

South Carolina
Court of Appeals

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DEC 12 2022

SC Court of Appeals

Earnest E. Vaughn | C/A No. 2020-000750
v Petitioner | Petition/Objection
State of South Carolina, | Rule 59(e) SCR CP.
Respondent | Motion To Alter or
Amend Judgement

The Petitioner in the above case Earnest E. Vaughn received an order of dismissal in the above case by this court on December 8th 2022, that is dated November 21st 2022. Therefore, this Motion/Petition/Objection should be deemed timely.

The Petitioner filed an ^{Pro/se} amendment to the Johnson Petition raising violations of the 4th, 5th, 6th and 14th amendments of the United States Constitution and the Petitioner has not waived any of these constitutional violations at trial, direct appeal or on post-conviction. Therefore, by way of this Rule 59(e) the Petitioner respectfully ask this Honorable Court of Appeals to rule on the Constitutional violations based on the facts and circumstances of this unlawful arrest and unfair trial in this case.

The Petitioner has enclosed exhibit A that is an amendment filed in the PCR by

pg. 2
Attorney Ashley M^{rs} Mahan and exhibit B a
Writ of Mandamus filed in the Supreme Court
listing the constitutional violations that was
raised pro/se in the Post Conviction pg 44-
56 of the evidentiary hearing transcript.

Due to the misconduct of the court
appointed lawyers and the Ass. Att. General
the PCR court failed to rule of these
constitutional violations, violating the Petitioners
6th and 14th amendments of the United-
States Constitution, "Due Process Of Law".

Therefore, the Petitioner ask in goodfaith
that this Honorable Court issue a ruling
pursuant to Rule 59(e) S.C.R.C.P. on the
constitutional violations raised pro/se in
this case.

Respectfully Submitted,
Date 12-8-22 S. Earnest Vaughn
Earnest Vaughn - 246912
1578 Clarence Coker Hwy.
Turbeville S.C., 29162

Exhibit A

MCMAHAN & TAYLOR
ATTORNEYS LLC

March 3, 2020

Chastity Copeland
Greenwood County Clerk of Court
ATTN: PCRs
528 Monument Street Rm #114
Greenwood, SC 29646

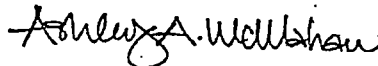
Re: Earnest E. Vaughn, Sr., #313102 v. State of South Carolina
2019-CP-24-00160

Dear Ms. Copeland:

Please find enclosed an amended application for the above-referenced matter. Kindly file this document and return a clocked copy to me in the enclosed envelope. Please note that because this is a PCR matter, it cannot be filed electronically.

Should you have any questions, I can be reached at the number listed below.

Best regards,



ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: ~~Earnest E. Vaughn, Sr., #313102~~
AAG Brianna L. Schill

P.O. Box 5501 • WEST COLUMBIA, SC 29171
TEL 803-219-1110 • FAX 803-500-9140 • WWW.MCMAHANTAYLOR.COM

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

Earnest E. Vaughn, Sr., #313102,)
)
Applicant,)
)
v.)
)
State of South Carolina.)
_____)

COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
Case No.: 2019-CP-24-00160

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February, 14, 2019, to clarify the following allegations:

1. Ineffective assistance of counsel of Jane H. Merrill, Esquire:

a. Trial counsel failed to adequately cross examine and challenge the officer related to the tainted evidence that was seized by the police. When the drugs were initially turned in the officer noted there were 18 grams but then later supplemented it with 3.4 grams that were found on the floor.

b. Trial counsel failed to move to recuse Judge Hocker from presiding over the trial as Judge Hocker had already shown bias against the Applicant when he set an excessive bond of \$100,000 (that was later reduced to \$20,000). Judge Hocker also had forced the Applicant to take a drug test.

c. Trial counsel failed to adequately move for a mistrial after one of Applicant's family members made contact with a juror in the bathroom.

d. Trial counsel should not have allowed the Applicant's prior overturned conviction to be mentioned during sentencing.

e. Trial counsel failed to adequately challenge the chain of custody on the substances seized from the Applicant. The chain of custody on these drugs was broken. The date the drugs were taken to SLED and received by SLED are different dates. Furthermore, Josh Hood admitted to detaining and searching the Applicant without consent or without a search warrant.

f. Trial counsel failed to adequately challenge the State's witness about the deal she was making with the State to testify at the Applicant's trial.

g. Trial counsel failed to adequately challenge the issue related to the dash-cam and it's lack of audio at certain points.

2. Ineffective Assistance of Appellate Counsel, Assistant Appellate Defender Taylor D. Gilliam:

a. Counsel failed to raise valid and preserved arguments on appeal, particularly that the Court erred in failing to suppress the tainted drugs that were seized by the police.

b. Failed to petition the issue related to the mistrial to the Supreme Court.

3. Prosecutorial Misconduct of Assistant Solicitor Micah E. Black:

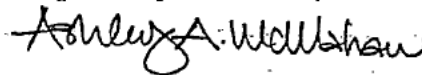
a. Mr. Black intentionally withheld the criminal record of the informant, Debbie Tucker. Furthermore, Mr. Black falsely indicated to the Court that the Applicant had made death threats against the informant.

b. Mr. Black failed to turn over as part of Discovery, the report made by Greg Allison where Allison admitted to finding a bag of substance on the floor of his office and adding it to the contents of the Applicant's case. (Please see the attached supplemental report obtained by the Applicant.)

c. Mr. Black attempted to withhold the field test of the substance seized from the Applicant at the time of his arrest that shows that the substances tested negative for drugs.

Furthermore, Applicant requests that the documents filed by the Applicant on September 26, 2019; December 16, 2019; and January 21, 2020, be construed as amendments to his PCR application. Applicant also requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR ATTORNEYS-LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

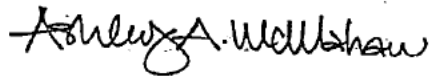
March 3, 2020

OF SERVICE

I certify that I have served this document via email to:

Brianna L. Schill
Assistant Attorney General
briannaschill@scag.gov

This 3rd Day of March, 2020.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

Exhibit B

South Carolina Supreme Court

Dear Clerk,

Columbia

pg. 1

Please find enclosed for filing in your office,
my writ of mandamus involving my
PCR case in Greenwood County.

Since I have gave a statement of
facts as the State, (Attorney Generals office),
requested in a partial return they filed,
I am also serving a copy to the
Greenwood County Clerk of Court and to
the Office Of The Attorney General.

Thank you very much for your time
and consideration in this matter.

Respectfully Submitted

Date, 9-20-19

S. / ~~Earnest~~ Vaughn

Earnest Vaughn

M^o C.I. F-44133

386 Redemption Rd.

M^o / Cormick SS. 29899

C.C. File:

Greenwood Co. Clerk

SC. Attorney General

wom/ev

In Re:

Vaughn v State

Dear Clerk

I have a PCR case pending in Greenwood County. I have been transferred from Broad River Corr. Inst. to Mc Cormick Corr. Inst. so my address has changed.

Earnest Vaughn - 246912

M/C.I. F-4-133

386 Redemption Rd.

Mc Cormick SC 29899

Would you please advise all proper parties on my behalf?

Thank you very much

Date 7-19-19 / Earnest Vaughn
Earnest Vaughn

South Carolina Supreme Court
Columbia

pg. 1

Earnest Vaughn | Petitioner
-V- Petitioner | Writ Of Mandamus
State Of S.C. | In Re: Vaughn V State
Respondent | 2019-CP-24-00160
Greenwood County

The Petitioner in the above case will respectfully move before this Honorable Court at this time to ask in good faith for an order be issued to the S.C. - Attorney General's Office and the 8th - Judicial Circuit Court Of Common Pleas to assure the Petitioner a timely and fair evidentiary hearing on all issues listed in the application for post conviction.

The Petitioner raised the following issues on the PCR application.

1. Judicial Misconduct, 6th & 14th amend. viol. U.S. Const., and "Abuse Of Discretion"!
2. Prosecutorial Misconduct, 6th & 14th amend. viol. U.S. Const.
3. Police Misconduct, 4th, 5th & 14th amend. viol. U.S. Const.
4. Ineffective Assistance Of Trial Counsel, 6th & 14th - amend. viol. U.S. Const.
5. Ineffective Assistance Of Appellate Counsel, 6th & 14th amend. viol. U.S. Const.
6. Violations of the 4th, 5th, 6th & 14th amendments of the United States Constitution.

"The Petitioner also reserved the right - to amend?"

pg. 2

The Attorney General's Office filed a partial return to the P.C.R. application. The Attorney General Employee asked that several issues raised on the P.C.R. application be dismissed and requested a more clear statement of facts be filed so they could make a more accurate return. However, they did not serve the Petitioner with a copy of that partial return. They also stated that any response or amendments not to be filed by the Petitioner himself.

This is an attempt to delay the evidentiary hearing and to obstruct justice in this case, where they are aware that the Petitioner can meet the burden of proof to all of the constitutional violations and to all allegations of misconduct. In fact, most of the misconduct committed is criminal in nature and should be heard in this case, and also dealt with in a court of law.

These violations of codes of South Carolina laws include, perjury, fraud/forgery, tampering with a defense witness, "tampering with and fabricating evidence," conspiracy, and obstruction of justice. This was also an abuse of power's!

Statements Of Fact's

On Jan. 27th 2016 in Greenwood County the Petitioner was a passenger in a vehicle unlawfully stopped by police. Police claimed that there was an active arrestwarrant for the driver. In the suppression hearing, police admitted that "it was not true".

This traffic stop was in violation of the 4th amendment under Terry v Ohio - 392 U.S. - 1, 88 S Ct. 1868, 20 L Ed. 889 (1968). Trial counsel was ineffective for failing to move for the dismissal of the charges at this time.

Instead, she allowed police to falsely testify that they also had an arrestwarrant "IN HAND" (per Brian Louis). Louis stated he was not sure if he had it or if someone else had it. This warrant was never entered into evidence. Brian Louis later stated ever who 351 was had the warrant.

That 351 was the arresting officer on these present charges Whiffield Brooks. Brook's later testified in the trial that he did not have the arrestwarrant but he stated that someone did. Agent Louis and Brooks lied under oath because they both knew that no-one had that warrant.

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The Prosecutor Micah Black failed to correct this perjured testimony in violation of the 6th and 14th amendment under Mooney v Holohan - 294 U.S. 103, 112, (1935). The Supreme Court made it clear that, a deliberate deception of a court and jurors by the presentation of known false evidence, is incompatible with rudimentary demands of justice. Also see, Riddle v Ozmint - 631 S.E. 2d. 70, Giglo v U.S. - 405 U.S. 150, 153 (1972), Napue v Illinois - 360 - U.S. 264, 79 S.Ct. 1173 (1957). We said the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Id. at 269, 79 - S.Ct. at 1177. However, the Prosecutor was aware that this was a "sham arrest warrant," and intentionally used it against the Petitioner in the suppression hearing and during the trial "before the jury" and then "dismissing the warrant" after the trial.

The Prosecutor told the Judge (Hocker) that the warrant would not be used and also told defense counsel before the trial started. This warrant was used to obstruct justice.

The Court also abused its discretion and intentionally erred for failing to suppress evidence claimed to have been seized during

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this unlawful detention and illegal search that was done by Agent Josh Hood and others. The search of the Petitioner by Agent Hood was recorded on the "dashcam" with video and audio. This search of the Petitioner violated the 4th amendment under Mapp v Ohio - 367 U.S. 643 (1961) This search was done without consent or a search warrant.

Police and Prosecutor also tampered with the dashcam video to exclude the audio (sound) after Agent Chad Cox read the Petitioner his rights. Petitioner told Cox he wanted his lawyer before any questioning. At that time Cox ceased on questioning and walked away.

After that, Jarvis Reeder can be seen coming up to the Petitioner questioning and threatening the Petitioner. This is the reason the audio was removed from the video. This video without audio was inadmissible and defense counsel was ineffective for failing to object to it. This misconduct violated my 5th 6th & 14th amendment rights of the United States Constitution.

The Prosecutor Micah Black also with-held other exculpatory evidence, Chain of custody and the prior criminal records of a

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government witness (Dobbie Tusker). Instead, he gave defense counsel a false prior criminal record. Crivens v Roth - 172 F.3d 991, citing United States v Bagley - 473 US 667, 676; 105 S.Ct. 3375, 87 L.Ed.2d. 481 (1985) found a Brady violation when witness prior criminal record would have been used to impeach the credibility of a government witness. The Solicitor's suppression or with-holding this evidence violates Due Process and the right to a fair trial in violation of the 6th & 14th Amendment of the United States Constitution.

Brandy Wilson was also named as a defense witness who gave a written statement in favor of the Petitioner. Wilson was later incarcerated on many charges. The Prosecutor tampered with this defense witness and conspired with her to lie under oath and change her statement in exchange for several charges being dismissed and the promise of a light sentence on other charges.

The indictments can also be shown to be tainted (forged) outside the jurisdiction of the Court Of General Sessions. Section 14-9-210 requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before a lawful return of

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a true billed indictment can take place. In the week of May 6th 2016 the court - calander for Greenwood Court shows that only the Court of Common Pleas was in session and is vested with NO authority to take any action on matters pertaining to return of true billed criminal indictments. See, Dove v Gold Kist Inc. - 314 S.C. 235, 442 S.E. 2d, - 598, 600 (S.C. 1994); see also S.C. Constitution Article V § 1. There is no true billed stamp affixed to either indictment in this case! Under Brown v State - 343 S.C. 342, 546 S.E. 2d 846 (2001) This issue can be raised at any time.

The judge (Hocker) also violated the Petitioners 4th & 14th amendment rights when he forced the Petitioner to submit to a drug test before the trial began based on a personal opinion. This was an illegal search for evidence of a crime, (the illegal use of drugs).

When the Petitioner passed the test it angered the judge and he revoked the Petitioner's bond and ordered the Petitioner into custody eventhough Petitioner had on an ankle bracelet for the past 8 months.

The Court also erred by denying the defense counsels motion for a mistrial after the State mentioned an

pending arrest warrant, in which, ^{pg 8}
was a pretext, (sham) warrant for
police not having a reason for
detaining the petitioner in the
first place. This warrant was
dismissed after the trial.

The Court abused its discretion
by giving a curative instruction.
The judge was aware that this was
done intentionally like throwing a
skunk in the box and asking the
jury not to smell it. This was
prejudice and it denied the
petitioner a fair trial in violation of
the 6th & 14th amendment U.S. Constitution.

The Court also erred by not removing
a juror after an incident outside
the courtroom with one of the jurors.
The State ask that the juror be removed.
Defense counsel stated she did not
know what to do, she was without
co-counsel. This was also, ineffective
assistance of counsel, in violation of the
6th amendment United States Constitution.

The evidence in this case can also
be shown to have been fabricated and
tainted by the improper handling and
improper testing by the Sheriff's Dept and SLED.

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This is the reason the Prosecutor Michah-Black, withheld the chain of custody and the drug reports until the day of the trial.

Lynn Black of SLED and Gregg Allison both lied under oath about the fabricated evidence. From the time claimed to have been seized, (18.22 grams) until it was taken to SLED it was approx. 22 grams because Allison added 3.4 grams after he done ll field test on the initial 18.22 grams with negative results as being drugs.

Ms. Black stated, she only tested one bag, (3.4 grams), she said the rest looked like meth. She later said she found meth in all 4 bags!

Mr. Allison said the drugs was never lost and he didn't find them on the floor of his office or add anything to it. He said he just entered it in the computer wrong. However, he had filed a supplemental report stating that he found a bag of substance on the floor of his office the next day that weighed 3.4 grams.

Sligh v. Johnson - 288 S.C. 364, 342 S.E. 2d 620 (S.C. App. 1986).
The burden of preserving an item or real demonstrative evidence intact and free from alteration is upon the party offering it in evidence.

pg. 10
The Court denied the Petitioner the right to challenge the authenticity of the evidence.

Trial counsel admitted she warned the Petitioner against challenging the chain of custody or the testing of the drugs.

Conclusion

The Petitioner was the victim of an unfair PCR evidentiary hearing that was delayed for 3 years because he would not waive all issues except ineffective assistance of counsel and the Ass. Attorney General still blocked the issues from being heard by conspiring with the judge to only hear the one issue.

Despite all of the abuse of power and misconduct committed in that case, this honorable court reversed and remanded and granted a new trial.

The charge's was later dismissed due to the 4th amendment violation and it was ordered to be expunged from the Petitioner's record.

Therefore, a writ of mandamus was filed 2 times in that case and was granted and was violated by the Attorney General's Office. Therefore, I ask in good faith that an order be granted in this case to assure me a fair and timely evidentiary hearing in this

case in Greenwood County,

This request would not be overly burdensome. It would only assure the Petitioner a fair evidentiary hearing on the right to preserve all issues to be heard by this Honorable Court on a Writ of Cert. because regardless of the facts and circumstances surrounding the unlawful arrest and all of the constitutional violations and misconduct (criminal & ethical) the Petitioner don't expect a fair hearing or the relief that has been requested. Although, "as a matter of law, the relief should be granted in this case."

Respectfully Submitted,
Date 9-20-19 S. Earnest Vaughn
Earnest Vaughn

South Carolina
Court of Appeals

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DEC 12 2022

Dear Clerk,

Please find enclosed for filing in SC Court of Appeals office my Rule 59(e) S.C.R.C.P. with exhibits.

Due to restrictions and indigent status, I am unable to make copies or serve anyone if it is required in this case.

Therefore, would you please serve all proper parties on my behalf electronically?

I would like to note: I was not served with the order dismissing my case until December 8th 2022 by the mailroom here at Turbeville.

Thank You Very Much,

Date 12-8-22 S. Ernest Vaughn

Ernest Vaughn - 246912
Turbeville C.T. SNB-142
1578 Clarence Coker Hwy.
Turbeville S.C. 29162

Earnest Vaughn-246912
Turbeville C.I. Snt B-142
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Turbeville S.C., 29162

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SC Court of Appeals

S.C. Court of Appeals
Clerk's Office

P.O. Box 11629
Columbia SC, 29211



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