

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

R. Lawton McIntosh, Circuit Court Judge

MARCUS L. MARTIN, SCDC#299118,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001535

PETITION FOR WRIT OF CERTIORARI

Marcus L. Martin
Pro Se Petitioner

Tyger River Corr. Inst.
UY-U7-Rm103
200 Prison Road
Enoree, SC 29335

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S.C. SUPREME COURT

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ISSUE PRESENTED

Circuit Court erred in dismissing Petitioners' second PCR application as successive when Petitioner has shown that his Constitutional Rights have been categorically violated when the Plea Court denied him Due Process, and this issue has not been properly reviewed.

STATEMENT

Petitioner Marcus L. Martin pleaded guilty to Murder, Armed Robbery , ABWIK, Criminal Conspiracy, and Possession of a weapon during the Commission of a Violent Crime, all stemming from one incident. Petitioner pleaded guilty only after his court appointed attorney Robert Gamble begged and cajoled Petitioner to except the offered plea.

Petitioner was brought before the Honorable J. Cordell Maddox for plea and sentencing. The Plea Court neglected to inform the Petitioner of the elements and sentencing range in which he was pleading guilty to. Thus, denying Petitioner of his Constitutional Due Process Rights.

On July 19, 2004, Petitioner filed a PCR application based on that his guilty plea was entered unintelligently, unknowingly, and involuntarily. An evidentiary hearing was held on November 15, 2007, and by order dated November 29, 2007, the PCR Court granted relief to Petitioner, vacating his sentence and declared that Petitioner is entitled to a new trial based upon the fact that the Plea Court failed to inform Petitioner or ensure on the record whether or not Petitioner understood the elements of the charged offenses, finding that "the record of Petitioner's guilty plea revealed Petitioner was not informed of the charges to which he pled". **This in violation of Petitioner's 5th and 14th Amendment Rights to Due Process of Law.**

In the State's appeal of the PCR Judge's order initially granting relief to Petitioner in this case, by presentation to the SC Court of Appeals, the State altered the issue upon which Petitioner's original PCR was granted by its' argument stating, The PCR Court erred in finding that plea counsel was ineffective for failing to explain the elements of each charge against Petitioner and the possible sentences he faced, which resulted in a plea that was not knowingly and voluntarily entered. Petitioner asserts that although it is true that plea counsel failed to explain the elements of the charges and possible sentences he faced, this presentation of the case was a diversion of the Court's attention from the real and genuine issue that the PCR Court granted relief upon, which is that Petitioner's plea was obtained in **violation of Due Process** requirements because the Plea Court failed to inform Petitioner on the record as to the elements of the charges to which he pled. Thus, effectively making Petitioner's issue one of ineffective assistance of counsel and **not denial to a Constitutional Right of Due Process**. From this point, Petitioner has vigorously tried to get his original issue heard to no avail. Therefore, the lower court's determination that this action is barred for being successive or untimely is improper. This petition follows.

ARGUMENT

Circuit Court erred in dismissing Petitioner's second PCR application as successive when Petitioner has shown that his Constitutional Rights have been categorically violated when the Plea Court denied him Due Process.

Relevant Facts

Because the record shows that Petitioners' right to due process of law was violated by the plea court and the lower court's erroneous adjudication of Petitioners' ground for relief as one of ineffective assistance of counsel, the successive PCR application in this case is permissible because of extraordinary circumstances. See e.g., *Robertson v. State*, 795 S.E.2d 29,35 (2016)(allowing a successive PCR application where PCR counsel was not statutorily qualified to represent the applicant; *Washington v. State*, 478 S.E.2d 833, 835 (1996)(permitting a successive PCR application where multiple procedural irregularities, including the denial of a direct appeal, denied applicant the benefit of due process); *Gamble v. State*, 379 S.E.2d 118, 119 (1989)(allowing a successive PCR application where the applicant unknowingly withdrew his first PCR application with prejudice); *Carter v. State*, 362 S.E.2d 20, 21-22 (1987)(authorizing a successive PCR application where the applicant did not have PCR counsel that differed from his trial counsel). Petitioner contends that his argument meets the requirements to be heard based on the foregoing.

Here, Petitioner was granted relief at his first PCR hearing by Judge Hayes stating that the record of the plea hearing is totally void of any instructions or explanation of the elements of the charges the Petitioner was facing. This is the true nature and issue which Petitioner is arguing. **Not ineffective assistance of counsel.**

Petitioner would show the Court that in his second order which denied the States' 59(e)motion to alter or amend his first order granting relief to Petitioner, the PCR Judge emphatically stated: **"This requirement falls under the Due Process Clause rather than the 6th Amendment Right to Counsel.** Therefore, the issue on this front is not one of ineffective assistance of counsel but whether or not a defendant has voluntarily, knowingly and intelligently entered his plea". *Boykin, Supra*. The PCR Court substantiated his grant of relief by further stating, "This is not an issue of ineffective assistance of counsel but one of a Due Process violation, citing the 5th and 14th Amendments to the U.S. Constitution, and Article 1, section 3, to the South Carolina State Constitution. Also, *Boykin v. Alabama*, 395 U.S. 238, *State v. Hazel*, 275 S.C. 292, *Anderson v. State*, 342 S.C. 54, and other established case law". The State filed an appeal on December 18, 2009, which was granted by the SC Court of Appeals issuing an opinion reversing and remanding the case for "additional findings" by the PCR Court based only on a statement that plea counsel made during the PCR hearing that he thought he explained the elements of the charges to Petitioner before the plea, diverting the PCR Court attention from the issue upon which relief was granted. The Plea Court and plea counsel, failed to inform Petitioner on record as to the elements of the charges to which he plead. This requirement falls under the Due Process Clause rather than the 6th Amendment right to counsel. There is

reversible error where the record did not disclose that defendant voluntarily and understandingly entered his plea of guilty. The Supreme Court has held that if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of Due Process and is therefore void. *McCarthy v. United States*, 395 U.S. 459, 89 S.Ct. 1166.

The appropriate scope of review is that any evidence of probative value to support the Post-Conviction Judge's factual findings is sufficient to uphold those findings on Appeal. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 83 (1984).

The PCR Judge took the case under advisement, therefore, Petitioner's grant of relief should have remained intact based upon the issue Judge Hayes found, entitling Petitioner to relief. It was a miscarriage of justice and improper determination by the S.C. Court of Appeals erroneously remanding the case based solely on counsel's inconclusive PCR testimony, and overlooking the obvious Due Process Violation, which was acknowledged in the second paragraph of the Court's opinion. (App.p.193) The lower Court was persuaded into accepting the State's tactics of distracting the Court's attention from the genuine issue which entitled Petitioner relief and unfairly rescinded the PCR Court's initial findings.

The Court of Appeals remanded the Petitioner's case to the PCR Judge with instructions for the PCR Judge to not consider his previous findings but to focus on Counsel's inconclusive testimony. Even the PCR Judge seemed to be confused by this improper instruction and remand by the Court of Appeals, which was expressed by his statement in the remand order: "The premise of the Court of Appeal's opinion is that a defendant can plead guilty to a crime, in this case murder, and not understand the elements of the crime and somehow not be prejudicial". (App.p.197).

The precedent of the South Carolina Supreme Court, the petitioner believes to be as follows: "The Supreme Court is not at liberty to weigh evidence, and must view it in a light most favorable to the PCR verdict". *Guthrie v. Morris*, 242 S.C. 56 (S.C. 1963). In reviewing a PCR grant, the Supreme Court is concerned with whether or not, there is any evidence to support the PCR Judge's decision. If there is any evidence found, the Supreme Court must affirm the ruling of the PCR Judge". *Grier v. State*, 299 S.C. 321, 384 S.E.2d 7232 (S.C. 1989).

"Cumulative error applies when although no single Trial error examined in isolation is sufficiently prejudicial, the cumulative effect of multiple errors may still prejudice the defendant". *Mancuso v. Olivarez*, 292 F.3d 939 (9th Cir. 2002). Thus, Petitioner's Due Process Rights were violated as outlined in this petition.

SUMMARY

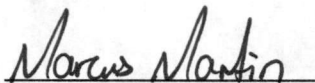
In this case, even the error by the plea court, when examined in isolation will prove sufficiently prejudicial to Petitioner, and moreover the multiple errors during the judicial proceedings in this case being viewed consolidated, entitles Petitioner to Postconviction Relief. It is grossly unfair to Petitioner in the adjudication of his case where Petitioner insisted on going to trial claiming his innocence, was begged and cajoled by trial counsel to plead guilty even though there was a lack of evidence to convict Petitioner in this case, where he was granted

relief by the PCR Court for violations of his 5th and 14th amendment Rights during his guilty plea. Then the S.C. Court of Appeal unfairly reversed and remanded his relief without considering the issue on which it was granted, though the PCR Court granted relief on the totality of the record that the Petitioner did not understand the elements of the charges he was facing at the time of his plea. All of which amounts to a improper determination and miscarriage of justice in Petitioner's case. Thus, Petitioner's Due Process Rights were violated by the plea court as outlined in this petition, and this issue has not been properly reviewed. By this explanation Appellant makes a sufficient showing to this Court that on this basis the determination by the lower court was improper.

CONCLUSION

Based on the foregoing argument , Petitioner would request that the Court grant the petition and allow this matter to proceed on the issue raised above.

Respectfully submitted,



Marcus L. Martin
Pro Se Petitioner

This 26th day of January, 2022.

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