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MAY 01 2013

{ STATE OF SOUTH CAROLINA }
{ IN THE SUPREME COURT }

S.C. SUPREME COURT

{ APPEAL FROM AIKEN COUNTY }
{ HONORABLE W. JEFFERY YOUNG PRESIDING JUDGE }

{ C/A No. 2009-CD-02-1417 }

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

JAMES PRATHER # 315663

APPLICANT

{ NOTICE OF INTENT TO APPEAL }

v.

STATE OF SOUTH CAROLINA

RESPONDENTS

NOTICE IS HEREBY GIVEN THAT JAMES PRATHER 315663 THE APPLICANT IN THE ABOVE NAMED MATTER DOES HEREBY APPEAL TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA, THE FINAL ORDER DENYING APPLICANTS MOTION TO ALTER OR AMEND THE DENIAL OF APPLICANT'S POST-CONVICTION RELIEF PETITION DATED APRIL 11, 2013 THE APPLICANT RECEIVED THE COURTS ORDER ON APRIL 22ND, 2013 THE McCORMICK CORRECTIONAL MAILROOM, REQUIRES A SIGNATURE BY THE APPLICANT. THE APPLICANT IN A JULY 19, 2011 LETTER TO COUNSEL REQUESTED THAT COUNSEL FILE A RULE 59(E) MOTION. SEE: COUNSEL RESPONSE IN JULY 21, 2011

LETTER.

THE COURT ISSUED ITS ORDER OF DISMISSAL WITH PREJUDICE DATED 12/28/13
JANUARY 9, 2012 IT WAS FILED BY THE CLERK OF COURT.

THE APPLICANT RECEIVED THE COURTS ORDER OF DISMISSAL ON
JANUARY 24, 2012. THE APPLICANT SUBMITTED A PRO'SE MOTION TO
ALTER OR AMEND DATED JANUARY 30, 2012 AND FILE WITH THE CLERK
OF COURT JANUARY 31, 2012.

THE RESPONDENT BY WAY OF A LETTER DATED FEBRUARY 2, 2012 STATED
THAT IT WOULD TAKE NO ACTION ON THE MOTION PURSUANT TO RULE (11)
S.C.R.C.P. AS APPLICANT WAS REPRESENTED, THEREAFTER COUNSEL WAS
FOR APPLICANT FILED A COPY/DUPLICATE OF APPLICANT'S PRO'SE
MOTION ON FEBRUARY 2, 2012.

APPLICANT'S RULE 59 (E) MOTION WAS GRANTED AND A HEARING WAS
HELD ON SEPTEMBER 30, 2012, THE APPLICANT REQUESTED THAT COUNSEL
BE RELIEVED AND PROCEEDED PRO'SE. THE (DCR) COURT FAILED TO MAKE
A FACTUAL FINDING ON APPLICANT'S RULE 59 (E) MOTION.

{ CONCLUSIONS }

THE APPLICANT RESPECTFULLY SUBMITS THAT HIS RULE 59 (E) MOTION WAS
TIMELY FILED FROM THE DATE OF THE WRITTEN NOTICE OF ENTRY OF THE
ORDER. THE APPLICANT RECEIVED THE COURT ORDER OF DISMISSAL ON
JANUARY 24, 2012. THE APPLICANT SUBMITTED A TIMELY PRO'SE
RULE 59 (E) MOTION ON JANUARY 30, 2012.

RESPECTFULLY SUBMITTED

SWORN OR AFFIRMED BEFORE ME

S. 

THIS 26 DAY OF April 2013



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 10/1/2021

2013 AT THE McCORMICK CORRECTIONAL INSTITUTIONAL MAILROOM.

THE APPLICANT IN A JULY 19, 2011 LETTER TO COUNSEL REQUESTED THAT COUNSEL FILE A RULE 59(E) MOTION

SEE: COUNSEL RESPONSE IN JULY 21, 2011 LETTER

THE COURT ISSUED ITS ORDER OF DISMISSAL WITH PREJUDICE DATED DECEMBER 28, 2011 AND FILED WITH THE CLERK OF COURT JANUARY 9, 2012

THE PETITIONER RECEIVED THE COURTS ORDER OF DISMISSAL ON JANUARY 24, 2012

THE APPLICANT SUBMITTED A PRO'SE MOTION TO ALTER OR AMEND DATED JANUARY 30, 2012 AND FILED WITH THE CLERK OF COURT JANUARY 31, 2012

THE RESPONDENTS BY WAY OF A LETTER DATED FEBRUARY 2, 2012 STATED THAT IT WOULD NOT TAKE NO ACTION ON THE MOTION PURSUANT TO RULE (11) S.C.R.C.P.

AS APPLICANT WAS REPRESENTED BY COUNSEL, THEREAFTER COUNSEL FOR

APPLICANT FILED A COPY OF APPLICANT'S PRO'SE MOTION ON FEBRUARY 2, 2012.

THE RULE 59(E) MOTION WAS GRANTED AND A HEARING WAS HELD ON THIS

MATTER ON SEPTEMBER 30, 2012, THE APPLICANT REQUESTED THAT COUNSEL

BE RELEVIED AND PROCEEDED WITH APPLICANT RULE 59(E) MOTION. THE COURT

FAILED TO MAKE A FACTUAL FINDING ON APPLICANTS RULE 59(E) MOTION

THE APPLICANT RESPECTFULLY SUBMITS THAT HIS RULE 59(E) MOTION WAS

TIMELY SUBMITTED FROM THE DATE OF THE WRITTEN NOTICE OF ENTRY OF

THE ORDER. THE APPLICANT RECEIVED THIS COURTS ORDER OF DISMISSAL

ON JANUARY 24, 2012 THE APPLICANT SUBMITTED HIS TIMELY PRO'SE

MOTION ON JANUARY 30, 2012

RESPECTFULLY SUBMITTED

SWORN OR AFFIRMED BEFORE ME

S. *James [Signature]*

THIS 26 DAY OF April 2013

Joyce L Young
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 10/11/2021

WALSHLAW, PA
Aaron G. Walsh, Esq.

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958 Millbrook Ave., Ste. 6 (29803)
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Aiken, SC 29802
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July 21, 2011

Mr. James Prather

#315663

McCormick Correctional Institute

386 Redemption Way

McCormick, SC 29899

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MAY 01 2013

S.C. SUPREME COURT

Dear Mr. Prather:

I am in receipt of your letter of July 19, thank you. Your question is not a bad one, but a bit difficult to answer. I believe all your issues were argued, and of course I intend to argue as much as allowed at the next hearing. Whether the Judge's actual Order will address them all, I just won't know until we get it.

My opinion, having now read over the post trial transcript another time, is that Ms. Alves probably did properly object to the trial issues, so that the PCR issues with her may be of less force. On the other hand, seeing that Ms. Alves did re-raise the issues about suppression, etc., makes me more convinced that you did have valid appeal issues, such that the failure of your Appellate Defender to at least make an attempt to address them was ineffective assistance. The suppression issue was appealable, the introduction of testimony about other guns, drugs, whatever, was appealable. There are others, but those two stand out.

To answer your second question, yes, the trial judge would have to find that any deficiencies on Ms. Alves' behalf were serious enough to have had an effect on the outcome of the trial, or at least find there is a serious chance they could have. While I think the introduction of the other drugs, and the failure to have a

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January 25, 2012

Mr. James Prather
#315663
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Dear Mr. Prather:

As we discussed today, I do not believe there are any issues in your case which require the filing of a 59(e) Motion. I also do not believe there are appealable issues in your case, which has already been reviewed once by the Appellate Court.

At this time, I am closing your file. I do not believe the Rules of Professional Conduct allow me to file motions I believe to be frivolous; in fact I believe they explicitly forbid me to do so. I have reviewed every bit of your case, I believe you were lawfully arrested after a lawful search. I believe you received a fair, if imperfect trial, where your objections were all made and preserved. I still think your original appellate defender should have briefed your issues, but I think you would not have prevailed if she had. Either way, I think the issue has been briefed, argued, and ruled upon.

Based on your comments, I suppose you will be filing grievances against me next. That is your right and privilege. I ask that you not contact my office by phone any more, however I read all correspondence in a timely manner.

STATE OF SOUTH CAROLINA
County of Aiken

) IN THE COURT OF COMMON PLEAS

)
)
James Prather, #315663
Applicant

) Case No #2009-CP-02-1417

)
)
vs.

) MOTION FOR RULE 59 (e)
) S.C.R.C.P.

)
)
State of South Carolina
Respondent,

COPY
ORIGINAL FILED
@ 2:35 PM
FEB 02 2012
Debra J. ...
AIKEN COUNTY
CLERK OF COURT

To Respondent;

This matter comes by way due to order of dismissal by the Honorable Judge Young. Which a Post-Conviction Relief hearing was heard in the the Court of common Pleas:

Counsel for the applicant alleges severel grounds in his Post- Conviction Relief Application; and required by law S.C. Code Ann 17-27-90; Post- conviction Relief Judge is required to rule upon all grounds alleges in his Post-Conviction Relief Application and all grounds address at his P.C.R. hearing by Counsel S.C.R.C.P. Rule 71.1 (g).

The records shows that the Counsel for the applicant address severel grounds and the P.C.R. Judge "must" and "shall" make a ruling upon these grounds listed below:

- 1). Ineffectivce Assistance Counsel;
 - (A) Not objecting to the missing link in chain of custody.
 - (B) Not requesting for a Franks hearing.
 - (C) Not Objecting to enhancement of time, Without enhancement Code.
 - (D) Not objection to the jury question.

The records will show on July 15, 2010, That the applicant properly raise the above issue on P.C.R. The applicant requested his lawyer Aaron Walsh to assist the applicant but lawyer decline.

Applicant enter this Motion Pro-Se on the his behalf. Applicant didn't recieve dismissal until January 24, 2012.

Date 1-30, 2012.

s James Prather
James Prather, #315663
386 Redemption Way
McCormick S.C. 29889

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APR 26 2010

MOCC
MAIL ROOM

...for its continuation
...you assume the
...with the
...of the

South Carolina Supreme Court
P.O. BOX 11330
Columbia S.C. 29202

James Prather 315663
386
Redemption way
McMinn, S.C. 29599