

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM BERKLEY
COUNTY

AUG 16 2023

SC Court of Appeals

COURT OF COMMON PLEAS

Roger Young, Circuit Judge

Case No. 2022-CP-~~08~~-01782

State of South Carolina, Respondent

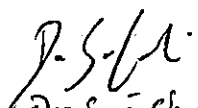
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Dan Surui Chisolm, Appellant

NOTICE OF APPEAL

Dan-Surui Chisolm appeals the order, Conditional Order of Dismissal and Order Denying Applicants Motion for Summary Judgment and Motion for Default Judgment, of the Honorable Roger Young dated June 29, 2023. Appellant received written notice of entry of this order on July 12, 2023, and signed for the same in view of a notary public on July 12, 2023.

Aug 1, 2023


Dan Surui Chisolm
4848 Goldmine Hwy
Keeshaw, SC 29067

Pursuant Rule 243 of the SC Rule of Appellate Court the appellant submits the following brief in support of the Notice of Appeal.

Relevant Law

SC Code Ann. § 17-27-45 (C) "If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed 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.

SC Code Ann § 17-27-20 (A)(4) The Act states a person may institute a PCR action if there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interests of justice.

"where a defendant alleges, in a successive PCR application facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and these facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. Robertson v State 418 SC 505

"when the State discloses Brady material the defense has a right to rely on its accuracy - ... accurate criminal background information on state witnesses is imputable to the State for Brady purposes" State v Durant 430 SE 98

"In the context of a guilty plea Brady is material" Gibson v State 334 SC 515

Argument Supporting Appeal

The applicant has established facts that require an exception to the statute of limitations and/or the prohibition against successive PCR's.

First and foremost the applicant/appellant has presented evidence to the lower court which directly challenges the record of the proceedings. The appellant has presented a lawfully constructed record of court action, spanning at least (14) fourteen years, in the form of a criminal history report/NCIC report.¹ This record is consistent and shows that Don Surui Chisolm, the appellant, was neither arrested or lawfully charged in relation to the crimes for which he is sentenced.

The respondents in this matter have relied upon documents and/or recordings which are the by products of a sham legal process.² This alternate record is inconsistent, incorrect, and immediately refutable in comparison to the lawfully constructed record.

There is a question of material fact as to which record is lawful and therefore should be relied upon.

Further the applicant has suffered circumstances, and actions beyond his control, which has caused him to be denied access, by the prosecution and/or its agents, to NCIC reports and/or background checks, which accurately reflects lawful arrests, indictments, or sentences, for approximately (14) fourteen years. (Exhibit A, B, C Dorchester county Bench Warrant 8/11/2011, Correspondence DCDC and SEDC)

The appellant has been in the custody and/or control of the Dorchester County sheriff's office and/or its agents since Nov 12, 2007. The appellant did not receive the first accurate report of

¹ The "record" the applicant refers to is the lawful record as provided by statute and developed through the SLED law enforcement database, as well as, the Federal NCIC database. SC Code of Law Ann. § 23-3-120, 23-1-90 & Code of Federal Regulations 28 CFR 20.20

² SC Code Ann § 16-17-735 Provides that documents such as warrants and/or indictments may very well "exist" but are no less sham legal documents if they are not lawfully issued.

his arrest and/or charges stemming from an arrest until Nov 29, 2021.

The appellants most recent PCR application, 2022-CP-08-01782, and grounds for relief are based upon facts and/or evidence discovered since 2021;

- On or about Nov 29, 2021 the applicant through the discovery process in an unrelated matter (2020-CP-35-00032, Chisolm vs SCDC) came into possession of the Wardens Jocket of 347831 Chisolm, Dansurui which contained; an NCIC report dated Sept 20, 2011, additional NCIC reports and/or documents tending to show fraud or conspiracy to commit fraud upon the court and person of Dansurui Chisolm, and NCIC reports on detainers and sentencing, which are contrary to records presented by the respondent in that they reveal all actions towards a lawful prosecution in the matter had been terminated and that, on or about July 26, 2012, the Charleston County solicitors office was proceeding with malicious intent and misconduct and in violation of the Brady standards.
- On or about March 13, 2022 the appellant, through service of subpoena duces tecum, received; an NCIC background report, in the name of Dansurui Chisolm, dated July 1, 2010, which was generated upon the authority of the Berkeley county solicitors office, but was not provided to the appellant prior to trial and/or sentencing; a June 17, 2010 Court Admin public record report, citing Dansurui Chisolm as the subject, and an internally produced Case Report Book, from the Charleston County Public Defenders Office. Which together and separately show lawful reason for which Chisolm was detained by the Berkeley County authorities, prior to extradition to Dorchester County, and the intent of assumed counsel to commit fraud upon the court and person of Dan Surui Chisolm.

- On or about Oct 14, 2022 the appellant received an updated NCIC criminal history of Don Surin Chrisolm, himself, and reviewed it with a SLED official. Review of this document revealed that the Berkeley county authorities did not report taking any lawful action against Chrisolm in connection to law enforcement case # 201004013692 of any point prior to Oct 14, 2022. The South Carolina Dept of Corrections is recorded as imposing sentences against Chrisolm on July 25, 2014 and Aug 8, 2014 citing warrants M331244, M331243, M325223 and no indictments in the matter. Also recorded was a sentence and entry made by the Darkester County authorities on Oct 16, 2014 which was exactly (2) two years after the appellant plead no contest to a plea agreement which stipulated a sentence to be imposed concurrently with Berkeley county/charleston county's judgement.
- On or about Jan 16, 2023 the applicant/appellant received an up to date criminal background check / NCIC for the states main witness, against the appellant, Kristen E. Graves (Zimmerman). This record revealed that Ms. Graves was the sole person lawfully reported to have been arrested in connection with law enforcement case # 201004013692. This is the very same case for which the appellant is sentenced and challenging. The report of Ms. Graves also list an arrest/conviction for filing false police reports on Jun 4, 2012, just 4 months prior to sentencing. The appellant had no previous knowledge of this report.

Each document of evidentiary value received by the appellant on each date mentioned meets the standards of after discovered evidence and/or Brady material which was withheld, or unavailable to the defense, prior to trial, and was in the possession of or known to the prosecution.

The appellant pled no contest/guilty upon the advice of counsel, whom advised him that the state would seek the death penalty if he did not accept a plea deal. The accepted plea agreement was a life sentence to run concurrent to a life sentence allegedly lawfully mandated by Darehester county.

The combined evidence discovered between Nov 29, 2021 and Jan 16, 2023 reveals an accurate criminal history of Don Sanni Chisolm which does not have any charges related to Berkeley county, and an accurate criminal history of the states main witness which shows she was the subject of lawful prosecution in Berkeley county. The appellant was not fully aware of his legal circumstances prior submitting to the advice of counsel.

The appellant was not aware of the evidence and facts derived from them prior to his 1st PCR hearing. In furtherance of these facts the appellant and record will show that certain actions which led to the development and discovery of particular material facts, now raised in a second PCR, did not take place until after the appellant filed his initial PCR.

The most relevant being the sentences the appellant challenges were not lawfully entered in the NCIC database until more than a year and a half after the appellant filed his original PCR. In fact it seems from the evidence that the PCR

application filed on Feb 18, 2013 was the catalyst for the entry of sentences against the appellant on July 24, 2014 and August 08, 2014 respectively.

Without access to the NCIC reports and facts derived from them the appellant could not have raised the grounds now presented in a 2nd PCR application and without access to this evidence the appellant was not in a position to fully and fairly present his claims to the 1st PCR court.

The record will show the appellant has been in the custody and control of the Dorchester County Sheriff's Office and its agents since Nov 12, 2007. The appellant provides this court with responses from both Dorchester County and the South Carolina Dept of Corrections whom have denied the appellant access to NCIC reports.

The record will show that the proper discovery requests were made and that in spite of this the appellant was not made aware of the evidence now available and presented. (See Applicant's Response to Motion for Summary Dismissal / Conditional Order) Aug 1, 2023

With each item discovered having a definitive date; Nov 29, 2021, March 13, 2022 Oct 14, 2022 and Jan 16, 2023 the appellant would show the court that by the least of these dates, the appellant would've been afforded until Nov 28, 2023, and until Jan 15, 2024 by the most recent discovery of a Brady violation attributable to the State, to file a PCR application. Thus the appellant believes his application for relief is timely and should be treated as such.


last the appellant would submit that his PCR is timely as one of the grounds for relief is based upon a lack of subject matter jurisdiction. The respondent has cited the general sessions court has jurisdiction over criminal matters, yet there is no available record showing that a general sessions court was lawfully convened or heard the matter. The Berkeley County general sessions court does not have a record of a plea hearing and an case # 10-65-08-6120. The Charleston County general sessions court does not have a record of a case/indictment # 10-65-08-6120. (See Applicants ~~Objection~~ Objection to Conditional Order)

The transcripts of the hearing in this matter was convened, as recorded and reported by the court reporter, under case no # 10-65-08-6120. This designation and an case/indictment number does not exist in the record therefore there is no definitive proof that Judge Markley Dennis was acting in the capacity of the general sessions court and thus he lacked jurisdiction to make a ruling in the matter at issue. (Exhibit D)

For the foregoing reasons the appellant respectfully objects to conditional dismissal of his PCR application and submits these issues for appellate review.

Aug 06, 2023

4848 Goldmine Hwy
Kershaw SC,
29067


Dan Savi Chuslm

AFFIDAVIT OF SERVICE BY MAIL

I, Don Surui Chisolm, a person presently incarcerated at Kershaw Correctional Institution, do hereby affirm that:

Notice of Appeal w/ Argument, Exhibits, & Order

was delivered into the hands of prison officials with the First Class Postage duly affixed and return address clearly indicated on the envelope for deposit in the United States Postal Service, addressed to the following person(s):

SC Court of Appeals

PO Box

Columbia, SC

29210

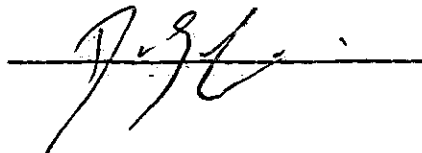
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AUG 16 2023

SC Court of Appeals

Dated: *Aug 6, 2023*

Respectfully Submitted,



THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

Certificate of Service

This is to certify that I, Dan Savi Christos, have this day caused to be served upon the person named below, the Notice of Appeal in the above captioned matter via US Mail/Interdepartmental mail by placing the same in the hands of the Kershaw Correctional mailroom staff addressed to the following:

Office of Attorney General
Donelle Dixon
PO Box 11549
Columbia, SC 29211

Berkeley County Clerk/Court
300 California Ave
Moncks Corner, SC 29461

Aug 1, 2023

D. Savi Christos
Dan Savi Christos
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Kershaw, SC 29067

