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S.C. SUPREME COURT

March 3, 2022

The Honorable Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re. Darrell Williams v. State of South Carolina; Appellate Case No. 2022-000096. Lower Court Docket No. 2017-CP-02-2286. **Letter of Explanation pursuant to Rule 243 (c), SCACR.**

Dear Ms. Howard:

Please accept the following as Petitioner's position concerning why his PCR appeal from his second PCR action should be allowed to move forward for review.

The findings of the lower court are based upon the conclusion that Petitioner's most recent Post-Conviction relief Application is barred by the Statute of limitations for PCR filings found in §17-27-45 (A) and that it successive. Petitioner asserts that reasonable questions exist as to whether those findings should be applied to bar appellate review on the facts of this case. The Order of Dismissal acknowledges the longstanding president for the fact that subject matter jurisdiction issues may be raised anytime, including, for the first time on appeal. Likewise the lower court quite correctly notes that this Court has long since found that the right of a defendant to be tried in the county in which his alleged offense took place is a matter of venue as opposed to subject matter jurisdiction. These finding however, overlook that the solicitor at guilty plea proceeding in Aiken County acknowledged that

> [T]here was a real question as to whether or not [the Victim] was initially kidnapped and they were all to (sic) happy to allow us to pursue the kidnapping charges here, but, actually, him being held in Saluda County for that time period and tortured and beat, there could have been charges in Saluda County, but since the buck kind of ended in Aiken County we felt it was appropriate to take all of the pleas here.

The Solicitor's previous remarks make it clear that the "they" referenced in the above quote addresses the Assistant Solicitors from Lexington County and Saluda counties, not the Petitioner. Under the State's theory of the case, there was "real question as to whether or not he was kidnapped initially." Likewise there is significant question as to the credibility of the evidence that Applicant was actually involved in the assault on the Victim which is alleged to have occurred in Saluda County. What is clear from the Order of Dismissal is that even the State saw that there was "real question" as to whether the Victim had been initially kidnapped. Petitioner and Walker may have arrived in Saluda with the Victim, but it is questionable that the state had any proof that Petitioner participated in bringing him to Saluda against his wishes. Petitioner did not plead to any offenses arising from unlawful actions he was alleged to have committed in Saluda County. This is not some case where someone disappeared at point A and was found buried at point B, thereby making prosecution in either venue appropriate. In this case, even the prosecutor admitted that the Victim may not have been kidnapped when he left Lexington for Saluda. The testimony of individuals who gave statements pertaining to this event have not subjected to the scrutiny of cross-examination at a trial. Petitioner, who has raised questions about his history of mental illness, may, under the state's evidence, have had nothing to do with the assault on this victim in Saluda County. If as the State's version of the facts asserts, Petitioner and Walker were left behind in Saluda while the other four perpetrators took the Victim to Aiken to where Gantt killed him., it begs the question why was it necessary for Petitioner and Walker to go back to Aiken to help the other four defendant's hide the body? Why would Petitioner and Walker be necessary to conceal a body when Gantt had three other men with him who could easily have assisted with the task? If Petitioner and Walker were in on the plan and participated in the kidnapping, torture and killing of the Victim, why would they stay behind only to go back to Aiken with, Gantt, Abner, Oakman and Norris, to help hide a body? If Petitioner did not participate in *a kidnapping* of the Victim from Lexington to Saluda, and did not go with the other four co-defendants to Aiken where the killing occurred, then it would appear that there was no evidence of Petitioner partaking in the crime for which he pleaded. This important question may in fact come down to whether there was any competent evidence that Petitioner actually participated in the crimes of assault and battery alleged to have occurred in Saluda County.

Petitioner submits that he deserves the opportunity to more fully develop the issues involved in his second PCR and to determine whether there may indeed be a real question of subject matter jurisdiction, where there appears to be a real question as to whether Petitioner committed any crime in connection with the kidnapping of the victim, the only crime to which he pleaded guilty in Aiken County. Without such evidence there was no probable cause for him to be charged with kidnapping. Furthermore, the record fails to establish that Petitioner knowingly and intelligently waived his right to be tried in the venue where the crime he was charged with took place. While this Honorable Court has clearly drawn a distinction between jurisdiction and venue, what is not clear is whether anyone ever adequately explained the distinction between the two to Petitioner. Petitioner asks that he be allowed to move forward with this PCR appeal in order that he might be given the opportunity to more fully present the issues touched upon herein.

Petitioner would also point out that the lower court's reliance upon ***Graham v. State***, 378 S.C. 1, 661 S.E.2d 337 (2008) is a stretch given the fact that ***Graham*** dealt with the right to a belated PCR appeal, not a more fundamental question concerning having charged adjudicated in the appropriate Venue.

As regards the doctrine of *laches*, the State has not demonstrated that the ability of the prosecution to retry this case has been damaged by the passage of time. There has been a previous PCR which was denied and that decision was appealed. The state has been so kind as to provide the lower court with a proposed conditional ordered dismissal in which the guilty plea record is quoted. Therefore they obviously had the guilty plea record available as recently as July, 2020. The Supreme Court of South Carolina denied Petitioner's appeal from the denial of his first PCR on April 8, 2015. That appeal was handled by the

Appellate Division of the South Carolina Commission on Indigent Defense in the person of Lanelle C. Durant, Esquire, of that agency. Petitioner has it upon information and belief that both the Office of Appellate Defense, and the Office of the South Carolina Attorney General, have a fifteen (15) year file retention policy. Therefore, there is every reason to believe that the records from the previous PCR, and PCR appeal, would be available at this time.

Petitioner's most recent Application for PCR raises an allegation concerning the fact that he was, "mentally ill and disabled." See, Allegation 1, 2017-CP-02-2286. Neither the Conditional Order of Dismissal, nor, the Final Order of Dismissal, address this important issue. For this reason, Petitioner would alternatively ask that this matter be remanded for an evidentiary hearing at which he would have the opportunity to demonstrate that at the time of his plea and his first PCR he had issues with his mental health which impeded his ability to knowingly and voluntarily participate in either proceeding. At a full and fair evidentiary hearing he would also have the opportunity to demonstrate that there was no evidence, even slight circumstantial evidence, which tended to prove Petitioner participated in any material acts that justified Aiken County being an appropriate venue for Petitioner's plea and sentencing on a charge of kidnapping. Petitioner is somewhat handicapped at this juncture where his retained PCR Counsel has not filed a Rule 59 (e) Motion asking for an amended Order requesting a ruling on the mental health issue raised by Petitioner, nor has PCR Counsel pointed out that certain aspects of this most recent PCR action require an evidentiary hearting to fully develop. Likewise, Petitioner's current Counsel has not had the benefit of reviewing the discovery material in this matter to best demonstrate why an evidentiary hearing should have been granted in this matter. For this reason, PCR Counsel respectfully asks that this matter be remained for an evidentiary hearing or in the alternative that Applicant be allowed to proceed with an appeal from the denial of this application.

/Tara D. Shurling
Tara Dawn Shurling
Attorney at Law

Cc: Megan Harrigan Jameson, Esquire