

The South Carolina Court of Appeals

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FEB 27 2023

SC Court of Appeals

State of South Carolina)
 South Carolina Court of Appeals)
 Gregory D. Daniels # 297449)
 Appellant)
 v)
State of South Carolina)

South Carolina Court of Appeals
 Appellate Case # 2021-001298
 Initial Brief and Designation
 of the Matter

Comes now through this court the Appellant respectfully
 proceeding pro se the request the entry for a New Judgment
 pursuant the ruling of a motion filed with the court of common
 pleas Twelfth Judicial Circuit. Motion for a New Trial
 of which was dismissed by the Honorable Judge D. Craig
 Brown. On October 27th 2021. (Civil case Action # 2013-CP-
 210280) Appellant Case # 2015-00 2033).

Exhibits

- (1) Copy of the proffer Agreement of the states
Lay witness Andrea Bradley.
- (2) Copy of Motion Filed by ~~Appellant~~ to the
Court of Common Pleas Twelfth Circuit and
Honorable D. Craig Brown.
- (3) Copy of the Sworn Affidavit from Gary Bostic
used at Post-conviction Relief hearing. As to
his involvement and how he would have been willing
to testify on the Defense's behalf.



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APR 14 2010

PUBLIC DEFENDER'S OFFICE
BY *[Signature]*

Exhibit

#1

U.S. Department of Justice

United States Attorney

District of South Carolina

PLAINTIFF'S
EXHIBIT
20
KS 444-15

Wachovia Building
Suite 500
1441 Main Street
Columbia, SC 29201
(803) 929-3000
FAX (803) 254-2912

151 Meeting Street
Suite 200
Post Office Box 978
Charleston, SC 29402
(843) 727-4381
FAX (843) 727-4443

John L. McMillan Federal
Building, Room 222
401 W. Evans Street
Post Office Box 1567
Florence, SC 29503
(843) 665-6688
FAX (843) 678-8809

105 N. Spring Street
Suite 200
Post Office Box 10067
Greenville, SC 29603
(864) 282-2100
FAX (864) 233-3158

Reply to: Florence

January 20, 2010

John M. Ervin, III, Esquire

[Redacted]

Darlington, SC 29540

RE: Andre Marquise Bradley

Dear Mr. Ervin:

The following constitutes the proffer agreement between the Attorneys for the Government and Andre Marquise Bradley, hereinafter referred to as "Client."

PROFFER AGREEMENT

The purpose of Client making a Proffer is to provide the Government with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others.

THIS IS NOT A COOPERATION AGREEMENT. Client has agreed to provide the Government with statements and information, and to respond to questions so that the Government may evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the Government does not agree to make a motion for downward departure on the Client's behalf or to enter into a cooperation agreement, plea agreement, immunity or non-prosecutive agreement. The Government makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the United States Attorney's Office for the District of South Carolina and federal law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning all unlawful activities. Also, Client understands that Client must fully disclose and provide truthful information to Government including any books, papers, or documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will, at the sole election to the Government,

John M. Ervin, III, Esquire
 January 20, 2010
 Page 2

cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on Client's part:

- (1) the Government may file any and all charges known to the Government in the appropriate district; and
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Client agrees to submit to polygraph examination(s) by any qualified polygraph examiner should Client be requested to do so. Failure to pass to the satisfaction of the Government any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the Government may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.

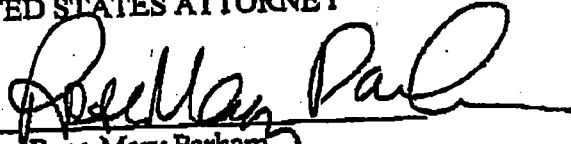
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- 3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially different from any statements made or other information provided during this Proffer, the Government may cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised sua sponte by the District Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.


John M. Ervin, III, Esquire
January 20, 2010
Page 4

that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

W. WALTER WILKINS
UNITED STATES ATTORNEY

By: 
Rose Mary Parham
Assistant U.S. Attorney

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:


ANDRE MAROUIE BRADLEY

1/20/10
Date



JOHN M. ERVIN, III

Exhibit
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STATE OF SOUTH CAROLINA,

County of Florence)

)

)

STATE OF South Carolina)

)

Plaintiff)

v.)

)

Gregory D. Daniels)

Defendant)

In the Court of General
Sessions

Docket #

Notice and motion for
New Trial Based on
After-Discovered Evidence
Pursuant to Rule 29(b)

Comes now the Defendant, and moves before this
Court for a new trial based upon after discovered Evidence
Pursuant to a rule 29(b) S.C.R.C.

Procedural History

The Petitioner is presently incarcerated in the South Carolina
Department of Corrections pursuant orders of commitment of the
Florence County Clerk of Court. The Florence County
Grand Jury Indicted the Petitioner in April of 2009 for
Murder and possession of a weapon during commission of a violent
crime.

G-5-21427, Counts (1+2) Attorney Jack W. Lawson Sr. Esquire, represented the Petitioner. April 16, 2010 A jury convicted the Petitioner as Indicted. The Honorable Thomas A. Russo sentenced Petitioner to life in Prison for Murder Concurrent (5) years for a weapons possession. Defendant filed a timely notice of appeal. State v. Daniels 401 S.C. 251, 731 S.E. 2d. (2012). The remittur was returned October 24, (2012) In which the defendant has now after his appeals found out that there are missing briefs. On February 1, 2013, the Defendant filed an application for Post Conviction relief. Defendant through counsel filed a motion to amend adding (13) ineffective assistance of Counsel Claims and also (1) ineffective assistance Counsel of appellate Counsel. The state filed a return on or about September 17, 2013, on September 22, 2014, Petitioner through counsel filed an Amendment to application for Post Conviction Relief. Pursuant Rule 15(b). An Evidentiary hearing was set for October 6, 2014, on September 29, 2014, Respondents filed a motion for Continuance and motion for Discovery. App. 704, 704 On September 30, 2014 Petitioner through Counsel, submitted a motion in opposition to Respondents request for a Continuance. App. 704 On October 6, 2014, a motion hearing was held in front of the Honorable Edgar W. Dickson.

Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondants were represented by J. Croom Hunter Esquire, Assistant Attorney General. After hearing both parties the Honorable Edgar W. Dickson made the decision to grant the Respondants Continuance but set the hearing date at the choice of Petitioner's Attorney and that this hearing was to take a full day. However as you can see that this order was not carried out as ordered by Honorable Edgar W. Dickson. However Judge D. Craig Brown stopped the hearing because of himself having somewhere to be at 4:00 p.m. The Court granted Respondants request for limited discovery this order was issued on October 22, 2014 which was filed on October 30, 2014 App 739.

An Evidentiary hearing was conducted at the Florence County Courthouse on April 14th and 17th of 2015 in front of Honorable D. Craig Brown. App. 745 Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondants were represented by J. Croom Hunter, Assistant Attorney General and John Thomas, Assistant Attorney General. Petitioner was called to the stand along with the following witnesses on his behalf Tristan Shaffer, Esquire, Garry Bostic, Johnny Ethridge Esquire, Andrew Williams

and Pete Skidmore. The Respondants called the following witnesses; Lieutenant Timothy Wade Compton, Grayson Smith, Esquire, and John Jeperinger Assistant Solicitor of the Twelfth Circuit. Petitioner attempted to admit 31 exhibits. Respondants admitted one exhibit. At the conclusion of hearing, Honorable D. Craig Brown instructed the parties to prepare proposed orders. Following the submission of proposed orders and order of dismissal was issued by the Honorable D. Craig Brown on June 8, 2015 and filed on June 10, 2015. App. p. 168.

On June 25, 2015 the petitioner timely filed a motion pursuant Rule 59(a) + (e), SCRPC App. p. 1200. Respondant filed a return on or about June 30, 2015 App. p. 1331. The Honorable D. Craig Brown issued an order of denial on August 5, 2015 which was filed on August 24, 2015. App. 1236. An appeal to the South Carolina Supreme Court was timely filed for writ of certiorari. The petitioner was denied on his writ of certiorari. The petitioner filed an application for Federal Habeas Corpus in the Fourth Circuit U.S. District of South Carolina that was denied see 5:18-CV-03064-RMG Daniels vs. Warden of Lee Correctional Institution. Case Number 40 (R+R) Docket number 29 as the order of the court and grants Respondants motion for...

Summary Judgment Docket # 21. The Court Denies the Petitioner's Petition for writ of habeas corpus 28 U.S.C. § 2254 and Denies Certificate of Appealability signed by Honorable Richard M. Gergal on 8/6/2019.

Argument

(1) After discovered evidence the Defense Counsel was incompetent due to illness of cancer.

Petitioner brings this motion for new trial based on After Discovered Evidence pursuant to Rule 29(b) F.R.C.P. A motion based on after discovered Evidence must be made (1) year after the date of actual discovery of the Evidence by the or after the date when the evidence could have been ascertained by exercise of able diligence. To prevail on a motion for a new trial based on after discovered Evidence. A Defendant must show (1) the evidence is such as to ~~would~~ probably change the result if a new trial is granted, (2) the evidence has been discovered since trial. (3) the evidence could not have been discovered ~~prior~~ to trial by exercise of due diligence;

A defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since trial (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v. Neels 333 S.C. 134, 508 S.E. 2d. 857 (S.C. 1998) criminal law key 938 (1).

Counsel for Petitioner was appointed by the Public Defenders Office in the Florence City-County Complex at 180 N. Tiby Street. to represent him on the charges of Murder and Possession of a weapon during Commission of a Violent Crime. Approximately 6-9 months after Petitioner was found guilty of both charges and sentenced to life in prison + 5 years for the weapons charge. Attorney for the petitioner made it clear on record that Jack Lawson Jr. Esquire passed away due to his battle to Cancer at this evidentiary Post Conviction Relief hearing. Due to the exercise of diligence and researching his case Petitioner could not

have discovered this prior to or at trial as Counsel was not privy in disclosing this most personal or intimate information to Petitioner

Petitioner Asserts that a person six to nine months from death of Cancer would in law, be deemed, medically incompetent to represent a person in Court on a Capital offense, As such a person would certainly suffer from Memory loss and other related ailments caused by damaged brain tissue.

Petitioner Further Asserts that Counsel's incompetence ~~greatly~~ affected the outcome of his trial. Petitioner uses the trial strategy of defense Counsel in trial transcripts that clearly show that the Counsel for Petitioner had a strong defense for DNA but didn't pursue the issue along with several other issues dealing with Cellphone illegally searched and seized, from clearly putting up a defense or proper defense for witnesses whom testified. Also the Defense Counsel failed to disclose all discovery to Petitioner and proceeded to trial without a proper defense against witnesses also the proper arguments at Jackson V Dero hearing,

In Spann v. State, 279 S.C. 399, 308 S.E. 2d. 518

(1983), the Court held that order to prevail on a new trial Motion, Petitioner must show that the after discovered evidence is such that it would probably change the result if a new trial was granted.

(1) Incapacity proceedings, The purpose of the incapacity proceedings shall be to determine whether the lawyer suffers from a physical or mental condition that renders the lawyer ability to practice law. (2) Proceedings involving the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings. The purpose of such proceedings shall be to determine ~~whether~~ rather the lawyer suffers from a physical or mental condition that renders the lawyer unable to participate in a disciplinary investigation or of assisting in the defense of formal proceedings pursuant to this rule. The Petitioner has the right to the proof that an investigation was conducted by the bar to assure according to this law that Attorney Jack W. Lawson was competent and that this illness didn't cause or effect the decisions made at Petitioners trial.

Conclusion

Therefore the Defendant named in the above case respectfully ask of this court to grant his motion and remand and vacate the sentence of this court pending a New trial

1st Notice

This day of January 7, 2020

Respectfully Submitted

Gregory D. Daniels #297449

Gregory D. Daniels

Second Notice

This day of February 26th, 2020

I ~~Debra Easterday~~ Notary Public do hereby
Certify that Gregory D. Daniels whose acknowledgment
is being taken personally appeared before me on
this day and acknowledged the due execution of
the foregoing instrument witness my hand and
Official Seal day of October 2020

Debra Easterday
Signature of Notary

My Commission expires

3/3/2026

2020 OCT 16 P 12: 22
DORIS FOULIOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
in Handwritten
CLERK OF COURT
FLORENCE COUNTY, S.C.

(10)

- II. The lower court erred in failing to make a finding of ineffective assistance and prosecutorial misconduct due to the allegations raised and testimony offered regarding Gary Bostic.

By way of his Amendment, Petitioner made the following allegation:

Ineffective assistance of trial counsel for failure to conduct an independent investigation and properly prepare Applicant's case for trial. Ineffective assistance of trial counsel for failure to call witnesses at trial. Specifically, failure to interview Gary Bostic and subpoena him for trial, which would have resulted in the discovery of a Brady violation and/or prosecutorial misconduct for failing to disclose the law enforcement interview of Gary Bostic. See attached Affidavit of Gary Bostic, Transcript pp. 598, lns. 22-25. Alternatively, prosecutorial misconduct and/or newly discovered evidence of a Brady violation regarding the failure of the State to disclose the law enforcement interview of Gary Bostic.

App. p. 695.

In support of this allegation, an affidavit of Gary Bostic dated September 15, 2014, was attached to the Amendment, which stated:

1. I affirm that I was interviewed by law enforcement regarding the murder of Corey L. Byrd on September 5, 2008.
2. I affirm that I was not contacted by Jack Lawson, Esquire, or anyone on behalf of Gregory D. Daniels prior to the trial held on April 12-16, 2010.
3. I affirm that I was not notified about the trial held on April 12-16, 2010 nor was I transported as a witness to the Florence County Courthouse.
4. I affirm that I am willing to testify to the above information.

App. p. 698.

At the evidentiary hearing, Gary Bostic was called to the stand. App. p. 768. He affirmed the information contained in his Affidavit. App. 773-4. He further explained that law enforcement spoke with him about the murder investigation of Corey Byrd. App. pp. 770-71. He told them he was not involved, and he heard nothing further from any of the parties. App. p. 771. He explained that he received probation for a charge involving an allegation of shooting at Corey Byrd. App. p. 770. He acknowledged that he had read through the trial transcript and was

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Witness Andrea Bradley

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(3) Copy of the Sworn Affidavit signed by Garry
Bostic at the Post Conviction Hearing of the Appellant.



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APR 14 2010

U.S. Department of Justice

United States Attorney

District of South Carolina

#1
PLAINTIFF'S
EXHIBIT
20
65 44-15

PUBLIC DEFENDER'S OFFICE
BY *[Signature]*

Wachovia Building
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1441 Main Street
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(803) 929-3000
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Reply to: Florence

January 20, 2010

John M. Ervin, III, Esquire
[Redacted]
Darlington, SC 29540

RE: Andre Marquise Bradley

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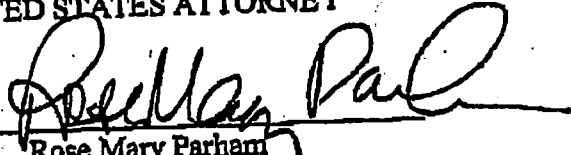
John M. Ervin, III, Esquire

January 20, 2010


Page 4

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W. WALTER WILKINS
UNITED STATES ATTORNEY

By: 
Rose Mary Parham
Assistant U.S. Attorney

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ANDRE MARQUIE BRADLEY

1/20/10
Date


JOHN M. ERVIN, III

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Summary Judgement Docket # 21. The Court Denies the Petitioners Petition for writ of habeas Corpus 28 U.S.C. § 2254 and Denies Certificate of Appealability signed by Honorable Richard M. Geraghty on 8/6/2019.

Argument

(1) After discovered evidence the Defense Counsel was incompetent due to illness of cancer.

Petitioner brings this motion for new trial based on After Discovered Evidence pursuant to Rule 29(b) F.R.C.P. A motion based on after discovered Evidence must be made (1) year after the date of actual discovery of the Evidence by the or after the date when the evidence could have been ascertained by exercise of able diligence. To prevail on a motion for a new trial based on after discovered Evidence. A Defendant must show (1) the evidence is such as to ~~would~~ probably change the result if a new trial is granted, (2) the evidence has been discovered since trial. (3) the evidence could not have been discovered ~~prior~~ to trial by exercise of due diligence;

A defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since trial (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v. News 333 S.C. 134, 508 S.E. 2d. 857 (S.C. 1998) criminal key key 938 (1).

Counsel for Petitioner was appointed by the Public Defenders Office in the Florence City-County Complex at 180 N. Ivey Street. to represent him on the charges of Murder and Possession of a weapon during Commission of a Violent Crime. Approximately 6-9 months after Petitioner was found guilty of both charges and sentenced to life in prison + 5 years for the weapons charge. Attorney for the Petitioner made it clear on record that Jack Lawson Jr. Esquire passed away due to his battle to Cancer at this evidentiary Post Conviction Relief hearing. Due to the exercise of diligence ~~in~~ researching his case Petitioner could not

have discovered this prior to or at trial as Counsel was not privy in disclosing this most personal or intimate information to Petitioner

Petitioner asserts that a person six to nine months from death of cancer would in law, be deemed, medically incompetent to represent a person in court on a capital offense, as such a person would certainly suffer from memory loss and other related ailments caused by damaged brain tissue.

Petitioner further asserts that Counsel's incompetence ~~greatly~~ affected the outcome of his trial. Petitioner uses the trial strategy of defense counsel in trial transcripts that clearly show that the Counsel for Petitioner had a strong defense for DNA but didn't pursue the issue along with several other issues dealing with cellphone illegally searched and seized, from clearly putting up a defense or proper defense for witnesses whom testified. Also the Defense Counsel failed to disclose all discovery to Petitioner and proceeded to trial without a proper defense against witnesses also the proper arguments at Jackson V Dero hearing,

In Spann v. State, 279 S.C. 399, 308 S.E. 2d. 518

(1983), the Court held that order to prevail on a new trial Motion, Petitioner must show that the after discovered evidence is such that it would probably change the result if a new trial was granted.

(1) Incapacity Proceedings, The purpose of the incapacity proceedings shall be to determine whether the lawyer suffers from a physical or mental condition that renders the lawyer ability to practice law. (2) Proceedings involving the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings. The purpose of such proceedings shall be to determine whether rather the lawyer suffers from a physical or mental condition that renders the lawyer unable to participate in a disciplinary investigation or of assisting in the defense of formal proceedings pursuant to this rule. The petitioner has the right to the proof that an investigation was conducted by the bar to assure according to this law that Attorney Jack W. Lawson was competent and that this illness didn't cause or effect the decisions made at Petitioners trial.

Conclusion

Therefore the Defendant named in the above case
respectfully ask of this court to grant his motion
and remand and vacate the sentence of this court
pending a New trial

1st Notice

This day of January 7, 2020

Respectfully Submitted

Gregory D. Daniels #297449

Gregory D. Daniels

Second Notice

This day of February 26th, 2020

Exhibits

- (1) Copy of the proffer Agreement of the states
Lay witness Andrea Bradley.
- (2) Copy of motion Filed by ~~Appellant~~ to the
Court of Common Pleas Twelfth Circuit and
Honorable D. Craig Brown.
- (3) Copy of the Sworn Affidavit from Gary Bostic
used at Post-conviction Relief hearing. As to
his involvement and how he would have been willing
to testify on the Defendants behalf.

I Debra Eastrop Notary Public do hereby
Certify that Gregory D. Daniels whose acknowledgement
is being taken personally appeared before me on
this day and acknowledged the due execution of
the foregoing instrument witness my hand and
Official Seal day of October 2020

Debra Eastrop
Signature of Notary

My Commission expires
3/3/2026

FILED
2020 OCT 16 P 12: 22
DORIS FOULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

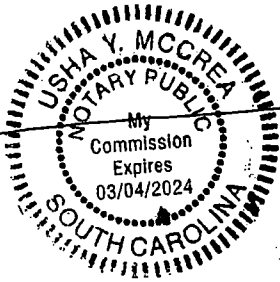
CERTIFIED: A TRUE COPY
DEBRA EASTROP
NOTARY PUBLIC
FLORENCE COUNTY, S.C.

(10)

Certificate of Notary

I Usha Y. McCrea Notary Public do hereby
Certify that Gregory D. Daniels whose acknowledgment
is being taken personally appeared before me on
this day and acknowledged the due execution of
the foregoing instrument witness my hand and
Official Seal day of February 18th 2023.

My Commission expires



Usha Y. McCrea
Signature of Notary

RECEIVED

FEB 27 2023

SC Court of Appeals

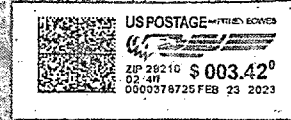
Gregory D. Daniels # 297949

F2-B-2247

Lee Correctional Institution

970 Wilsach Hwy

Bishopville SC 29010



RECEIVED

FEB 27 2023

SC Court of Appeals

South Carolina Court of Appeals

P.O. Box 11629

Columbia, South Carolina

29211

