

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 04 2022

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

William A. McKinnon, Chief Admin Judge

CASE NO. 2018-CP-46-03722

The State of South Carolina Respondent

v.

Victor L. Huntley, #268632 Applicant

PETITION TO RE-OPEN APPEAL FROM YORK COUNTY

The applicant as cited above moves this Court to Re-open this appeal for York County for the following:

1. This PCR Action was timely filed on December 10, 2018 pursuant to McCoy v. State, 401 SC 363, 737 SE2d 623 (2013) et note [3-4] citing S.C. Code Ann. § 17-27-45 (c) holding: Allowing one year after the discovery of material facts not previously presented and heard that requires Vacation of the sentence or conviction to file a PCR application.

The Applicant is "entitled to the benefit of the "Discovery Rule".

2. Pursuant to Robertson v. State, 418 SC 505, 795 SE2d 29 (2016) at note (7) holding: Applicant has raised issues of "Genuine - Material Fact" that cannot be refuted by the initial record of the PCR Court that can only be resolved by a hearing to fully resolve the issue.

3. The Respondent has failed to file its Return within 30 days as statutorily required under the Provisions of the Uniform Post-Conviction Procedural Act citing SC Code Ann. § 17-27-10 to -120 See SC Code Ann. § 17-27-70 (a) and the lower Court has never granted any motions to extend that 30 day time limit of the Respondent.

The Conditional Order of Dismissal was filed on December 30, 2019 and the Return was untimely filed on February 11, 2021.

4. The Applicant timely filed a Motion for Judgment by Default pursuant to Rule 55 (a) & (b) SCRCP citing Duncan v. Duncan, 93 SC - 487, 76 SE 1099 (1913) (default judgment based on failure to file response pleading), for the Respondent's failure to timely file its return.

5. The Applicant has never received any filings from the Honorable Judge Hall dated February 17, 2021 as stated by the Honorable McKinnon on November ¹⁵, 2021.

6. Applicant filed objections to the above cited #5 to the Honorable McKinnon on October 13, 2021 citing Allen v. Leeke, 328 F. Supp. 292 (D.C. SC. 1971) holding: (An inordinate and unjustified delay in the State Correctional process may well result in the

frustration of petitioner's rights and be such a circumstance as to render that process ineffectual").

7. The Order dated October 13, 2021 filed by the Honorable William A. McKennon Chief Administrative Judge contains erroneous findings of fact and misapplication of law

This current PCR Action was timely filed, and the Respondent is in Default and the applicant is entitled to a Evidentiary hearing on this matter

The Public Index Records will clearly support that Rule 59(c) SCRC motions and objections were timely filed and were supplied to the Honorable Clerical Court of York County, the Respondent and the Honorable McKennon by Certified mail as to all matters.

wherefore, the applicant respectfully refutes the erroneous conclusions that this appeal was untimely filed and moves this Honorable Court to grant the applicant an Order remanding the lower Court to grant an Order to schedule a evidentiary hearing in the interest of justice and as a matter of law and right. pursuant to Rule 71.1 SCRC and McLoy v. State, Supra, and Robertson v. State, Supra.

Respectfully Submitted
Victor L. Huntley #268632 Jr
Victor L. Huntley #268632
Pro-Se.