

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Terrell McCay, 256070
Applicant

VS.
state of South Carolina
Defendant

) IN THE COURT OF COMMON
PLEAS
) CIA: 2013-CP-10-199
) (Supplement)
SCRPC
) Rule 60(B)(1)(4)(6)
Rule 60(B)(1)(3)(4)(5)(6)
) MOTION
For New Trial
) 60(B)(1)(2)(3)(4)(5)(6)

FILED
2023 JAN 26 PM 2:20
CLERK OF COURT

SCRPC Rule 60(B)(1) provides relief from judgment in cases of "mistake, inadvertence, surprise, or excusable neglect" (b)(1) newly discovered evidence (b)(2), fraud (b)(3) when the judgment is void (b)(4), when the judgment has been satisfied or discharged (b)(5) and for any other reason that justifies relief (b)(6) SCRPC Rule 60(B)(2) Newly discovered evidence

This motion is brought under SCRPC Rule 60(B)(1) and (6). This motion is timely, whereas the judgment was entered on June 14, 2019

Applicant timely appealed, and the order was issued by the South Carolina Court of Appeals on September 8, 2022

Applicant filed ~~first~~ his first SCRPC Rule 60(B)(3) motion October 24, 2022 and November 14, 2022.

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Applicant has copies of all orders and will present each Order to the court during the hearing. This Court should have copies of each Order filed in connection with the above case.

Applicant argues "mistake"; PCR Judge committed a mistake oversight or omission in judgment dated June 14, 2019.

First, the PCR Judge's order was vacated by the South Carolina Supreme Court on February 1, 2019.

Second, The SC Supreme Court mandated in its Order that the PCR Judge had 30 days to issue a new order which complies with law. The PCR Judge issued an Amended Order on June 14, 2019, more than 90 days had elapse.

Third, The judgment has been prior vacated because the order did not comply with the law. In the PCR Judge Judgment, extraordinary circumstances of Applicant's case "cry" out for the exercise of that equitable power to do justice, absent such relief Applicant will remain imprisoned for 40 years, as a result of Post Conviction Relief Judge error. If not corrected would result in a judicial travesty because, the adverse party committed fraud upon court, by presenting perjured testimony by Cerenda Snowden who gave (3) different stories to police, and was threaten by police she was facing charges for the crimes Applicant was arrested for. See trial transcript "Cerenda Snowden testimony". The solicitor Burns wetmore, Peter McCray, explained to the Judge that they did not subpoena ~~evidence~~ material evidence

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despite the facts that Applicant, made specific request for the evidence under Brady v. Maryland.

During Applicant's trial, the solicitors told the Judge they had turned over all evidence to Applicant. Trial transcript pages, 51, 70, 75, ~~77, 78,~~ The state and the Judge stated that a 911 tape did not exist, and if it existed it was destroyed.

After Applicant was convicted, He later discovered that the 911 tape did exist. Applicant due diligence discovered, through affidavit of Kriston Neely dated December 11, 2015 that a 911 tape did exist when Applicant public defender filed a timely SCR Crim Rule 5 motion under Brady v. Maryland dated April 4, 2006. Applicant discovered evidence while PCR was pending.

The affidavit by Kriston Neely declares under penalty of perjury that the evidence was destroyed June 20, 2006.

The Judge explained during Applicant's trial had the 911 tape was disclosed, he would allow Applicant to play the 911 tape. See trial transcript page 636 line 1-5

The 911 tape was material evidence because it rebutt the State theory of the case, and could have been used to impeach the State's evidence.

Next, Applicant argued this during Post Conviction Relief hearing. See PCR hearing transcript date December 14, 2015

The PCR judge order states no Brady violation occurred, and also misapplied the law under Brady, this judgment is erroneous, and should be set aside, where the state committed fraud upon court intentionally.

Applicant met the burden for new trial based on after discovered evidence.

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The Jury was never informed that the adverse party destroyed evidence. Applicant requested a adverse jury instruction, and the Judge Roger Young stated "Well, there was no evidence that they destroyed anything that I ever heard, so your motion is denied. Trial Transcript page 654 line 1-5.

Applicant requested this jury charge during trial. See Trial transcript page 653 line 6-25.

Applicant raised this during his evidentiary hearing. See PCR transcript page 39 line 4-25; page 40 line 1-9. PCR Judge denied relief stating that No ~~fourteenth~~ fourteenth Amendment right was violated because the state did not have the evidence in its possession, and the Assistant Solicitor or the North Charleston Police Department engaged in deliberate acts to destroy evidence to support any allegations of spoliation of the 911 tape or CAD report.

Applicant's trial transcript was a part of the PCR record. As stated above, the Solicitor explained he nor his office subpoena the material evidence despite the fact public defender filed a SCRCRimp Rule 5 and 6, with proof of service. See ~~Motion~~ SCRCRimp Rule 5 and 6 motion filed dated March 30, 2006, and proof of service dated April 10, 2006. See Trial Transcript page 634 line 1-25 through page 635. The attorney's for the state committed fraud upon the Court.

The 911 tape was destroyed because it gives a brief description of the crime, told to the 911 dispatcher by a unidentified witness.

Applicant should have been granted a new trial, therefore based on fraud, Applicant is entitled to equitable relief.

The SC Supreme Court vacated the PCR judge order. An order granting relief would be final under the first test for finality.

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PCR Judge failed to review the statements given by Cerenda Snowden. The first statement, was sworn to under the penalty of perjury. In her first statement to police she stated she did not know who killed the victim. She ~~testified~~ stated in her statement that she was laying in the bed, when she heard loud knocking at her door, and a loud boom the sound of the door being kick open, and heard shots.

She stated when she enter her living room she found the victim covered in blood. She stated she ran to the front door and spotted someone running down the street, and then ran into her bedroom raise the window and jump out the window. See North Charleston Police Department witness statement of Carinda Williams Snowden attached to this motion. As Exhibit # 4

The evidence which was destroyed by police corroborate Carinda Williams Snowden first statement. See Trial transcript page 633 line 16--19; page 635 line 6-12 which is a part of this record.

This is Fraud upon the Court. The affidavit of Kristen Neely is newly discovered, because as Applicant attempted to explain to the trial judge Roger Young that evidence was destroyed in order to receive a adverse jury instruction, the judge stated no evidence was destroyed in this case. This is clear abuse of discretion.

The PCR Judge denied ~~Relief~~, and Applicant filed a timely SCRCP Rule 59(e) motion. See SCRCP Rule 59(e) which is a part of this record.

The adverse party committed misconduct by using peremptory strikes on black american jurors.

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Applicant, a black american, was convicted by 12 white american jurors. Applicant raise this issue during trial, PCR, and appeal.

According to Batson v. Kentucky, PCR Judge should have granted Applicant relief. During the trial, the adverse party reason for striking all black americans were because they were from North Charleston, ~~Applicant~~ but allowed white americans who were also from North Charleston. Applicant filed a SCRCP Rule 59(e)

PCR Judge's mistake and omission must be corrected. All these issues were raise during PCR, and under extraordinary circumstances Applicant should be entitled to set aside judgment and a new trial granted under SCRCP Rule 60(B)(6) where the state violated Applicant's right to a jury of his peers pursuant to Batson v. Kentucky, absent such relief Applicant will remain imprisoned for 40 years, as a result of Post Conviction relief judge error. As stated, prior judgment was vacated because by SC Supreme Court because the judge order did not comply with the law under SCRCP Rule 52(a).
See SCRCP Rule 60(B)(4)(5)

This motion is a Supplement motion as prior rule 60(B)(3)(4)(5)(2) were filed October + November of 2022.

This motion is not a Successive post Conviction relief, it does not raise New claims. Applicant motion this to set aside judgment and grant equitable relief. Applicant has also filed a cause of action under SCRCP Rule (9).

The solicitor allowed perjury. Perjury, or lying under oath, is the crime of telling a lie after giving an oath or affirmation promising to tell the truth to a public official.

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written statements still count, however, so if a person signs or acknowledges a false writing while under oath.

This constitutes Fraud upon Court. Applicant Judgment should be set aside based on Fraud upon the Court, where the prior judgment was vacated, where the Judges order did not comply with the law.

It is apparent from the record that the law under Brady v. Maryland requires to turn over all evidence in the government possession including police. The PCR Judge Order states the government does not have to turn over all evidence in a criminal matter, and denied Applicant relief. This is more evidence of Fraud upon the Court described in Chewning v. Ford Motor Id. "Fraud perpetrated by officers of the Court so that judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, 294 S.C. 525, 529, 366 S.E. 2d 44, 46 (Ct App. 1988) Emphasis Added. "It has also been defined as fraud that does, or at least attempts to defile the Court itself...."

These Fraudulent documents and scheme to defile the SC Supreme Court & Court of Appeals. The Judgment should be set aside based on Extrinsic Fraud, where the state allowed perjury by Cerenda Williams Snowden, Angela Bunker, and a failure to produce documents which was later destroyed in order to obtain a conviction.

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