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JAN 18 2022

THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Luzenski Allen Cottrell,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

S.C. SUPREME COURT
IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-26-05709

Fifth Amended Scheduling Order

REBEEN N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2022 JAN 10 P 12:50
HORRY COUNTY

This matter is before the Court on Mr. Cottrell’s Fifth Motion to Revise the Scheduling Order dated November 9, 2021 (“Motion”). On December 20, 2021, Mr. Cottrell provided an Addendum to the motion, and the State provided a Response in Opposition to Mr. Cottrell’s motion (“Addendum” and “Response”). Based on good cause shown, this motion should be granted.

FINDINGS OF FACT

Since May 2021, when this Court last amended the scheduling order, Mr. Cottrell’s legal team has diligently continued to develop the claims raised in his application for post-conviction relief (“PCR”). Nevertheless, a number of external factors have made it difficult for Mr. Cottrell to timely comply with the May 2021 scheduling order, including: the discovery of previously unknown mitigation evidence; recommendations from Mr. Cottrell’s experts for follow-up evaluations; scheduling conflicts with Mr. Cottrell’s experts attributable to the significant backlog in investigation because of the COVID-19 pandemic.

In his motion, Mr. Cottrell informed this Court that Dr. Marlyne Israelian discovered Mr. Cottrell may have a learning disability that affects the rate at which he is able to read and process information therefore her neuropsychological evaluation took “significantly longer than expected” and will require her to return to South Caroling to complete the evaluation. Motion, at 6. Since

filing the Motion, Dr. Israelian completed scoring of the tests already administered to Mr. Cottrell. As a result, Dr. Israelian has concerns about Mr. Cottrell's executive functioning and memory. Completing her evaluation requires Dr. Israelian administer a full battery of memory-specific testing and tests that specifically target executive function. She also recommends obtaining an MRI and a PET scan. Dr. Israelian further recommends that Dr. Erin Bigler review the MRI and PET scan. Addendum, at 1-2.

Finally, Dr. Israelian recommended Dr. Howard Fradkin evaluate Mr. Cottrell regarding childhood sexual trauma. Motion, at 8-9. Since filing the Motion, Dr. Fradkin reports he will be work on Mr. Cottrell's case in mid-January and February 2022, prior to a scheduled knee replacement surgery on March 2, 2022. Addendum, at 2.

CONCLUSIONS OF LAW

A showing of "good cause" requires continuing the evidentiary hearing to provide appointed counsel sufficient time and resources to investigate all available grounds for relief and amend the PCR application. S.C. Code Ann. § 17-27-160(C). As our Supreme Court reminded, "the Sixth Amendment guarantee of effective assistance of counsel is a 'bedrock principle in our justice system.'" *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) (citing *Martinez v. Ryan*, 566 U.S. 1 (2012); see also *Robertson v. State*, 418 S.C. 505, 522, 795 S.E.2d 29, 38 (2016) (applying *Strickland* standard to performance of PCR counsel). "[T]he interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure." *Mangal*, 421 S.C. at 99, 805 S.E.2d at 575 (emphasis original). Our Supreme Court, accordingly, "encourage[s] trial courts in PCR cases to use the discretion [it] grant[s] them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the

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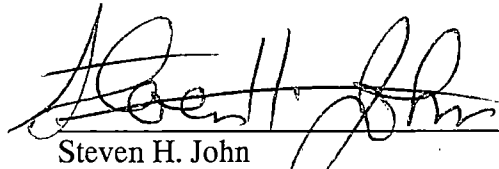
merits of substantial issues.” *Id.* 421 S.C. at 100, 805 S.E.2d at 576; *see also Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) (denial of motion to amend application for post-conviction relief was abuse of discretion); *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (2016) (Circuit Court abused its discretion in denying PCR Applicant’s second motion for additional time).

Having reviewed the Motion, Addendum, and the State’s Response, this Court finds and concludes Mr. Cottrell has shown good cause to amend the scheduling order.

Therefore, having found good cause exists for amending the scheduling order, this Court issues the following scheduling order:

1. Mr. Cottrell shall complete his discovery by May 1, 2022;
2. Mr. Cottrell shall file his amended PCR application by May 15, 2022;
3. The State shall complete its discovery by July 1, 2022; and
4. The evidentiary hearing shall convene the week of September 19, 2022.

IT IS SO ORDERED.



Steven H. John
Presiding Judge by Special Assignment of the
Supreme Court of South Carolina

1/10, 2022
Conway, South Carolina

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