SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

L. CASEY MANNING, PRESIDING

CASE NO: 2021-001438

Taurus Watts

Appellant

"VS"

STATE OF SOUTH CAROLINA

Respondent

EXPLANATION AS TO WHY THIS ACTION IS NOT TIME-BARRED AND SHOULD BE ENTERTAINED ON THE MERITS

Mr. Taurus Watts, #324820
Kershaw C.I. Rm. PA-32
4848 Goldmine Hwy.
Kershaw S.C. 29067

RECEIVED
FEB 18 2022
S.C. SUPREME COURT

[TABLE OF CONTENTS]

[TABLE OF AUTHORITIES]

[CASES]

[AMENDMENTS]

[STATUES]

[STATEMENT OF ISSUES ON APPEAL]

[I].DID THE LOWER COURT ERROR BY HOLDING THAT APPELLANTS PCR ACTION WAS TIME BARRED/SUCCESSIVE WHEN APPELLANT PRESENTED THE COURT AFTER DISCOVERED EVIDENCE VIA STATEMENT FROM HIS CO DEFENDANT, AND NO INQUIRY WAS DONE TO SEE WHEN THE STATEMENT WAS FORTHWITH ?

[II].DID THE LOWER COURT ERROR BY NOT GRANTING APPELLANT A PCR HEARING WHEN APPELLANT HAS A STATEMENT FROM HIS CO DEFENDANT WHICH IS CONSTRUED AS AFTER DISCOVERED EVIDENCE, AND THE DICTION ON THE STATEMENT IS NOT CONCLUSIVELY REFUTED BY THE RECORD ?

[STATEMENT OF THE CASE]

This is the Applicants [s]econd PCR action submitted to the lower court. Applicants litigation sub judice is predicated on a statement received from his Co Defendant to wit, Mr. Tremaine Wray which vindicated any and all culpability from Appellant in this case
Mr. Tremaine Wray did not testify at trial, therefore the statement in question has never been reviewed by the trial court.
Applicant avers that the statement is [a]fter discovered evidence based on fact he received the statement after his trial.
Respondent avers that Applicant cannot satisfy prong three of the Hayden test, and time barred this action, and this appeal follows.

[ARGUMENTS]

[I].Because Appellant presented the Lower Court with after discovered evidence predicated on his actual innocence via statement from his Co-Defendant, and no judicial inquiry was done by the Lower Court to see when the statement was forthwith, it was error by the Lower Court to hold that Appellants PCR action was time-barred/successive.

Getting straight to the point, it is basic PCR jurisprudence that a PCR action must be filed within one year of the conviction, or remitter to the court, Peloquin "vs" State, 321 S.C. 468, 469 S.E.2d. 606 (S.C.1996)-§ 17-27-45(A)..

Notwithstanding, Peloquin supra, nor the S.C. Code Ann. § 17-27-45(A) had any force or effect in this litigation.

To be sure, when a PCR action is presented to the lower court predicated on after discovered evidence, the proper moreover critical judicial inquiry should be to obtain certain knowledge as to when the after discovered evidence (statement) was discovered by Appellant.

Likewise, I must point out, that after discovered evidence has its own jurisprudence pursuant to the S.C. Code Ann.§ 17-27-45(c) which unequivocally states In Haec Verba:

"If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date if actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the excercise of reasonable diligence.®

I must point out, that the lower court [s]ummarily dismissed this action pursuant to the S.C. Code Ann. §17-27-70(b) without having cognition as to when the statement was forthwith, thus leaving a hypercritical question of fact before the lower court.

Jurisprudentially speaking, it is naive for a court to rely on guesses, and uncertainty in a matter such as we have here, when Appellants actual innocence was sub judice. To crystalize my point here, to summary dismiss a PCR action with a genuine issue of material fact still being present is at war with the S.C. Code Ann. § 17-27-70(b), Mase "vs" State, 420 S.C. 500, 803 S.E. 2d.718 (S.C.2017)-McCoy "vs" State, 401 S.C. 363, 737 S.E. 2d. 623 (S.C.2013).

(Summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develope any facts, and (2) the applicant is not entitled to relief).

What is more, I must point out that Appellants PCR action in question cannot be construed as successive by the very essence and definition of the word- *Successive: Following each other without interruption: Following in order.

In point of fact, Appellant could not have raised this issue in his first PCR application, because he did not receive the statement in question until [a]fter his PCR application was adjudicated on the merits.

[T]his court has already held in Tilley "vs" State,334 S.C. 24,511 S.E. 2d. 689 (S.C.1999) that the circumstances here points to reversal. Likewise, because a genuine issue of material fact exist, and there is no probative evidence to support the lower courts conclusion of law that this action is barred from PCR adjudication, the error by the lower court is glarring,Holland "vs" State,322 S.C. 111,470 S.E. 2d. 378 (S.C.1996). Applellants 14th amendment rights to the U.S. Constitution was violated in this matter.

II. Because Appellant has a statement from his Co-Defendant which is construed as after discovered evidence and the diction on the statement is not conclusively refuted by the record, it was error by the lower court not to grant Appellant a PCR hearing.

In Hayden "vs" State, 278 S.C. 610, 299 S.E. 2d. 854 (S.C.1983), this court set-forth the five part test for after discovered evidence.
I think it pertinent to observe that the Respondent in this litigation [c]onceeds that Appellants statement from his Co-Defendant passes all the prongs of the Hayden test with the exception of prong three.
In view of this, it is paramount that this prong of the Hayden test be re-examined by this court.
Respondent has made its position in this litigation quiet clear, and avers that Appellant could have discovered the diction on the statement prior to trial.
Notwithstanding, the law arises from facts (Ex Facto Jus Oritur) and avers the facts in this case unequivocally discloses that Respondents position in this litigation has no merit.

It is of vital importance for this court to develope a clear awareness that Appellants Co-Defendant to wit, Mr.Tramaine R. Wray excercised his [F]ederal and [S]tate Constitutional Rights not to testify at [t]rial based on the advice of his counsel.
The law is clear that the law allows everything that it does not prohibit ans Appellants Co-Defendant in not prohibited from admitting his guilt, and telling the truth [a]fter trial regardless of the passage of time.
This much is certain, regardless of Appellant having cognition that his Co-Defendant was guilty and he had nothing to do with this criminal case, Appellant could not beat the truth out of Mr. wray, it was up to Mr. Wrays conscious to disclose the truth to the court which to ok some time.
This court is not dealing with a recantation of a previous statement, a guilty plea, or evidence in apublic record ect, this court is only faced with a statement from a person who did not testify at trial by Constitutional Right, but his conscious has made him come forward with the truth now via statement to Apppellant.
Ita Lex Scripta Est, The PCR Court may grant a motion by either party for summary disposition of the PCR application when there is no genuine issue of material fact, and the moving party is entitled to a judgement as a matter of law, S.C.Code Ann. § 17-27-70(c).

When considering that states motion for summary dismissal where no evidentiary hearing has been held, the PCR judge must assume facts presented by the Applicant are true and view those facts in light most favorable to the Applicant, Leamon"vs"State, 363 S.C. 432,611 S.E. 2d. 494 (2005).
Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications, and those facts are not [c]onclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a pcr hearing, McCoy "vs" State, 401 S.C. 363,737 S.E. 2d. 623 (2013) citing Delaney "vs" State, 269 S.C. 555,238 S.E. 2d. 679 (1977).
The statement in this case vindicating Appellant of any involvment in this case is not conclusively refuted by the record, and Appellant did not receive his entitlement, to wit, a PCR hearing, therefore his case is controlled by an error of law.
This court has made it clear, that it will reverse the decision of a PCR Court when it is controlled by an error of law,
Jordan "vs" State, 406 S.C 443,752 S.E. 2d. 538 (S.C.2013).
Jurisprudentially speaking, the [a]ctual [i]nnocense of Appellant was before the PCR Court, therefore the Lower Court had the Constitutional and Judicial obligation to review this litigation carefully, pursuant to the S.C.Code Ann. § 17-27-20(a)(4).

*THAT EVIDENCE OF MATERIAL FACT'S, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST OF JUSTICE.

It is not even arguble that the interest of justice requires adjudication of a claim of actual innocence with the most exacting judicial scrutiny and it appears that Appellant did not get such a review.
In these obvious facts, the law is clear, Appellant was and is entitled to a PCR hearing on the merits for [a]fter discovered evidence ipso jure. Appellants 14th Amendment Rights to the U.S. Constitution was violated in this matter.

[CONCLUSION]

For the reasons stated, this court should reverse the judicial decision of the lower court, and remand this case for a hearing on the merits for after discovered evidence.

Respectfully Written

2/15/2022
DATE

Taurus Watts

Mr. Taurus Watts, #324820
kershaw C.I. Rm. PA-32
4848 Goldmine Hwy.
Kershaw S.C. 29067