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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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OCT 25 2021

SC Court of Appeals

APPEAL FROM CHEROKEE COUNTY

Court of Common Pleas

J. Mark Hayes, II, Judge

Case No. 2021-000497

Leonard L. Foster

Petitioner

v

State

Respondent

PETITION FOR A WRIT CERTIORARI

cc: Alan McCrory Wilson
Chelsey Faith Marts

Leonard L. Foster #179576
1578 Clarence Coker Hwy.
Turbeville S.C. 29162

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Leonard Lee Foster certifies that the Petition for rehearing was made and finally ruled on by the Court of Appeals on September 30, 2021

Questions Presented

1. Did the Court of Appeals err in holding this judgment should be upheld because Petitioner could have raised issue in timely application under Post Conviction Relief Act
2. Did the Court of Appeals err in holding they was unable to discover any material fact or principle of law has been either overlooked or disregarded

Statement of Case

On July 29, 2019 Petitioner brought habeas corpus application in Cherokee County Common Pleas Court asserting State violated his due process Pursuant S.C. Code Ann. 22-5-320 and S.C. Const. Art. 1 sections 10 and 15 deprive General Session of subject matter jurisdiction whereas March 20, 2002 judgment are void.

On January 27, 2021 Petitioner provided judge Mark Hayes with supplemental pleading in accordance S.C. Code 17-27-20 (3) thereupon documents was forward to Cherokee County Clerk of Court

On February 11, 2021 State moved for summary judgment asking Court to dismiss application for the following:

1. filing application in wrong venue
2. lack of subject matter jurisdiction
3. failure to show prejudice in default
4. Procedurally barred
5. issues raised in writ habeas corpus could have been raised in a timely application under Post Conviction Relief Act.

On April 8, 2021 judge Mark Hayes granted State summary judgment motion without providing hearing thereupon Petitioner filed opposition motion which was denied.

Appeals Court affirmed judgment and held issues raised in writ of habeas corpus could have been raised in timely application under Post Conviction Relief Act.

Pursuant SCAACR Rule 203(d) (1) (B) (V) Appellant is required to provide a written explanation to this Court as to why the lower court's determination was improper. Although Appellant did file an explanation but explanation does not contain sufficient facts arguments and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower Court was improper.

ARGUMENT

1. The Court of Appeals should have disregarded Respondant's allegation that Petitioner could have raised issues in timely application under Post Conviction Relief Act.

Tillman v Manning 241 SC 221 127 SE 2d. 721 On appeal from dismissal of habeas corpus petition without hearing allegation of petition must be assumed to be true whereas Petitioner did raise issues in application 2004-CP-11-599 wherefore Respondant failed to address issues was a violation of S.C. Code 17-27-80 Fishburne v State 427 S.C. 505 832 SE 2d. 584 On an application for post conviction relief when counsel for either side prepares the proposed order the order must include finding of fact and conclusions of law as to all issues raised by an applicant.

2. Petitioner did timely object to trial judge's jurisdiction of the subject matter pursuant S.C. Code 17-17-40 whereby S.C. Code 17-27-20 (2) provides persons who may institute proceeding exclusiveness of remedy. Pursuant 25 S.C. Jur. Rules of Civil Procedures section 82 when an action is brought in the wrong County or in the wrong Court the Court shall not dismiss the action but shall transfer it to any proper county or Court in which it could have been brought.

Whetstone v South Carolina Dept. of Highways and Public Transp. 272 S.C. 324 252 SE 2d. 35 a Court which may be without proper venue to try a cause on its merits nevertheless has authority to change venue to proper County and upon a proper showing it becomes Court's imperative duty to do so.

CONCLUSION

For the reasons stated Petitioner ask this Court to grant the petition for writ of certiorari.

October 17, 2021

Sincerely
Lionel Feist