

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL
CIRCUIT

RECEIVED

Apr 03 2023

S.C. SUPREME COURT

John D. Alexander, #194748,)
)
)
Applicant,)
)
)
vs.)
)
The State of South Carolina,)
)
)
Respondent.)

Case No. 2018-CP-42-03181

AFFIDAVIT

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2021 OCT 26 AM 8:30

FILED

COMES, John D. Alexander, Applicant / Affiant with an Affidavit and asserts that on 14 September 2018, he filed an Application For Post-Conviction Relief seeking relief. At present, the case is still pending. To better assist the Court in finding a Cause of Action the Applicant will show:

That on 6 May 2010, the Affiant filed its first Post-Conviction Relief application within the Court of Common Pleas, Spartanburg County. On 8 December 2011, the Honorable J. Mark Hayes, II convened an evidentiary hearing. Applicant was represented by John Holland, Esquire. And the State was represented by Suzanne H. White, Esquire.

The Affiant claims that twice during the hearing Judge Hayes stopped him from presenting and arguing the issues, material facts and evidence for which he was seeking Post-Conviction Relief holding: "It was not conducive to the Court's time." See

1.

Post-Conviction Relief Transcript of Record page 11 lines 4-9; and page 12 lines 7-10.

Consequently, the PCR Court's discretion barred the Affiant from presenting and arguing as a separate and distinct Ground:

In the event the PCR Court were to find trial counsel were not ineffective in failing to object and preserve for direct review the trial Court's Malice Charge permitting the Jury to infer malice from the use of a deadly weapon; "the applicant would then Amend and request the PCR Court to consider 'whether trial counsel's negligence in failing to object to and preserve the malice is direct review entitle applicant to a belated appeal where he would have won pursuant to State v. [redacted], 385 S.C. 597, 685 S.E.2d 802 (2009) reasoning?"

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The Appellate Court of South Carolina procedurally barred Affiant a direct review on the malice issue where Ms. Celia Robinson, Appellate Defender incorporated the Belcher ruling into Affiant's Direct Appeal that was currently pending within the Appellate Court at the time of the Belcher ruling.

Subsequently, where PCR Counsel refused to do so, the Affiant filed a timely Rule 59(e) Motion To Reconsider the PCR Court's Order of Dismissal seeking to present to and have the PCR Court consider the above mentioned ground for relief. However, Judge Hayes determined the motion was procedurally barred by hybrid

representation citing Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989).

Final, the Affiant petitioned the Supreme Court (prior to his PCR Writ of Certiorari) as well as the United States District Court of South Carolina (prior to filing its Petition For Habeas Corpus Relief) requesting an alternative remedy to have the Malice / Belcher issue considered by those Courts independent of the initial question of whether trial counsel was ineffective in not objecting and preserving the malice issue for direct review. However, each Court advised me to seek assistance of an attorney. That it cannot give legal advise.

Ultimately, the Affiant has been caught in a trap for the weary in regards to having any Court address the unconstitutionality of the trial court's permissive inference of malice from the use of a deadly weapon Jury Charge use to convict him where no other direct or circumstantial evidence of malice exists to sustain the conviction.

I, John D. Alexander, certify on this 20 day of October, 2021, I sent the Affidavit United States Post Services, prepaid, to Clerk of Court, Spartanburg County, 180 Magnolia Street, Spartanburg, South Carolina 29306

Respectfully Submitted,
John D. Alexander

Sworn and Subscribed
this 20th day of October, 2021
Shaquanna Brown
Notary Public For South Carolina
My Commission Expires 2/3/2026.

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