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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No 2021-CP-22-00002

Patrick Bryant, #215212, PETITIONER,

v

State of South Carolina, RESPONDENT.

APPELLATE CASE NO. 2021-000980

PETITIONER'S EXPLANATION
(Pursuant to RULE 243(c), SCACR)
AND UNREASONABLENESS OF MAXTON ORDER

Petitioner hereby provides written explanation as required by RULE 243(c) and shows this Court why the lower Court's determination that Petitioner's PCR action is barred as being successive and untimely under the statute of limitations is improper.

Newly Discovered Evidence

Petitioner shows this Court that the current PCR action would not be barred as being successive and untimely as Petitioner files the PCR action under the discovery rule which exists

under the Uniform Post-Conviction Procedure Act, S.C. Code of Laws 17-27-10 -160 et seq.

Under this Act, "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. S.C. Code of Laws §17-27-45(C).

A five-pronged newly discovered evidence standard was established in Clark v State, 315 SC 385, 434 SE2d 266 (1993), and provides: "To obtain a new trial based on after discoved evidence, the party must show that the evidence:

(1) would probably change the result if a new trial is had;
(2) has been discovered since the trial;
(3) could not have been discovered before trial;
(4) is material to the issue of guilt or innocence; and;
(5) is not merely cumulative or impeaching.

Petitioner would show that he can, in fact, meet the Clark five-pronged standard, and states as follows:

The Respondent and PCR Court seeks to mute Petitioner's newly-discovery claim, by pointing to correspondence dated October 19, 2020, written from Petitioner's Counsel whom represented him on the charges during his Jury trial on the charges in 2007, which Petitioner has submitted.

Respondent and the PCR Court relies on the language in this correspondence, wherein trial Counsel, J. Eric Fox writes, "My notes indicate that on May 29, 2007, you were before Judge Stephen John on a motion for the State to get a DNA sample from you. At that time, a plea offer was placed on the record."

Respondent and the PCR Court erroneously infers and consequently argues that "[T]he language of this letter indicates that [Petitioner] was present when the offer was made..."

However, Petitioner would contend that there was a point in time when the court heard a motion for the State to get a DNA sample. Petitioner was not present at any such hearing on this motion and as Petitioner was not present there was not a plea offer conferred at that time to the Petitioner. Records would reveal that Petitioner was not present. Records would only reveal that a DNA sample was obtained

at a later time. Therefore, this argument and erroneous reasoning and inference fails as the adversary claims the Petitioner would have been made aware of the offer at the time.

Next, the PCR Court erroneously determined that Petitioner's knowledge of the offer is corroborated by the trial transcript. However, the portion of the trial transcript that the PCR Court points to does not corroborate, but rather supports trial counsel's ineffectiveness in not objecting to such statement and further ineffectiveness in failing to confirm to the the truthfulness of such statement by the State.

Lastly, the PCR Court points to the transcript from Petitioner's November 16, 2010, PCR hearing wherein Petitioner and his trial counsel were present, and presents that, at the very latest there is no doubt Petitioner learned of the plea offer on November 16, 2010 at his PCR hearing being held at that time. The PCR Court states that at the very latest, this claim therefore must have been brought on or before November 17, 2011.

The PCR Court however fails to apply reasonableness as it fails to view this matter subjectively. If this

Matter were analyzed subjectively, as it should, the PCR Court would have understood that this issue was one which occurred at the PCR hearing. As the notice of appeal was filed seeking to appeal the denial of PCR, Petitioner was represented by Attorney Tristan M. Shaffer, and was advised by this counsel that such issue could not be raised.

Remaining unaware and without proof, the PCR Court correctly contends that Petitioner did file other PCR actions and did also pursue federal habeas.

During this period, Petitioner did continuously attempt to communicate with trial counsel to obtain documented and more in depth truthfulness to his statements made. However, trial counsel would never provide any response until Petitioner reached out in a latest continued effort.

Plea Counsel finally provided a series of correspondence.

1) September 8, 2020, wherein he stated he had no documents or whatsoever relating to Petitioners case because they were shredded.

2) October 16, 2020, wherein he stated he has no recollection of any plea offers from the State, and wasn't sure that any were made. Note: Counsel began

by stating that he does remember Petitioner and the case well.

3) October 19, 2020, whereby he stated that he had located some notes from Petitioner's case relating to a plea offer.

As it was by and through this October 19, 2020, correspondence that Petitioner did finally obtain knowledge and written evidence from trial counsel that there had in fact been a plea offer extended. Note: In counsel's October 16, 2020, counsel stated that he remembers Petitioner's case well and he had no recollection of any plea offers.

Petitioner has filed his PCR action timely and in accordance with the PCR discovery rule and thus this action is timely and properly brought before the Court. As such, the PCR case should not be dismissed as successive nor untimely.

MAXTON UNREASONABLENESS

Petitioner would also emphasize that he does not raise his issue in a frivilous manner. This case is clearly one which is distinguishable from that of Maxton, as Petitioner's filings does not rise to the level of repetitative abusive filings.

Petitioner, albeit the assertion is correct, that he has filed three (3) prior PCR applications; he did so without benefit of PCR counsel. Also, Petitioner did not raise claims seeking to be abusive to the process nor the court's resources.

In short, there is insufficient factual basis to determine Petitioner is an abusive litigant. See also Williams v State, 354 SC 630, 583 SE2d 52 (2003) ("Clearly, petitioner's four applications for PCR are **much** fewer than Maxton's filings, and even significantly fewer than those [mentioned in

CONCLUSION

WHEREFORE, there is insufficient factual basis to determine Petitioner is an abusive litigant, and thus it is unreasonable and improper to apply Maxton Order to Petitioner.

Further, as Petitioner has filed his PCR application timely under the Uniform Post-Conviction Procedure Act's discovery rule, this action is brought before this Court properly and, as such, should not be dismissed as successive nor untimely.

[Signature Block On Following Page]

Respectfully submitted, Patrick Bryant

Patrick Bryant, #215212

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 1st day of November, 2021.