THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2013-000449

Raymond W. Carter,

Appellant,

V.

Donnie Myers, Solicitor, Lexington County, Tracey Carroll, Asst. Solicitor Lexington County, Brian Buck, Irmo Police Department, Scott Franklin, Irmo Police Department, Timothy E. Stephenson, SC Law Enforcement Division (SLED), George White, Ex father-in-law, Tammy Carter, (AKA: Tammy Kidd, AKA: Tammy Scrogham, Ex Wife, Barbara Keadle (AKA: Diane Hinkle) Investigator, LDSS, Francis Ross, LDSS, Paulette Jolly, Guardian Ad Litem,

Respondent,

APPELLANT INITIAL BRIEF

July 8, 2013
Columbia, SC

Raymond W. Carter
2219 Leesburg Road
Columbia, SC 29209-3055

Appellant Pro Se

Cc: File

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STATEMENT OF THE CASE

On May 13, 2002, Appellant plead guilty to 1-Count of Attempting or Committing a Lewd or Lascivious Act on a Minor S.C. Code Ann. 16-15-140 in Lexington County, and sentenced before the late Honorable Judge Marc Westbrooks to a maximum of 15 years in the Department of Corrections.

After service of seven (7) years and eight (8) months and three (3) days, the Appellant, without noticed or having previous knowledge of the fact, was transferred back to Lexington County Detention Center with a charge from the Attorney General's office stating the State of South Carolina had reason to believe that the Appellant was by means of statute, a sexually violent predator S.C. Code Ann. § 44-48-10 - 170. Appellant was compelled beyond his control to face a jury trial to make this determination.

Appellant remained in custody of the Lexington County Detention Center another year and two (2) months and eight (8) days where he was forced to a jury trial to determine if he met the statutory criteria of the statute at the behest of the S.C. Attorney General's office.

On November 2 - 3, 2008 a trial was conducted and because the Appellant had denied allegations that were transferred from the criminal court that brought him before this civil committment trial, he was found to meet the states criteria and therefore the jury's verdict found that, based soley on the evidence of the criminal court that the Appellant met the criteria to be committed to the S.C. Department of Mental Health for long-term control, care and treatment.

During the civil committment of Appellant, he had appealled the decision of the civil committment trial court and was attempting to exhaust his internal remedies. However, on January 8, 2010 and again on September 23, 2010 chief psychologist for the

Department of Mental Health determined on both occasions that Appellant "did not currently meet diagnostic criteria for a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence". [1] Further adding Appellant is "in the lowest possible risk category for sexual recidivism, one that is lower than the typical sexual offender".[1]

On October 25, 2010, the director for the S.C. Department of Mental Health offically notified Appellant and authorized his attorney of record to motion the court for his release.

A trial was conducted on June 30, 2011 where the court concluded that the State had not met it's burden to the continue confinement of Appellant in the SC Department of Mental Health. Before the jury was allowed to diliberate, the judge dismissed the jury and granted the directed virdict motion of the Appellant's attorney and granted by order, the immediate release of Appellant.

On June 22, 2012, Appellant filed (unknown to the Appellant at that time) what amounts to a claim for relief pursuant to S.C.R.C.P. Rule 60(b), seeking relief from a judgment or order and under law SCCA § 17-27-20(4) & SCCA § 17-27-20(5).

On February 7, 2013, a motions hearing was conducted before the Honorable Frank Addy, Jr. in Lexington County Court of Common Pleas, where the judge dismissed the case due to the statute of limitations had expired and dissmissing the case due to absolute immunity of the prosecuters in the case.

ARGUMENT

I. DID THE TRIAL COURT ERR BY DISMISSING ALL OR PART OF THE COMPLAINT DUE TO STATUTE OF LIMITATION HAD EXPIRED?

Pursuant to SCRCP Rule 60(b), the Appellant make seek relief from a judgment or order based on "mistakes, inadvertence; excusable neglect; newly discovered etc." (SCRCP Rule 60(b)), and specifically lays out a reasonable time for subsections "(1), (2) and (3) of not more than one year after the judgment, order or proceeding was entered or taken" (SCRCP Rule 60(b)).

Appellant believed he filed in a timely manner as the statute of limitations would only begin to toll after a judgment or order of the Court. Appellant had an appeal in court at the time of his release from the SC Department of Mental Health, by this order and did not get the opportunity to complete exhaustion of state remedies.

However, there are multiple parts and charges to the Complaint file by the Appellant. All actions complained about and all charges related to the original case on record should be filed pursuant to S.C. Code Ann. § 15-3-530 giving the Appellant three (3) years in which to commence an action based on the Appellee's actions.

An order was issued by the Hororable Judge William Keesley on June 30, 2011. The statute of limitation began to toll from that date.

Because there is no precedents in this particular case, new rulings on such cases should be decided by the Appellate Court. Appellant was in a treatment program based soley on the Appellee's actions. The entire regiment of the treatment program was based soley on the Appellee's action which ran the course of two (2) years and seven (7) months. Everyday, the Appellant was challenged in treatment based soley on the Appellee's actions.

II. DID THE TRIAL COURT ERR IN FAILING TO PROPERLY RECOGNIZE THE STATUTE OF LIMITATION TOLLED AFTER JUDGMENT OR ORDER ISSUED?

Due to the fact that because the writ of Coram Nobis has been abolished under South Carolina law, S.C.R.C.P. 60(b) and because Appellant was released and not able to further his attempt in exhaustion of administrative remedies, or right to Habeas Corpus decision, Appellant filed the complaint within the one (1) year statute as prescibed by SCRCP 60(b) and therefore renders Honorable Judge Addy's decision invalid.

The Appellant believes the Honorable Judge Addy did not take into consideration in light of the most recent decision in the case or the facts based on the judgment and imminent order to release the Appellant from custody. Nor did the judge take into consideration what the complaint had clearly identified that the administrative remedies had not been completely exhausted upon the trial courts decision to release Appellant.

The Appellant had no access to a law library, legal materials or assistance of legal counsel in his attempt to exhaust his remedies. He was committed as a mental patient in a mental hospital undergoing treatment, based soley on the actions of Appellees.

As for service of Appellees in the original complaint, 2 DSS service workers have retired and were at that time unlocatable. As for Solicitor Carroll she had moved and was not to be found on internet data bases. As for all those served by mail, it is the USPS job to ensure mail is delivered to the addressee especially when it is sent Certified Return Receipt Requested. By not doing so the USPS is at fault for not delivering the mail exactly to how the Return Receipt was made out to. How can they say they delivered the mail with Return Receipt Requested when the sole purpose of paying for this service is to ensure the parcels delivery. Appellant made all attempts as possible to serve Appellees and filed In Forma Pauperis when he file his complaint. Appellant can't get a job, has no job and can't afford direct, out of state service, nor can he afford to hire private investigator.

III. DID THE TRIAL COURT ERR BY DISMISSING ALL OR PART OF THE COMPLAINT THUS GRANTING PROSECUTORIAL IMMUNITY TO APPELLEES MYERS AND CARROL?

When prosecution fails to turn over to the defense, substantial evidence of innocence persuant to Brady v. Maryland, this failure is a reversible error.

Honorable Judge Addy granted the dismissal of the Appellant's complaint due in fact that it had been years since the Appellee's, if they had committed their prosecutoral misconduct. However, the damage the prosecution had on the Appellant continued which brought forward the case to an ultimate plea which was taken under duress, basically coerced by Assistant Solicitor Tracy Carroll.

Appellant had no way of knowing that evidence had been concealed, evidence that would have saved Appellant from the time in jail, ultimately pleading under said duress, committment to the Department of Mental Health and registration as a sex offender and as a sexually violent predator, evidence that would have proved his innocence. This information wasn't discovered until Appellant was released from the SC Department of Mental Health. Appellant filed within one year of the Order of Judgment from Honorable Judge William Keesley.

Prosecution violated Appellant's substantive due process rights, grossly. Prosecution procured false testimony, misconduct occured during investigation of the case.

Brady v. Maryland states:

"with holding exculpatory evidence violates due process where evidence is material to guilt or to punishment". "Exculpatory evidence is material if ther is a reasonable probability that the conviction or sentence would have been different had these material been disclosed". (Brady v Maryland, 373 US 83 (1963).

Appellant was unaware of such evidence, however he did convey verbally to every public defender and appelant defender in this case, from its induction that such evidence did exist and that the prosecution was with holding it from defense counsel to cooberate Appellants admissions.

This crime that the Appellant was forced into, never happened. The Appellant is factually and legally innocent. He committed no crime of sexual abuse of anyone, in the past, present or future. It is not in his mentality to commit such an offense, testing shows there is a lack of emotional or circumstantial causes to commit such an offense.

There was never a question on how the alleged confession was obtained, which was used against the defendant in order to get him to plead guilty and this same alleged confession was used again as evidence to convince a jury that the Appellant was a sexually violent predator. There was video tape for an alleged interview with the only victim that ever made any allegation in this case and that tape was never received by the Appellant's defense counsel and is still not on record or allowed to be retrieved. Multiple counts were brought against the Appellant based soley on the alleged confession, as there was only one child, the daughter of the Appellant who ever made an allegation of abuse. And this one child was coached by Appellee Tammy Carter and her father Appellee George White who feared that because Appellant had DSS Richland Co investigating neglect that they would lose custody of the children in the approaching child custody battle with the Divorce of Appellee Tammy Carter and Appellant.

Richland Co. Department of Social Service records were also withheld showing that Richland Co. DSS caseworker was interacting with these alleged child victims for almost a year, who had thoroughly question the children on numerous occassion as to physical, mental or sexual abuse. All responses and observations over the course of a year were negative.

However, it was shown through Brady that the case mysteriously transferred from Richland Co. DSS to Lexington Co. DSS where Appellee Tammy Carter and George White had a "family friend" working with Lexington Co. DSS and the very next day the case is transferred to the Lexington Co. office of DSS, the very next day, the allegations of sexual abuse surfaced and at that time the Appellant hadn't seen his three daughters with the exception of 2-2 hour visits (documented) in 6 months. This is why Appellee's buddies at Irmo police documented that the alleged offenses occured at the Irmo Residence instead of where the alleged was reported. This is impossible as now you would have the offense occuring in the family household in Irmo, Richland Co. DSS with the children, and the Appellee still living in the home with said alleged victims.

The prosecution in this case failed the Appellant in every way possible and did so maliciously with intent to do exactly what they did, force the Appellant into a plea and this triggered, the unknown by Appellant at that time, committment under the Sexually Violent Predator Act SCCA 44-48-10 - 110.

CONCLUSION

For the above stated reasons and pursuant to the law and rules of court, this Honorable Appellant Court should revere all or part of the judgment of the Court of Common Pleas and a trial should be held to rule on these violations and grant the relief sought.

Respectfully Submitted,

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