

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelynn Newman, Circuit Court Judge

Lower Court Case No: 2021-CP-40-04999

Appellate Case No: 2022-000278

Mr.Marlon Levon Miller, 339382,.....Petitioner,

v.

Mr.Alan M. Wilson, Attorney General,
State of South Carolina, Mr.Mark Keel, Chief,
(SLED) South Carolina Law Enforcement Division,.....Respodents,

PETITION FOR A WRIT OF CERTIORARI

Dated: 3-27-22

/s/ Marlon Miller
Mr.Marlon Levon Miller, 339382
ACI. Hampton Unit F-3 A-43
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

OTHER COUNSELS OF RECORD:
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S.C. SUPREME COURT

QUESTIONS PRESENTED

1. Did the circuit court erby misconstruing this complaint as an ordinary (PCR) Post-Conviction Relief Application on a claim for "INEFFECTIVE ASSISTANCE OF COUNSEL"?

2. Did the circuit court abuse its discretion by denying the Plaintiff the right to proceed against the following Defendants in law or equity in pursuant to the Uniform Post-Conviction Relief Procedure Act Section 17-27-20 (b)(1-6), Persons who may institute proceedings; Exclusiveness of Remedy ?

STATEMENT OF THE CASE

On September 14th, 2021, the Petitioner, instituted a complaint civil action proceeding in the Court of Common Pleas as a common lawsuit against the following Defendants captioned as Plaintiff v. Defendants, filed on October 5th, 2021, assigned civil action number 2021-CP-40-04999. Plaintiff alleges that a coversheet, application/complaint along with attachments, a summons, notice of lawsuit and request to waive service of a summons, and waiver of the service of summons, and duty to avoid unnecessary expenses of serving a summons were served on each Defendant for the commencement of process in this action.

On December 7th, Petitioner received an Return and Motion to Dismiss from Yasmeeen E. Klein, Assistant Attorney General, responding for the Defendants. In their Return and Motion to Dismiss, it was noted that they manipulated the pleading as Applicant v. Respondents, as if the Plaintiff was initiating an ordinary Post-Conviction Application as one claiming issues of Ineffective Assistance of Counsel. Petitioner also, received an proposed Conditional Order of Dismissal signed by the Honorable L. Casey Manning, Circuit Chief Judge, on December 7th, 2021, and filed on December 9th, 2021.

Petitioner was granted (20) twenty days to show why his complaint should not become final. Petitioner's Reply in Opposition to the Defendants Return and Motion to Dismiss/Proposed Conditional Order of Dismissal was filed on December 31st, 2021.

On March 4th, 2022, Petitioner received from the Office of the Attorney General's, a copy of the Final Order of Dismissal, signed by D. Russell Barlow, II signed by the Honorable Jocelynn Newman on February 23rd, 2022, and filed on February 24th, 2022, captioned Marlon L. Miller, Applicant, v. State of South Carolina, Respondent.

Petitioner filed his Notice of Appeal to secure Appellate review with the S.C. Court of Appeals, and the case was transferred to the S.C. Supreme Court, Appellate Case number 2022-000278. Appeal as follows:

10.00001

ARGUMENTS

Discussion

1. The Circuit Court did err in construing this complaint as an ordinary (PCR) Post-Conviction Relief Application on a claim of Ineffective Assistance of Counsel.

Petitioner was given (20) twenty days from the date he received on March 21st, 2022, to file his explanation as to why he believe the lower court's decision was improper.

(a). Petitioner cites the case of * Stiles v. Onorato, 318 S.C. 297, 457 S.E. 2d 601 (1995), (rulings on a Rule 12(b)(6), SCRPC, Motion to Dismiss must be solely upon the allegations set forth on the face of the complaint, and the motion may not be sustained if facts alleged and inference reasonably deducible therefrom would entitle Plaintiff to any relief on any theory of the case.

(b). Petitioner asserts that the PCR Act now comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the lifetime sexual offender registry sentence imposed. See S.C. Code 17-27-20(b), * Finklea v. State, 273 S.C. 157, 255 S.E 2d 447 (1979), (aim of PCR Act is to consolidate in one simple statute all the remedies presently available for challenging the validity of a sentence imposed.

2. The Lower Court did abuse its discretion when it denied the Petitioner the right as a Plaintiff, the right to proceed against the following Defendants in law or equity in pursuant to the Uniform Post- Conviction Relief Procedure Act 17-27-20(A)(1-6), Persons who may institute proceedings; Exclusiveness of Remedy.

(a). Petitioner argues that additionally, none of these courts have any judicial powers to dismiss any common law suit, as they are all administrative courts set up under the Administrative Procedure Act of 1946. The 11th Amendment to the United States Constitution of February 1795 effectively altered Article III Section 2 of the constitution. The 11th Amendment says, the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subject of an foreign state.

The court only has one action as revealed by the Rule of Civil Procedures Rule 2--one form of action, the civil action can be brought only by the people and not any level of government. Plus the Court has no jurisdiction under Rule 12 (b)(1)(2)(3), of the South Carolina Rules of Civil Procedure (SCRCF).

(b). Petitioner asserts that the Lower Courts decision was an abuse of discretion and improper and should be remanded for further proceedings, as justice is so required. Petitioner is entitled to due process of an judicial review in regards to the lifetime sexual offender registry.

CONCLUSION

Wherefore, for all reasons stated, Petitioner, prays for relief and respectfully asks this Honorable Court, to grant the Petition for a Writ of Certiorari or any other relief that may be deemed just and proper.

Dated: 3-27-22

Respectfully submitted,
/s/ Marlon Miller
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