

IN THE STATE OF SOUTH CAROLINA

In The Supreme Court

The Honorable Roger Young, Circuit Court Judge

Appellate Case No. 2023-001382

Terrell H. McCoy, 256070 Petitioner

v.

State of South Carolina Respondent

MOTION FOR LEAVE

MEMORANDUM OF LAW AND SUPPORTING AFFIDAVITS

Petitioner has recently filed Motion for leave regarding SCRPC Rule 60 (B)(1) based on the lower court failure to properly rule on Petitioners 60(B)(1). Petitioner request leave to file a proper Rule 29 SCR Crim; Rule 15; Rule 60 (B)(2) motion based on newly discovered evidence. Extraordinary Circumstances exist which require a new trial. See attached affidavit by Terance Prizzie. See attached Motion(s); See attached affidavit by Kriston D. Neely. During the course of Petitioners appeal based on denial of Post Conviction Relief, Clarissa Joyner nor Melissa Gay attached the Affidavit of Kriston D. Neely to Petitioners Writ of Certiorari, depriving Petitioner an effective appeal. The affidavit was introduced during Post Conviction Relief under S.C. code Ann. 17-27-45 (c). The PCR Court ruled that No Brady v. Maryland violation occurred. PCR Court order is mistake Pursuant to SCRPC Rule 60(B)(1), The PCR Court failed to distinguish the Materiality of the Suppress evidence under Brady, Kyles v. Whitley, 514 U.S. at 434, 115 S.Ct 1555, Cone v. Bell; Mooney v. Holohan 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791; Strickler v. Greene, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed. 2d 286 (1999) Napue v. Tiliacos, 360 U.S. 264 79 S.Ct 173, 3. L.Ed. 2d 217 (1959)

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Based on these facts, Petitioner request leave from this court on the following grounds Standard Oil Co. v. United States 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed. 2d 21 (1976) This is evidence of after discovered fraud. Solicitor Burns wetmore explained to the trial court all evidence was disclosed. (see trial transcript pages 47-80 631-636 and 653-654)

This affidavit by Kriston D. Neely shows a meritorious defense. During Jury selection, Solicitor scheme to defraud the court can be shown. Solicitor misrepresented that all black jurors had criminal records. This was not supported by the voir dire record. trial transcript page 26-44) Petitioner made several objections. Solicitor misrepresentation that juror 197 Anne Nicholson was a man, ~~and~~ had several criminal conviction(s). This was perjury. He also misrepresented that juror 136, he question her communication skills but juror 136 was a man named William Johnson. See Patton v. Yount, 467 U.S. 1025, 1036 104 S.Ct 2885, 81 L.Ed. 2d 847 (1994) Batson v. Kentucky

Solicitor also presented false statement(s) by Cevenda Snowden who testified she lied to police on numerous occasion. The false statement(s) were given willfully under SC Code 16-9-10. See trial transcript pages 93 line 21-25; pg 94 line 2-13

Solicitor also presented false testimony by Angela Bunker who testified that DNA (blood) that was found by Coroner Rae Wooten was not related to the victim. Angela Bunker committed perjury that blood on the walls, Door jamb at 5061 delta street was not related to the homicide. Trial transcript page 386 line 11-25; 387 line 1-5 389 line 16-25; 390 line 1-8; 391 line 5-14; 392 line 13-15; 395 line 11-20; 396 line 1-25; 397 line 1-25 401 line 11-17; 420 line 1-11; 421 line 11-22; 521 line 5-25; 523 line 9-25; 524 line 1-20; 525 thru 528

Lastly solicitor failed to correct Angela Bunker testimony that DNA was not popular in 2006, therefore she was unable to collect the DNA and perform test. See trial transcript pages: 324 line 22-25 through page 325 line 1-5 through pages. Compare to transcript pages 401 line 6-17, pg 401 and 402, page 389 line 16-24; pg 396 line 1-25

Coroner Rae Wooten was the Coroner who photographed the DNA on the raise window, she testified crime scene investigator were present but no one collect the DNA. Moreover the prosecutor's duty encompasses both impeachment material and exculpatory evidence, and it concludes material known only to Police investigators, and not the prosecutor. Along those lines, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government behalf. Brady v. Maryland, Kyles Id at 437, 115 S.Ct. 1555. See Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 248, 64 S.Ct. 997, 88 L.Ed. 1250 See transcript pages: (2)

The PCR Judge's Amended Order is error of law pursuant to Kemp v. United States 142 S.Ct 1856 (2022) Petitioner moves pursuant to SCRPC Rule 60(B)(i) Kemp was decided June 13, 2022. Petitioner filed his first Rule 60 B motion June 7, 2022.

The SC Court of Appeals affirmed Petitioner's denial of PCR on May 18, 2022. The Remittur was sent October 20, 2022. Petitioner's Rule 60(B) motions are timely.

But see In Re Brown, 333 S.C. 414, 511 S.E. 2d 351; Ex parte Robinson, 19 Wall 505, 510, 510, 86 U.S. 505, 22 L.Ed 205, 207.

The SC Supreme Court issued a Order on February 1, 2019. The SC Supreme Court mandated for PCR judge to issue an Amended Order within 30 days, and to issue a order which comply with the law. The Amended order was issued on June 14, 2019. The Amended Order does not Comply with the laws set forth above. The Power to punish for

Contempt is inherent in all courts... Spartanburg County Dept of Social Services v. Padgett, 296 S.C. 79, 370 S.C. 2d 872 (1988) A wilful act is defined as one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or disregard the law.

The PCR Court was aware that Solicitor Burns wetmore misrepresentation that Jenie Fowler subpoena went to another Jenie Fowler in attempt to defraud the trial Court. Public Defender Koelle Proctor misrepresented to the trial Court that there were two Jenie Fowler and therefore she subpoena the wrong Jenie Fowler, depriving Petitioner the right to fully present his case. Trial transcript pag 631 line 1-25 page 632 line 1-25) Compare to letter of Beth Woodall attached to this Motion.

Petitioner acted due diligently to discover on August 2, 2013, that there was only one Jenie Fowler that work for North Charleston Police Department, and both attorney committed fraud, misrepresentation to the trial Court. This deprive the Petitioner from fully presenting his defense. Chewing v. Ford Motor, 354 S.C. at 81, 579 S.E. 2d at 610

The SC Court of Appeals judgment was obtained by fraud. The trial Judge Roger Young ruled at the end of Petitioner's trial, there was no evidence destroyed. The PCR Court Amended Order does not Comply with the law. The affidavit of Kristin D. Neely proves a 911 tape did exist. The police Suppress the 911 tape before trial. The identity of the 911 caller was also suppress as result. See Monroe v. Angelone, 323 F. 3d 286 (4th Cir. 2003); Cone v. Bell; Brady v. Maryland, The PCR Court failed to distinguish the materiality of the Suppress identity of the 911 caller with respect to Petitioner's guilt and punishment. The withheld documents were material to the question whether Petitioner committed murder Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935) (3)

For these reasons, set forth, Petitioner move for leave for new trial, whereas the PCR Judges Amended Order date June 14, 2019, does not comply with law, where this highest Court has already accorded the PCR Court to issue a order which comply with the law. See Terrell McCoy v. The State appellate case No. 2017-000755 Lower Court Case No. 2013-CP-10-01994

This court has copies of the trial transcript dated February 2-6, 2009;
This court has January 27, 2009 hearing transcript; September 9, 2015 Summary judgment transcript; and PCR transcript December 14, 2015 evidentiary hearing transcripts.

Attached to this Motion for leave is the following:

- (1) Affidavit by Kriston D. Neely
- (2) Affidavit by Terance Prizzie
- (3) Letter of Beth Woodall - Compare to trial transcript pages 631 through 632
- (4) This Court should have all (3) False statement(s) by Cerenda Snowden, if this Court does not have the false statements, Petitioner will provide copies.

This motion is based on Kemp v. United States - 115 - 142 S. Ct. 1856, 213 L. Ed. 2d 90 2022, where the PCR court order fails to comply with law and is based on mistake Rule 60(B)(1) See 60(B)(4)(5) and (3); Extraordinary and exceptional circumstances exist. The lower court consistently failed to honor Petitioner due process right under 5th Constitution, and has consistently failed to honor the February 1, 2019 "Order" issued by this Court.

See attached motion regarding newly discovered evidence. This Rule 60(B)(1) is also based on the facts that Honorable Larry B. Hyman did not issue a Order (Summary judgment order) on September 9, 2015. The PCR Court ruled that Petitioner could not raise issue regarding trial Counsel failure to Subpoena Petitioner's witness at trial, and Petitioner did not appeal the Summary judgment Order. See June 14, 2019 PCR Judge Order, page 3, 9, 10 of 21; Summary judgment hearing pages 11-19. This is clearly a mistake pursuant to SCRPC Rule 60(B)(1). There was no Summary judgment order issued by the Clerk of Court, or attorney general. The Court of Appeal judgment was obtained by fraud.

Jenele McCoy, 256070
PCI Cox.
430 Oaklawn Rd
P.O. Box 50 29669

dated 9-25-23

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