**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3563**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. M.A. Pitts, Vick, Bedingfield, Crawford, Hardwick, G.R. Smith, Duncan, Pinson, Toole, A.D. Young, Hamilton, Nanney, Lowe, Rice, Spires, Umphlett, Willis and Wylie

Document Path: l:\council\bills\gjk\20095ahb09.docx

Introduced in the House on February 18, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Post-conviction relief actions

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/18/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\02-18-09.docx)‑22

2/18/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\02-18-09.docx)‑23

**VERSIONS OF THIS BILL**

[2/18/2009](file:///p:\pprever\2009-10\3563_20090218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17‑27‑75 SO AS TO REQUIRE THE COURT TO DISMISS A POST‑CONVICTION RELIEF ACTION THAT IS SUCCESSIVE OR ON THE GROUNDS OF MISUSE OF PROCESS, TO DEFINE MISUSE OF PROCESS, AND TO ALLOW THE COURT TO PENALIZE THE APPLICANT BY REDUCING CERTAIN CREDITS GRANTED BY THE DEPARTMENT OF CORRECTIONS; TO AMEND SECTIONS 17‑27‑20 AND 17‑27‑45, RELATING TO PERSONS WHO MAY INSTITUTE A POST‑CONVICTION RELIEF ACTION AND FILING PROCEDURES, RESPECTIVELY, SO AS TO ELIMINATE THE PROVISIONS ALLOWING AN ACTION WHEN MATERIAL EVIDENCE WAS NOT PREVIOUSLY PRESENTED OR HEARD; TO AMEND SECTION 17‑27‑70, RELATING TO COURT PROCEDURES FOR POST‑CONVICTION RELIEF APPLICATIONS, SO AS TO REQUIRE THE COURT TO DISMISS ACTIONS UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 17‑27‑80, RELATING TO HEARINGS ON A POST‑CONVICTION RELIEF APPLICATION AND FINAL JUDGMENT, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 17‑27‑160, RELATING TO POST‑CONVICTION RELIEF PROCEDURES IN CAPITAL CASES, SO AS TO CHANGE AND STREAMLINE THE PROCEDURES FOR FILING A POST‑CONVICTION RELIEF ACTION AND SHORTEN THE TIME IN WHICH A HEARING MUST BE HELD.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 27, Title 17 of the 1976 Code is amended by adding:

“Section 17‑27‑75. (A) The court summarily shall dismiss an application which, upon its face, is successive. A successive application is an application filed by the same applicant upon the same grounds authorized pursuant to Section 17‑27‑20.

(B) The court may deny relief on the grounds of misuse of process. An applicant misuses process if he:

(1) presents claims for relief which he inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous post‑conviction proceeding; or

(2) files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.

(C) Misuse of process must be pled by the State and the burden of proof also is upon the State. Upon a showing of misuse of process, the court may penalize the applicant through a reduction of good time credits granted by the Department of Corrections pursuant to Section 24‑13‑210.”

SECTION 2. Section 17‑27‑20 of the 1976 Code is amended to read:

“Section 17‑27‑20. ~~(a)~~(A) ~~Any~~ A person who has been convicted of, or sentenced for, a crime and who claims that:

(1) ~~That~~ the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) ~~That~~ the court was without jurisdiction to impose sentence;

(3) ~~That~~ the sentence exceeds the maximum authorized by law;

(4) ~~That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;~~

~~(5)~~ ~~That~~ his sentence has expired, his probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

~~(6)~~(5) ~~That~~ the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error ~~heretofore~~ available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; may institute, without paying a filing fee, a proceeding ~~under~~ pursuant to this chapter to secure relief. Provided, however, that this section ~~shall~~ may not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

~~(b)~~(B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies ~~heretofore~~ available for challenging the validity of the conviction or sentence. It ~~shall~~ must be used exclusively in place of them.”

SECTION 3. Section 17‑27‑45 of the 1976 Code is amended to read:

“Section 17‑27‑45. (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application ~~under~~ pursuant to this chapter may be filed not later than one year after the date on which the standard or right ~~was~~ is determined to exist.

~~(C)~~ ~~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 of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.~~”

SECTION 4. Section 17‑27‑70 of the 1976 Code is amended to read:

“Section 17‑27‑70. ~~(a)~~ (A) Within thirty days after the docketing of the application, or within ~~any~~ another further time the court may fix, the State shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court ~~may~~, when appropriate, may issue orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of ~~any~~ a pleading. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions ~~thereof~~of it that are material to the questions raised in the application.

~~(b)~~ (B) When a court is satisfied, on the basis of the application, the answer or motion, ~~and~~ or the record, that the applicant is not entitled to post‑conviction relief and no purpose would be served by ~~any~~ further proceedings, ~~it may~~ the court must indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant ~~shall~~ must be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default ~~thereof~~of it, the court ~~may~~ must order the application dismissed ~~or grant leave to file an amended application or direct that the proceedings otherwise continue~~. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

~~(c)~~(C) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, and admissions and agreements of fact, together with ~~any~~ all affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

SECTION 5. Section 17‑27‑80 of the 1976 Code is amended to read:

“Section 17‑27‑80. ~~The application shall~~ If the application is not dismissed pursuant to Section 17‑27‑70(B) or 17‑27‑75, it must be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings ~~shall~~ must be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and ~~any~~supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.”

SECTION 6. Section 17‑27‑160 of the 1976 Code is amended to read:

“Section 17‑27‑160. (A) If a defendant has been sentenced to death in South Carolina, he must file his application for post‑conviction relief in the county ~~in which he was indicted for the crime resulting in the sentence of death~~ in the original jurisdiction of the South Carolina Supreme Court. Upon receipt of the application for post‑conviction relief, the ~~clerk of court~~ Supreme Court shall forward the application to ~~the~~ a judge who has been assigned to hear the post‑conviction relief application. This judge shall maintain control over the expedited consideration of the application pursuant to this section. ~~The judge assigned as the post‑conviction relief judge must not be the original sentencing judge.~~ A copy of the application ~~shall immediately~~ immediately must be provided to the solicitor of the circuit in which the applicant was convicted and a copy provided to the Attorney General. The filing of the application does not automatically stay any sentence of death.

(B) Upon receipt of the application for post‑conviction relief, the counsel for the respondent shall file a return within thirty days after receipt of the application.

If the applicant is indigent and desires representation by counsel, two counsel ~~shall immediately~~ immediately must be appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death‑sentenced inmate in state or federal post‑conviction relief proceedings or ~~(1)~~ must:

(1) meet the minimum qualifications ~~set forth~~ provided in Section 16‑3‑26(B) and Section 16‑3‑26(F); and

(2) successfully have ~~successfully~~ completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate ~~and/or~~ or post‑conviction defense.

The Supreme Court may promulgate additional standards for qualifications of counsel in capital post‑conviction proceedings. The court may not appoint an attorney as counsel ~~under~~ purusuant to this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment. Counsel appointed in these cases ~~shall~~ must be compensated from the funding provided in Section 16‑3‑26 in the same manner and rate as appointed trial counsel, provided that Section 16‑3‑26(I) ~~shall~~ does not apply to counsel appointed in post‑conviction relief proceedings. Appointed counsel on appeal from state post‑conviction relief cases ~~shall~~ must be funded and compensated from the funds established for representation of indigents on appeal by the ~~Office~~ Commission on Indigent Defense, Division of Appellate Defense pursuant to ~~Chapter 4~~ Article 3, Chapter 3, ~~of~~Title 17. Nothing in this section ~~shall preclude~~ precludes an out‑of‑state attorney from appearing pro hac vice.

If counsel is the same person appointed as counsel on appeal, the court shall appoint a second counsel to assist in the preparation of the application for post‑conviction relief. If the applicant elects to proceed pro se, ~~any~~ all findings made by the court ~~shall~~ must be done on the record and in open court concerning the waiver of the assistance of counsel.

(C) Not later than thirty days after the filing of the state’s return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post‑conviction relief. The hearing must be scheduled within ~~one hundred eighty~~ ninety days from the date of the status conference~~, unless good cause is shown to justify a continuance~~. A continuance only may be granted once for no more than an additional ninety days and only upon a showing of good cause.

(D) Within thirty days from the ~~receipt of the transcript, or if the judge requests post trial briefs, within thirty days from the receipt of the post trial briefs~~ conclusion of the hearing, the hearing judge in writing shall make specific findings of fact ~~and state expressly the judge’s conclusions of law~~ relating to each issue. ~~This order is a final judgment subject to a motion for rehearing, a motion to alter or amend judgment, a motion for relief from judgment or order, or any other motion as allowed by the South Carolina Rules of Civil Procedure.~~ These findings of fact must be submitted to the South Carolina Supreme Court. The court, based upon these findings, shall reach a conclusion of law on each issue presented and issue a written order. This order is a final judgment.

(E) In these expedited capital post‑conviction relief hearings, a court reporter ~~shall~~ must be assigned to take testimony. The transcription of the testimony and record ~~shall~~ must be given priority over all other matters concerning the preparation of the record and, upon completion, ~~shall~~immediately must be provided to the parties and the Clerk of the Supreme Court of South Carolina.”

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 8. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 9. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑