

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

ON PETITION FOR WRIT OF CERTIORARI TO ANDERSON COUNTY

THE HON. THOMAS W. COOPER, JR., TRIAL JUDGE
THE HON. ALEXANDER S. MACAULAY, FIRST PCR JUDGE
THE HON. EUGENE C. GRIFFITH, JR., SECOND PCR JUDGE

APPELLATE CASE NO. 2020-001619

HERMAN BELTON _____ PETITIONER
STATE OF SOUTH CAROLINA V. _____ RESPONDENT(S)

AMENDED SUPPLEMENT TO THE APPENDIX
(RECORD ON FILE) TO INCLUDE AN INDEX

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DATE: JAN. 31, 2022

PRO-SE

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Questions Presented

- I. Did the PCR COURT ERR when it failed to MAKE A FINDING OF FACT AND CONCLUSION OF LAW ON ALL ISSUES THAT WERE RAISED AT THE PCR HEARING?
- II. Should This Petition be GRANTED?

STATEMENT OF THE CASE

THE PETITIONER WAS INDICTED AT THE JUNE 2006 TERM OF THE ANDERSON COUNTY GRAND JURY FOR TRAFFICKING CRACK COCAINE, (2006-GS-04-1844). ON FEBRUARY 5TH AND 6TH, 2007 PETITIONER WENT TO TRIAL AND WAS FOUND GUILTY AS CHARGED. THE HONORABLE THOMAS W. COOPER, SENTENCED PETITIONER TO TWENTY FIVE (25) YEARS.

A timely notice of appeal was filed on November 19, 2009. THE S.C. COURT OF APPEALS DISMISSED PETITIONER'S APPEAL IN AN UNPUBLISHED OPINION (2009-up-526).

ON FEBRUARY 24TH, 2010, PETITIONER FILED APPLICATION FOR POST CONVICTION RELIEF (PCR). THE STATE FILED A RETURN ON JUNE 8, 2011, THE HONORABLE ALEXANDER S. MACLAULAY PRESIDED. ON NOV. 8, 2011 PETITIONER'S PCR APPLICATION WAS DENIED.

ON AUGUST 6, 2012, PETITIONER FILED PETITION FOR WRIT OF CERTIORARI WITH THE S.C. SUPREME COURT. APPELLATE CASE NO. 2011-204374. DENIED JULY 3, 2014.

ON JAN. 22, 2015, PETITIONER FILED 28. U.S.C. 2254 WRIT OF HABEAS CORPUS. CASE NO. 6:15-262-JMC-KPM. DISMISSED MARCH 21, 2016.

JAN. 31, 2017, APPEALED TO THE FOURTH CIRCUIT COURT OF APPEALS. DENIED FEB. 2, 2017, NO: WL 449583.

ON APRIL 19, 2017 PETITIONER FILED APPLICATION FOR WRIT OF STATE HABEAS CORPUS IN RICHLAND COUNTY, CASE NO. 2017-CP-4002381. ON OCT. 10, 2018 RECEIVED ORDER ENDING JUDGEMENT.

ON FEB. 5, 2019, FILED MOTION S.C.R. CIV.P 60(b) (4)(5) IN THE ANDERSON S.C. COURT OF COMMON PLEAS. STATE FILED THE RETURN ON ~~SEPT. 3, 2020~~ SEPT. 3, 2020. VIRTUAL HEARING WAS HELD ON OCT. 21, 2020 WAS DENIED.

NOTICE OF APPEAL WAS FILED ON DEC. 15, 2020. ON JAN. 5, 2021, ASSIGNED APPELLATE CASE NO. 2020-001619 FROM S.C. SUPREME COURT.

ARGUMENT

I. Did the PCR COURT ERR when it failed to MAKE A FINDING OF FACT AND CONCLUSION OF LAW ON ALL ISSUES THAT WERE RAISED AT THE PCR HEARING?

According to S.C. Code 17-27-80(2014)
It is the COURT'S duty to MAKE SPECIFIC FINDING OF FACT AND STATE EXPRESSLY ITS CONCLUSIONS OF LAW RELATING TO EACH ISSUE PRESENTED.

Respondent's in their return to Petitioner's Petition for writ of Certiorari, Appellate Case No. 2011-204374 APPX. PAGE 152, states the following "This issue is procedurally without merit. The PCR Judge did not MAKE A Ruling on the allegation now before this court REGARDING whether Counsel was ineffective for failing to Renew his objection to the Admissibility of the Narcotics during trial."

PCR COURT DENIAL OF ALL CLAIMS NOT SPECIFICALLY
ADDRESSED IN THE FINAL ORDER DOES NOT CONSTITUTE
A SUFFICIENT RULING ON ANY ISSUE SINCE IT DOES NOT
SET FORTH SPECIFIC FINDING OF FACT AND CONCLUSIONS
OF LAW. S.C. CODE ~~17-27-80~~ 17-27-80, SIMMONS V. STATE
788 S.E.2d 220. THE PETITIONER RAISED SEVERAL CLAIMS
FOR RELIEF IN HIS PCR APPLICATION AND AT THE HEAR-
ING; AND PRESENTED EVIDENCE REGARDING THOSE CLAIMS
DURING THE PCR HEARING. THE PCR COURT DID NOT
ADDRESS ALL THE PETITIONER'S CLAIMS. THE PCR COURT IN
IT'S ORDER PAGE 126 STATES "THE APPLICANT ASSERTS
THAT THE TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO
PROPERLY INVESTIGATE, PRESENT EVIDENCE, CROSS EXAMINE
AND MAKE MOTIONS TO SUPPRESS EVIDENCE;" THE COURT
FAILED TO ADDRESS THE FRAUD ON THE COURT, OBSTRUCT-
ION OF JUSTICE AND TAMPERING WITH THE EVIDENCE.
AT THE PCR HEARING ON THE RECORD PAGE 72-1-13-15
PETITIONER REQUEST THAT HIS TRIAL COUNSEL FILE A
59(e) MOTION TO ADDRESS ALL THE CLAIMS NOT RULED ON.

His trial counsel promised he would, and the PCR court said he would address his claims. The Respondent would argue that a 59(e) motion should have been filed and the Petitioner realized that and requested such on the record, and was promised that, however it was not done. Reese v. State "This court has raised concerns over orders that do not comply with sect. 17-27-80". Reese v. State 820 S.E.2d 376, Fishburne v. State 832 S.E.2d 584." Because the U.S. Const. 6th Amend. guarantees to a defendant the right to effective assistance of counsel is engrained in PCR cases. We cannot continue to permit a party's procedural shortcoming, such as a failure to file Rule 59(e) motion to prevent this court from remanding claims of ineffective assistance of counsel when the PCR court does not comply with section 17-27-80.

This court will take notice that issues were raised at hearing in the PCR court, they are not new. Petitioner request at the hearing that the correct procedure be followed in making and addressing the court's order and was promised such. The right to seek appellate review of the denial of PCR is expressly authorized by state law. Hollingsworth v. State 2015 WL 2231946. Petitioner is entitled to an Austin Review of a prior order if there is an affirmative finding that the applicant either (1) requested and was denied an opportunity to seek appellate review of the prior PCR order or (2) did not knowingly and intelligently waive the right to appellate review of the prior PCR order. King v. State 417 S.E.2d 868.

The Respondent(s) do not deny that the court failed to address all of the claims that were raised.

II. Why This Petition Should be GRANTED!

On page APPX. 172 of Respondent(s) Return to Rule 60(b) motion for Relief from Order of Dismissal. They state "Applicant alleges in his motion that he is entitled to Relief under Rule 60(b) SCRPC because there has occurred "Fraud on the Court, also obstruction of justice AND/OR TAMPERING WITH EVIDENCE (ON THE STATE)." Petitioner is entitled to Relief under SCRPC Rule 60(b)(4), because the order filed by the PCR court is a void judgement, AS A MATTER OF LAW. Section 17-27-80 is CLEAR ON WHAT IS REQUIRED OF A PCR ORDER. THIS IS AN ESSENTIAL FACT THAT ENTITLES PETITIONER TO RELIEF. BOWERS V. BOWERS 403 S.E.2d 127.

THE COURT IN DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGEMENT ON PAGE APPX. 180 OF THAT ORDER RELYS ON HENDRICKS V. STATE 692 S.E.2d 892, THE CITE DOES NOT APPLY BECAUSE HENDRICKS ARGUES THAT A NEW SUBSTANTIVE CONSTITUTIONAL STANDARD SHOULD HAVE BEEN APPLIED RETROACTIVELY.

THAT IS NOT THE CASE HERE. SECTION 17-2780 IS NOT NEW AND IT IS CLEAR. THE COURT ON PAGE APPX 181 OF THE ORDER DENYING MOTION STATES "APPLICANT IS TRYING TO HAVE A TWO FOR ONE ACTION IN WHICH HE REHASHES TRIAL ISSUES, PCR ISSUES HE BELIEVES SHOULD HAVE BEEN ADDRESSED BY JUDGE MACAULAY AND THE APPELLATE COURTS AND A NEW OVERARCHING PCR ISSUES THAT CONCERN HIS PCR ATTORNEY."

THIS IS FAR FROM THE TRUTH, ALL PETITIONER WANTS AND IS ENTITLED IS HIS ONE COMPLETE "BITE OF THE APPLE." "FINDING OF FACTS AND CONCLUSIONS OF LAW" ON EACH ISSUE.

THE RESPONDENT(S) AND THE COURT ARGUE THE AMOUNT OF TIME THAT HAS PASSED SINCE THE PCR COURT RULED AND NOW IS A UNREASONABLE AMOUNT FOR THE PURPOSE OF THIS MOTION. ONE CAN ONLY BE IN ONE COURT AT A TIME ON THE SAME CASE. AS STATED IN THE STATEMENT OF THE CASE, FROM 2011 UNTIL NOW/TODAY, PETITIONER HAS ENGAGED THE COURTS TRYING TO SHOW THAT HE IS "NOT GUILTY," AS CHARGED.

This claim is timely AND WAS RAISED IN A REASONABLE TIME. THERE IS NO STANDARD THAT SAYS THAT A 60(b) MOTION MUST BE FILED BEFORE OTHERS. AND TO TRY TO INTERJECT THAT LOGIC WITHOUT SUPPORT AT THIS POINT IS UNJUST.

REMAND WAS REQUIRED FOR TRIAL COURT TO MAKE FINDING OF FACTS AND CONCLUSIONS OF LAW ON DULY RAISED POST CONVICTION CLAIMS, MARLAR V. STATE 653 S.E.2d 266, AND HUMBERT V. STATE 548 S.E.2d 862, U.S. CONST. AMEND. 6th, S.C. CODE ANN. 17-27-80, S.C.R. CIV. P 52(A). PCR COURTS DENIAL OF ALL CLAIMS NOT SPECIFICALLY ADDRESSED IN THE ORDER DOES NOT CONSTITUTE A SUFFICIENT RULING ON ANY ISSUE SINCE IT DOES NOT SET FORTH SPECIFIC FINDING OF FACT AND CONCLUSIONS OF LAW. SIMMONS V. STATE 788 S.E.2d 220. THE COURT IN SIMMONS V. STATE RULED THAT ALTHOUGH THE APPLICANT FAILED TO FILE A RULE 59(e) MOTION TO REQUEST A RULING ON THE SUMMARILY DENIED ISSUES. WE NOTE THAT ALTHOUGH THE STATE IS TECHNICALLY CORRECT, WE ALSO BELIEVE DISMISSING THE WRIT OF CERTIORARI WOULD BE FUNDAMENTALLY CONTRARY TO THE INTEREST OF JUSTICE.

HOWEVER, UNLIKE SIMMONS THE PETITIONER REQUESTED AT THE PCR HEARING ON THE RECORD FOR A 59(e) MOTION TO BE FILED APPX. 72 L 13-15. EXTRAORDINARY ACTION OF REMANDING DEFENDANT'S APPLICATION FOR PCR WAS WARRANTED EVEN THOUGH DEFENDANT FAILED TO PRESERVE FOR APPEAL ISSUE OF PCR'S COURT'S FAILURE TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW BY FILING 59(e) MOTION SIMMONS V. STATE 788 S.E.2D 220, RISHBURN V. STATE 832 S.E.2D 584, MARLAR V. STATE 653 S.E.2D 266, PRUITT V. STATE 423 S.E.2D 127, MCCRAY V. STATE 408 S.E.2D 241.

IN REESE V. STATE 820 S.E.2D 376 "COURT HAS RAISED CONCERNS OVER ORDERS THAT DO NOT COMPLY WITH SECTION 17-27-80." TO DENY PETITIONER AN ORDER THAT ADDRESSES ALL ISSUES RAISED WITH A FINDING OF FACT AND CONCLUSION OF LAW IS DENYING HIM HIS PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHT UNDER THE FEDERAL AND STATE CONSTITUTIONS. LOOKING AT THE ISSUES THAT WAS NOT ADDRESSED AND REMEMBERING THAT THIS IS A "NOT GUILTY" PLEA, ONE CAN SEE WHY THERE MUST BE A REMAND.

Conclusion

In South Carolina the Post Conviction Relief Act affords this Petitioner "one complete bite of the apple," and a final order from the PCR court that complies with Section 17-27-80. To date Petitioner has not been afforded his guaranteed rights. Petitioner prays that this Court will remand this case back to the PCR court for an order that complies with the statute.