court err when it failed to make a finding of fact and conclusion of law on all issues that were raised at the PCR hearing?
- II. Should this Petition be granted?

Statement of the Case

The Petitioner was indicted at the June 2006 term of the Anderson County Grand Jury for trafficking crack cocaine, (2006 GS-04-1844). On February 5th and 6th, 2007 Petitioner went to trial and was found guilty as charged. The Honorable Thomas W. Cooper, sentenced Petitioner to twenty-five (25) years.

A timely notice of appeal was filed on November 19, 2009. The S.C. Court of Appeals dismissed Petitioner's appeal in an unpublished opinion (2009-UP-526).

On February 24th, 2010 Petitioner filed application for Post Conviction Relief. The State filed a return on June 30th, 2010, an evidentiary hearing was held on June 8th, 2011, the Honorable Alexander S. McCaulley presided. On Nov. 8, 2011 Petitioner's PCR application was denied.

On August 6, 2012, Petitioner filed Petition for writ of certiorari with the S.C. Supreme Court. Appellate Case No. 2011-204374, denied July 3, 2014.

On January 22, 2005 Petitioner filed 28 U.S.C. 2254 writ of Habeas Corpus. Case No. 6:15-262-JMC-KFM. Dismissed March 21, 2016.

January 31, 2017, appealed to the Fourth Circuit Court of Appeals. Denied Feb. 2, 2017 NO. WL449583.

ON APRIL 19, 2017, PETITIONER FILED APPLICATION FOR WRIT OF STATE HABEAS CORPUS IN RICHLAND COUNTY CASE NO. 2017-CP-4002381. ON OCT. 10, 2018 RECEIVED ORDER ENDING JUDGEMENT.

ON FEB. 5, 2019, FILED MOTION S.C.R. CIV. P 60(b) (4)(5) IN THE ANDERSON S.C. COURT OF COMMON PLEAS. STATE FILED THE RETURN ON SEPT. 3, 2020. VIRTUAL HEARING WAS HELD ON OCT. 21, 2020 WAS DENIED.

NOTICE OF APPEAL WAS FILED ON DEC 15, 2020. ON JAN. 5, 2021 ASSIGNED CASE NO. 2020-001619 FROM S.C. SUPREME COURT.

I:

Argument

Did the PCR Court ERR when it failed to MAKE A FINDING OF FACT AND CONCLUSION OF LAW ON ALL ISSUES THAT WERE RAISED AT THE PCR HEARING?

According to S.C. Code 17-27-80(2014) It is the COURT'S DUTY TO MAKE SPECIFIC FINDING OF FACT AND STATE EXPRESSLY IT'S CONCLUSION OF LAW RELATING TO EACH ISSUE PRESENTED.

Respondent(s) in their Return to Petitioner's Petition for Writ of Certiorari, Appellate Case No. 2011-204374 APPX. PAGE 152, states the following. "This issue is procedurally without merit. The PCR Judge did not make a ruling on the allegation now before this Court regarding whether counsel was ineffective for failing to renew his objection to the admissibility of the narcotics during trial.

PCR COURT DENIAL OF ALL CLAIMS NOT SPECIFICALLY
ADDRESSED IN THE FINAL ORDER DOES NOT CON-
STITUTE A SUFFICIENT RULING ON ANY ISSUE
SINCE IT DOES NOT SET FORTH SPECIFIC FINDINGS
OF FACT AND CONCLUSION OF LAW. S.C. CODE 17-
27-80, SIMMONS V. STATE 788 S.E.2d 220. THE
PETITIONER RAISED SEVERAL CLAIMS FOR RELIEF
IN HIS PCR APPLICATION AND AT THE HEARING,
AND PRESENTED EVIDENCE REGARDING THOSE
CLAIMS DURING THE PCR HEARING. THE PCR
COURT DID NOT ADDRESS ALL THE PETITIONER'S
CLAIMS. THE PCR COURT IN ITS ORDER PAGE
126 STATES "THE APPLICANT ASSERTS THAT THE
TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING
TO PROPERLY INVESTIGATE, PRESENT EVIDENCE,
CROSS EXAMINE AND MAKE MOTIONS TO
SUPPRESS EVIDENCE." THE COURT FAILED TO
ADDRESS THE FRAUD ON THE COURT, OBSTRUCTION
OF JUSTICE, AND TAMPERING WITH THE EVIDENCE.
AT THE PCR HEARING ON THE RECORD PAGE 72
L 13-15 PETITIONER REQUESTED THAT HIS
TRIAL COUNSEL FILE A 59(E) MOTION TO ADDRESS
ALL THE CLAIMS NOT RULED ON. HIS TRIAL COUNSEL
PROMISED HE WOULD, AND THE PCR COURT SAID
HE WOULD ADDRESS HIS CLAIMS.

The Respondent would argue that a 59(E) Motion should have been filed and the Petitioner realized that and requested such on the record and was promised that. However, it was not done. Reese v. State. "This Court has raised concerns over order that do not comply with sect. 17-2780." Reese v. State 820 S.E.2d 376. Fishburne v. State 832 S.E.2d 584. "BECAUSE THE U.S. CONST. 6th AMEND GUARANTEES TO A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS ENGRAINED IN PCR CASES. WE CANNOT CONTINUE TO PERMIT A PARTY'S PROCEDURAL SHORTCOMING, SUCH AS A FAILURE TO FILE RULE 59(E) MOTION TO PREVENT THIS COURT FROM REMANDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN THE PCR COURT DOES NOT COMPLY WITH SECTION 17-2780.

This Court will take notice that issues were raised at hearing in the PCR Court, they are not new. Petitioner requested at the hearing that the correct procedure be followed in making and addressing the court's and was promised such.

The Right to seek Appellate Review of the denial of PCR is expressly authorized by state law, Hollingsworth v. State 2015 WL 2231946. Petitioner is entitled to an Austin Review of a prior order if there is an affirmative finding that the applicant either (1) requested and was denied an opportunity to seek appellate review of the prior PCR order or (2) did not knowingly and intelligently waive the right to appellate review of the prior PCR order. King v. State 419 S.W.2d 868.

The respondents do not deny that the court failed to address all of the claims that were raised.

II Why This Petition should be GRANTED!

ON PAGE APPX. 172 OF Respondent(s) RETURN to Rule 60(b) motion FOR RELIEF FROM ORDER OF DISMISSAL; THEY STATE "Applicant ALLEGES in his motion that he is entitled to RELIEF UNDER Rule 60(b), SCRPC, BECAUSE THERE HAS OCCURRED "FRAUD ON THE COURT, ALSO OBSTRUCTION OF JUSTICE AND/OR TAMPERING WITH EVIDENCE (ON THE STATE)." PETITIONER IS ENTITLED TO RELIEF UNDER SCRPC Rule 60(b)(4), BECAUSE THE ORDER FILED BY THE PCR COURT IS A VOID JUDGEMENT AS A MATTER OF LAW. SECTION 17-27-80 IS CLEAR ON WHAT IS REQUIRED OF A PCR ORDER. THIS IS AN ESSENTIAL FACT THAT ENTITLES PETITIONER TO RELIEF. BOWERS V. BOWERS 403 S.E.2d 127.

THE COURT IN DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGEMENT ON PAGE APPX. 180 OF THAT ORDER RELYS ON HENDRICKS V. STATE 692 S.E.2d 892; THE CITE DOES NOT APPLY BECAUSE HENDRICKS ARGUES THAT A NEW SUBSTANTIVE CONSTITUTIONAL STANDARD SHOULD HAVE BEEN APPLIED RETROACTIVELY. THAT IS NOT THE CASE HERE. SECTION 17-27-80 IS NOT NEW AND IT IS CLEAR.

The court on page Appx 181 of the order denying motion states: "Applicant is trying to have a two for one action in which he rehashes trial issues, PCR issues he believes should have been addressed by Judge Macaulay and the appellate courts and a new overarching PCR issues that concern his PCR attorney."

This is FAR FROM THE TRUTH, ALL PETITIONER WANTS AND IS ENTITLED IS HIS ONE COMPLETE BITE OF THE APPLE; FINDING OF FACTS AND CONCLUSIONS OF LAW ON EACH ISSUE.

The Respondent(s) and the court argue that the amount of time that has passed since the PCR court ruled and now is a UNREASONABLE amount for the purpose of this motion. One can only be in one court at a time on the same case. As stated in the statement of the case, from 2011 until today petitioner has engaged the courts trying to show that he is "not guilty" as charged. This claim is timely and was raised in a reasonable time. There is no standard that says that a 60(b) motion must be filed before others, and to try to interject that logic without support at this point is unjust.

REMAND WAS REQUIRED FOR TRIAL COURT TO MAKE FINDINGS OF FACTS AND CONCLUSIONS OF LAW ON duly RAISED post conviction claims, MARLAR V. STATE 653 S.E.2d 266, AND Humbert V. STATE 653 S.E.2d 862. U.S. CONST. AMEND. 6th, S.C. CODE ANN 17-27-80 S.C.R. CIV. P 52A. PCR COURTS DENIAL OF ALL CLAIMS NOT SPECIFICALLY ADDRESSED IN THE ORDER DOES NOT CONSTITUTE A SUFFICIENT RULING ON ANY ISSUES SINCE IT DOES NOT SET FORTH SPECIFIC FINDING OF FACT AND CONCLUSIONS OF LAW. SIMMONS V. STATE 788 S.E.2d 220. THE COURT IN SIMMONS V. STATE, RULED THAT ALTHOUGH THE APPLICANT FAILED TO FILE A RULE 59(E) MOTION TO REQUEST A RULING ON THE SUMMARILY DENIED ISSUES. WE KNOW THAT ALTHOUGH THE STATE IS TECHNICALLY CORRECT, WE ALSO BELIEVE DISMISSING THE WRIT OF CERTIORARI WOULD BE FUNDAMENTALLY CONTRARY TO THE INTEREST OF JUSTICE. HOWEVER, UNLIKE SIMMONS, THE PETITIONER REQUESTED AT THE PCR HEARING ON THE RECORD FOR A 59(E) MOTION TO BE FILED APPX. PAGE 72 L-13-15. EXTRAORDINARY ACTION OF REMANDING DEPENDANT'S APPLICATION FOR PCR WAS WARRANTED EVEN THOUGH DEPENDANT FAILED TO PRESERVE FOR APPEAL ISSUE OF PCR'S COURT'S FAILURE TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW BY FILING 59(E) MOTION.

SIMMONS V. STATE 788 S.E.2d 220, FISHBURN V. STATE 832 S.E.2d 584, MARLAR V. STATE 653 S.E.2d 266, PRUITT V. STATE 423 S.E.2d 127, MCCRAY V. STATE 408 S.E.2d 24. In REESE V. STATE 820 S.E.2d 376 "COURT HAS RAISED CONCERNS OVER ORDERS THAT DO NOT COMPLY WITH SECT. 17-27-80." TO DENY PETITIONER AN ORDER THAT ADDRESSES ALL ISSUES RAISED WITH A FINDING OF FACT AND CONCLUSION OF LAW IS DENYING HIM HIS PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHT UNDER THE FEDERAL AND STATE CONSTITUTIONS. LOOKING AT THE ISSUES THAT WAS NOT ADDRESSED AND REMEMBERING THAT THIS IS "NOT A GUILTY PLEA" ONE CAN SEE WHY THERE MUST BE A REMAND.

Conclusion

IN SOUTH CAROLINA THE POST CONVICTION RELIEF ACT AFFORDS THIS PETITIONER ONLY COMPLETE BITE OF THE APPLE, AND A FINAL ORDER FROM THE PCR COURT THAT COMPLIES WITH SECT. 17-27-80. TO DATE PETITIONER HAS NOT BEEN AFFORDED HIS GUARANTEED RIGHTS. PETITIONER PRAYS THAT THIS COURT WILL REMAND THIS CASE BACK TO THE PCR COURT FOR AN ORDER THAT COMPLIES WITH THE STATUTE.

State of South Carolina
In the S.C. Court of Appeals

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SC Court of Appeals

CERTIORARI To ANDERSON County
Hon. Eugene C. Griffith, Circuit Court Judge

HERMAN BELTON v. State of South Carolina
Petitioner/Appellant Respondent(s)

Appellate Case No. 2020-001619

Certificate of Service

I CERTIFY that a true copy of (Appellant(s))
Initial Brief have been mailed to the parties
listed below by U.S. mail this 18th day of Oct. 2021.

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SC Court of Appeals

HERMAN BELTON v. STATE OF SOUTH CAROLINA
Appellant Respondent

Appellate Case No. 2020-001619

DEAR Ms. Kitchings;

I AM enclosing the original and one copy of Initial Brief (op Appellant) with proof of service in the above referenced appeal. Please file the enclosed and return a file-stamped copy to me, using the enclosed self-addressed, stamped envelope. I genuinely appreciate your assistance in this regard.

cc: TAYLOR Z. SMITH, HAG
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Sincerely
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SC Court of Appeals

The State of South Carolina
In the South Carolina Court of Appeals
Appeal From ANDERSON County
Court of Common Pleas

Hon. Eugene C. Griffith, Circuit Court Judge
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HERMAN Belton v. State of South Carolina
Appellant Respondent(s)

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED A COPY OF Initial
Brief (of Appellant) along with PROOF OF SERVICE on
the parties listed below by depositing a copy in
the U.S. MAIL addressed as below on this 18th
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