Exhibit 1
1 of 2

The Supreme Court of South Carolina

Terrell McCoy, Appellant,

v.

The State, Respondent.

Appellate Case No. 2023-001382

ORDER

In August 2023, the circuit court denied Petitioner's numerous Rule 60(b), SCRCP, motions related to his 2013 post-conviction relief action. Days later, Petitioner filed a timely Rule 59(e), SCRCP, motion to alter or amend the circuit court's judgment. Before the circuit court could rule on Petitioner's Rule 59(e) motion, Petitioner filed a notice of appeal with this Court. Two weeks later, Petitioner filed a "motion for leave" with this Court in which he requested "to return back" to the circuit court for the court to rule on his pending Rule 59(e), SCRCP, motion.

Because Petitioner's Rule 59(e) motion has not been ruled on by the circuit court, we grant Petitioner's motion for leave and dismiss Petitioner's notice of appeal without prejudice as premature. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (noting when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature).

C.J.

J.

J.

J.

J.

Columbia, South Carolina
October 24, 2023

cc:
Terrell McCoy, 00256070
Danielle Dixon, Esquire

Exhibit 2

2013-CP-10-1994

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court, Judge

2013-CP-10-1994

FILED
2023 SEP -5 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTHCAROLINA _ _ _ _ _ _ _ Respondent

V.

Terrell McCoy 256010 _ _ _ _ _ _ _ _ Petitioner

NOTICE OF INTENT TO APPEAL

The Petitioner appeals from the Order denying Petitioner's Rule 60(B)(3)(4)(5) order of the Presiding Judge Roger Young dated 8-3-23

dated 8-28-23

Terrell McCoy 256010
PCI C.X. 3
430 Oak Lawn Rd
Pelzer SC 29669

Exhibit 3
1 of 2

The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 6, 2023

Terrell McCoy, 00256070
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Terrell McCoy v. The State
Appellate Case No. 2023-001382

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02.

Please note that the responsibility for ensuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Patricia A. Howard

CLERK

cc: Danielle Dixon, Esquire

Exhibit 4

jury. You just need to make sure that you raise that issue before you do that. If you want to protect something you better do it before, because it is important, before you empanel a jury. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Okay.

DEFENDANT: And you told me that I could give the people that I want to subpoena to court to Ms. Proctor.

THE COURT: I said that Ms. Proctor is going to assist you and that's -- once there are no other persons that she has, that the last administerial act that she will have to do, that is to consummate the subpoena requests, assuming that you -- are you paying for that, too, Ms. Proctor? Is your office paying for the subpoenas?

MR. PROCTOR: No, sir, I don't think that we pay for them. I had subpoenaed most of them. I had told him that -- I think that there's one of them on here that I was unable to find but we will do whatever we can to find her.

THE COURT: Okay.

A. No.

THE COURT: Finished?

MR. WETMORE: Yes, sir.

THE COURT: Okay. Redirect?

MR. TERRELL McCOY: No, sir.

THE COURT: All right. You can step down. Thank you. Do you have another witness?

MR. TERRELL McCOY: No, Your Honor. Hold on, Your Honor. All right.

THE COURT: All right. I'm going to send y'all out for a couple minutes while we take up some legal matters. Don't begin deliberations or discussions about the case.

(In open court, jury not present.)

MS. PROCTOR: He has something about a witness he'd like to address with you.

THE COURT: What would you like to tell me?

MR. TERRELL McCOY: We subpoenaed a James Fowler. He or she is a dispatcher that works for the North Charleston police department, but I found out that there were two J. Fowlers. I don't know how that happened. They got two J. Fowlers that work for the North Charleston police department, so the subpoena went to another J. Fowler, and I needed that witness to testify that a female made the call to the 911 dispatcher

because it was said that a male made that call.

I want the record to show a female called at 5:49 stating that her door got kicked in and not a male, and I needed that testimony. They're saying that person doesn't work for the North Charleston police department no more. They said it's two of them work there, and -- but they said she's on leave and they don't want -- they're not going to allow her to testify. State is not going to allow her to testify, but I subpoenaed her.

THE COURT: Have you been able to subpoena the correct witness?

MS. PROCTOR: Let me clear it up.

MR. TERRELL McCOY: I think it's only one.

MS. PROCTOR: There are two, but we subpoenaed the wrong one. I had asked the state if they would stipulate to the report so we wouldn't need to get her, and the state said even if she came, they are objecting to her testimony anyway because it would be hearsay for what she is having to say.

So I wanted to clear that up so we could move on with the case. If they're going to object to her testifying anyway and she's not allowed to, then we don't need to go find her. She's dispatch.

THE COURT: She's a dispatcher? You don't have a 911 tape?

Attachment 15 2 of 2

Exhibit # 6

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSION COURT	COUNTY: CHARLESTON
THE STATE OF SOUTH CAROLINA v. Terrell McCoy	CASE NO.2006-GS-10- 4987
	SUBPOENA FOR ☑ PERSON ☑ DOCUMENT(S) OR OBJECT(S)

TO: Pfc. J. Fowler
N. Charleston P. D.
4900 Lacross Rd.,
N. Charleston, S. C. 29405
554-5700

PLACE	COURTROOM TBA GENERAL SESSIONS
CHARLESTON COUNTY JUDICIAL CENTER 100 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401	DATE AND TIME: Week of February 2, 2009 09:00am And all subsequent dates until case is disposed of.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).

LIST DOCUMENT(S) or OBJECT(S)
Upon receipt of this subpoena, please call Inv. Verdell Young, 958-1866 (DL) or 509-7557 (Cell), leaving a contact number where you could be reached.
Case Number: 2006010576

*** PLEASE NOTE: TELEPHONE STANDBY - In order to inconvenience you as little as possible, please call the Public Defender's Office (843 958-1850) at 9:00am and 1:00pm on the date stated above, and each day thereafter, until this case is called for trial for further information as to the time when you are needed in court for your testimony.**

UPON ARRIVAL ON COURT DATE, REPORT TO THE PUBLIC DEFENDER'S OFICE

This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT	DATE
Julie J. Armstrong	January 28, 2009
(BY) DEPUTY Ronald J. Ruyan	

This subpoena is issued upon application of the	ATTORNEY'S NAME AND ADDRESS
☐ SOLICITOR ☒ DEFENDANT	Prose Terrell McCoy Lorrell Proctor ASSISTANT PUBLIC DEFENDER CHARLESTON COUNTY PUBLIC DEFENDER'S OFFICE O.T. Wallace County Office Building 101 Meeting Street, 5th Floor Charleston, South Carolina 29401-2214 (843) 958-1850

Attachment 15, 1 of 2

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
LEGAL DEPARTMENT

Exhibit # 6

August 2, 2013

Terrell McCoy, #256070
PCI C X 9
430 Oaklawn Road
Pelzer, SC 29669

Re: FOIA

Dear Mr. McCoy,

I am in receipt of your second FOIA request regarding the identification of a North Charleston Police Officer named James or J. Fowler. The documents I previously sent to you indicated that there was no active officer named Fowler in 2009. However, in speaking with a clerk from Human Relations, I learned that dispatchers have a different classification. While they technically fall under the North Charleston Police Department, they are considered civilian employees. We did have a female dispatcher named Jenie Fowler who was employed in 2009. She did not appear in the first search because that search was for police officers only and did not include any civilian employees. I hope this information is helpful to you. Ms. Fowler is no longer an employee of the North Charleston Police Department. She is currently employed by Charleston County in the Consolidated Dispatch Center.

Sincerely yours,

Beth Woodall

Beth Woodall
Legal Department

TBW/hs

Exhibit 1 4
1 of 4

(The following proceedings were had December 14, 2105, Charleston County Circuit Court, Judge Deadra Jefferson, 10:21 a.m.)

THE COURT: State ready to proceed?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Applicant ready to proceed?

MR. DAVIS: If you could give me a moment; I'm letting Ms. Proctor know that we called this one.

(Brief pause)

MR. DAVIS: Your Honor, may it please the Court?

THE COURT: Give me one second.

MR. DAVIS: Yes, ma'am.

THE COURT: Did you-all get an order to Judge Hyman, that he specified in his form order?

MR. DAVIS: To whom, Your Honor?

MR. JOHNSON: Judge Hyman's order.

MR. DAVIS: I apologize, Judge, no. And that's something -- on the record, no. I wish I could tell the Judge when I saw that form. That's a drop-the-ball on my part, obviously, summary judgment in favor of the State and I did not.

I have in my notes that I was to

provide an order against my client, and so I did not. Within the past -- not long, Your Honor. I apologize, but I have seen it --

THE COURT: I don't know that it's necessary because I think his finding on the record, as well as his form order, is clear.

MR. DAVIS: I understand, Your Honor, but, for the record, I did not see that until not long ago and I did not provide --

THE COURT: I wouldn't lose any sleep over it. I was just curious when I saw it because I didn't see it in the file, and I wanted to make sure.

MR. DAVIS: Yes, ma'am.

THE COURT: Let's see here. The applicant filed his application for post-conviction relief on April 4th of 2013. The matter was appealed to the court of appeals which was affirmed in Opinion Number -- it's an unpublished opinion -- 2011 UP 471. It was tried by Judge Young, and that opinion was filed October 26th of 2011.

At that time, Mr. McCoy represented himself. He was sentenced to 40 years confinement by Judge Young on 3/5/09, on the charge of murder. And that is Indictment 2006-GS-74987. He was

originally sentenced to 50 years on 2/6/09 -- I think I have my dates wrong, I apologize. No, I have them right. I couldn't read his handwriting -- on 2/6/09. It appears Judge Young amended that sentence in March and reduced it by ten years.

A motion for summary judgment was heard on September 9th of 2015, and that was heard by Judge Hyman. And the record reflects that on January 27, 2009, Judge Dennis heard a motion to relieve Ms. Proctor as counsel and for the defendant to proceed pro se. There was a full Faretta hearing and Judge Dennis granted the motion and relieved Ms. Proctor, but asked her to remain as standby counsel.

Trial was held on February 2nd through 6th of 2009 before Judge Young. The applicant represented himself, the jury convicted him of murder, he was sentenced as I've already indicated for the record. There was a timely notice of appeal which was filed, which was denied, as well as a petition for rehearing, as well as the application for certiorari to the supreme court. The remittitur was issued on March 8th of 2013.

Just for the record, the State filed its return on May 19th of 2014, to the application

for post-conviction relief.

Going back to Judge Hyman, apparently, the State at that time moved for a motion -- made a motion for summary judgment, and he found at that time that since the applicant proceeded on his own that he could not make an application or sustain an application for ineffective assistance of counsel, at least at the trial level.

Also, within the order relieving Ms. Proctor, Judge Dennis noted that she was relieved of any post-conviction relief action effective after 12:00 p.m. on January 27th of 2009. Judge Hyman granted summary judgment as to trial counsel, and based on this transcript it involved all parameters of her representation prior to being relieved.

The only issues that would be left then would be the alleged prosecutorial misconduct as well as appellate counsel.

Was the summary judgment ever appealed --

MR. DAVIS: No, Your Honor. And --

THE COURT: The State still takes the position that any alleged prosecutorial misconduct is a direct appeal issue?

Attachment 41

Exhibit 8

Appendix

AFFIDAVIT OF KRISTON D. NEELY

I, Kriston D. Neely, after being duly sworn, say:

I am employed with the Legal Department for the City of North Charleston, South Carolina.

In that capacity, I was involved in litigation with Terrell McCoy in his claim against the City and the North Charleston Police Department (Civil Action #: 2013-CP-10-06876).

In the course of that litigation, the City admitted that a 911 recording and CAD report pertaining to Mr. McCoy's criminal trial (CADOPERATION REPORT #: 2006036162/ Indictment #: 2006-GS-10-4987) was destroyed on (Recording) June 25, 2006, and (CAD Report) March 25, 2009, in compliance with the retention policies of the State of South Carolina and the City of North Charleston.

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME
This 11th day of December, 2015

Notary Public for North Carolina

My Commission Expires: 11-24-2024

DEFENDANT'S EXHIBIT 4 Mem Apr cants

260

Exhibit 9

CITY OF NORTH CHARLESTON

Call Number 2006036162 Printed 04/05/2006 11:16 AM

[03/25/2006 05:51:36 : WHISENAA]
55 COPIED AND 24 COPIED

[03/25/2006 05:51:01 : YOEMANF]
NORTH 1033

[03/25/2006 05:49:49 : WHISENAA]
242 C7

[03/25/2006 05:49:14 : JFOWLER]
FEMALE CALLED ADV HEARD SOMEONE BANGING ON THE DOOR AND THE DOOR FLEW OPEN AND A BM WAS C2D SHE DOES NOT KNOW WHO HE IS

[03/25/2006 05:49:00 : WHISENAA]
58 COPIED

[03/25/2006 05:48:04 : JFOWLER]
Cross streets: REBECCA ST/WILLIS DR

NBH:RUSSELLDALE
FEMALE IS 1023 AT THE NEIGHBORS ADVISING SHOTS FIRED AND POSS SOMEONE IS C2D AT HER RESD

Press Release Notes

Location Comment

Department/RMS OCA Numbers

Department	OCA Number	RMS Jurisdiction
NCPD	2006010576	SC0100800

Call Dispositions

Date Time	Disposition
2006/03/25 13:29:07	WRITTEN REPORT TAKEN

Call Complaints

Date Time	Complaint	Action By
3/25/2006 05:59:53	1087	JFOWLEI

852

witness being excused? From the State?

MR. JOHNSON: No, ma'am.

THE COURT: From the defense -- the applicant, I'm sorry?

MR. DAVIS: No, Your Honor.

THE COURT: Mr. Dudek, thank you.

THE WITNESS: Thank you, Judge Jefferson.

THE COURT: Have a good day.

THE WITNESS: You too, ma'am. Thank you.

THE COURT: All right. The applicant may proceed.

MR. DAVIS: Your Honor, we would call Burns Whetmore.

THE COURT: Mr. Whetmore, please come to the stand to be sworn please.

THE WITNESS: Yes, ma'am.

MR. JOHNSON: Your Honor, at this time, I want to renew that objection as to prosecutorial misconduct.

THE COURT: Is that why Mr. Whetmore is being called?

MR. DAVIS: Yes, Your Honor.

THE COURT: Your client raised that

issue at page 653, and the Court heard it. He raised it in a motion of limine. The judge found there was no basis for him -- for prosecutorial misconduct in terms of -- I believe the word he used was destroying evidence, tampering with evidence, and stuff like that. And he found there was no basis in the record for it and denied the motion, so it was preserved. Mr. Dudek had the availability to look at it and decide if it was a viable issue for appeal.

I'm trying to figure out what more Mr. Whetmore could add to that, other than raising it for a direct appeal issue. What can he add to what's already in the record?

MR. DAVIS: If you would give me a minute.

THE COURT: I thought the way you all raised it originally was silent, but, again -- I read these a couple of weeks ago. And now looking at my notes again, it was raised several times in the record and ruled directly on by the judge, as well as the voluntary manslaughter objection and the Batson motion.

MR. JOHNSON: To add to that, the Neil v. Biggers hearing was also in the transcript.

THE COURT: Uh-huh.

(Off the record.)

MR. DAVIS: Thank you for the time to talk to my client. We understand that you have the entirety of the trial record with you, and with that being a part of this record, we will agree that Mr. Whetmore does not have additional information since the time of that trial that we would add, other than what was put in on direct.

THE COURT: Thank you. Mr. Whetmore, you're excused.

MR. WHETMORE: Thank you, Judge.

THE COURT: You may proceed.

MR. DAVIS: Judge, may I approach?

THE COURT: Uh-huh.

MR. DAVIS: The one issue my client wanted me to raise is the fact that in that record Mr. Whetmore indicated, I don't think there was a 911 tape.

THE COURT: He had to raise that at the time of trial. That's why when you represent yourself you have the duty to discover everything that was available to you at that time. That would be a direct appeal issue, he raised it, he should have had that at the time.

I cannot now go back behind the issue and decide it, basically creating an entirely new record. It doesn't work that way.

MR. DAVIS: Your Honor, I would ask that this exhibit be marked as Applicant's Number 1.

THE WITNESS: What is it?

MR. DAVIS: It's an affidavit from Chris Neely of the North Charleston Legal Department.

THE COURT: Indicating?

MR. DAVIS: Indicating that a 911 call and CAD report did exist at the time of Mr. McCoy's trial. It was destroyed and/or taped over at a later date. Of course, Mr. Whetmore would not have known that, and he could not have testified to this issue.

THE COURT: What's the State's position?

MR. JOHNSON: Your Honor, I have no problem with that. Let me check one date.

THE COURT: Certainly.

MR. JOHNSON: Give me two seconds, Your Honor. I have no problem with the affidavit. Mr. Davis and I have been in contact concerning this;

however, I still don't think it shows anything that could not have been raised on direct appeal.

THE COURT: I agree. It will be marked as Applicant's 1.

(APPLICANT EXH. 1, Affidavit, was marked for identification.)

MR. DAVIS: That is now part of the record, Your Honor?

THE COURT: Yes.

MR. DAVIS: Thank you.

THE COURT: It doesn't change anything. It's a direct appeal issue. And when you represent yourself -- a lawyer would have gone back behind it, would have researched it, would have subpoenaed whoever they needed to subpoena, and would have done whatever needed to be done.

It doesn't really raise any new issue that Mr. McCoy did not raise at that time, which as he said, something was destroyed, hypothecated, hidden, whatever. It was his duty at that time to present the Court with evidence of that, and he didn't. And so he's the architect of his own dilemma.

The lawyer would have pursued it and found out and got that information, but I really

Exhibit 11

there. That night when it happened, your identification, your vision, your viewing of the defendant, was it clouded by anything, clouded by sleep?

A. I don't understand.

Q. Were you groggy? Were you asleep or were you focussed on what was happening?

A. I was focussed.

Q. Were you high or were you strung out on any kind of drug or drug?

A. No, sir.

Q. So your memory wasn't cloudy?

A. No, sir.

Q. Were your observations blocked by anything?

A. No, sir.

Q. You were clearly able to see what happened?

A. Yes, sir.

Q. Clearly able to see the defendant?

A. Yes, sir.

Q. And you knew him?

A. Yes.

Q. Now, you talked to North Charleston police department three different times.

A. Yes, sir.

Q. First time you talked to them was right after this murder happened.

A. Yes.
Q. And in that first statement, were you honest with North Charleston police department?
A. No, sir.
Q. Okay. At that point, did you look at any pictures?
A. No, sir.
Q. Okay. And at that point, the first time you talked to them and you were not honest with them, did you tell them that the defendant committed this murder?
A. No, sir.
Q. So you didn't give up his name at that point?
A. No, sir.
Q. The second time you talked to North Charleston police department, when did that take place?
A. It was the same time, right after the first time.
Q. So just shortly after the first statement, you gave them a second statement?
A. Some hours had went past the second time.
Q. It was that same day?
A. Yes, sir.
Q. And you gave them a second statement?
A. Yes.
Q. And in that statement, did you identify the defendant?

A. Yes, I did.
Q. Do you remember telling them that the guy that did it was your boyfriend's brother?
A. Yes, I do.
Q. Do you remember telling them that his street name is Sleezie Boy?
A. Yes.
Q. And you could see him well, and you identified him the second time you spoke to North Charleston?
A. Yes.
Q. Now, at that time, did you look at any photographs with North Charleston police?
A. Yes.
Q. Okay. Did you look at single pictures or did you look at multiple pictures on the page?
A. Multiple.
Q. Okay. Now, when you looked at these pictures on the page, did North Charleston police department tell you, Hey, the guy that we think did this is in here?
A. No, sir.
Q. Did they tell you that they had a suspect in this lineup?
A. No.
Q. Did they tell you who to pick?
A. No.

and he ate at my house, and he done been around me and my daughter, and I know him.

THE COURT: Okay. That's fine. The issue about your brother isn't relevant at this time. We're just talking about the identification process, which she came to say that she told the police that she knew you before they showed the photographs to her.

Okay? So that is really what you need to focus on. That other stuff, I'm going to let you get into that other stuff during the trial. We're going to focus on one narrow issue right now.

BY MR. TERRELL McCOY:

Q. You gave three different statements for that, but in two of your tapes, you said you didn't know who committed this crime, right?

A. Repeat that.

Q. In two of your statements, you stated that you didn't know who committed this crime, right?

A. In my first statement.

Q. And your second statement, you said that -- hold on.

THE COURT: I know this is kind of splitting hairs, and you don't understand the distinction, but what the statement says, ultimately, is not necessary for me to know right now. It's the circumstances under the

Exhibit 12

RE:2013-CP-101994

TESTIMONY

To: Whomever It May Concern:

I, Terence L. Prizzie Terence L. Prizzie, am making a sworn statement on the events that happen March 24th of 2006 to the best of memory. I lived in the Blakely, Georgia during 2006. On 3/24/2004 at night (unable to remember the exact time) I received a call from my younger brother, Terrell L. McCoy asking me for directions to Blakely from Atlanta, Georgia. My brother said he was in Atlanta selling his CDs of the music record he made, and he wanted to visit me since he was in Atlanta. I gave him directions and he got to my house around 6am or 7am in the morning which was March 25, 2006. He stayed until March 26, 2006 because one of my younger cousins called from Charleston, S.C. saying my brother on the news as a suspect in a murder. My brother and I talked about the situation and decided to hurry back to Charleston so that he wouldn't be a fugitive. That is the end of my testimony.

2023 APR 27 PM 12:11

CLERK OF COURT

Sincerely,

Terence L. Prizzie

TAKIYAH L. SHEPPARD
COMM. EXP.
NOTARY
PUBLIC
07-23-2031
SOUTH CAROLINA

4/27/2023

Takiyah L. Sheppard

07/23/2031

c: Judge Young

Exhibit 13

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2013-CP-10-1994

Terrell McCoy, 256070

Applicant

V.

State of South Carolina

Respondent

RULE 29 SCRCrimP
Post Trial Motion
Rule 60 (b) (1) (2)
Rule 59 (b)
Rule 15 (b) Amendments to Conform to the evidence S.C. 15-13-920

FILED
2023 OCT 10 PM 2:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY: [illegible]

Terrell McCoy, Me, (Hereinafter called Applicant

This motion is brought to this court based on the affidavit filed by Terance Prizzie on April 27, 2023. The affidavit attest that Applicant was with him on March 25, 2006, the date and time the victim, Antwan Bryant was killed. Petitioner has exercised due diligence to discover the evidence & could not have presented the alibi witness during trial based on ineffective assistance of appointed counsel Lorelle Proctor failing to interview or call witnesses prior to trial.

During a hearing held on January 27, 2009, Judge Markley Dennis Ordered Lorelle Proctors last administrative duty to subpoena witnesses. Applicant was indigent and could not perform these duties without assistance from the State. See Ake v. Okla homa, 470 U.S. 68, 77, 105 S. Ct 1087, 84 L.Ed. 2d 53 (1985). PCR Counsel failed to Contact Mr. Prizzie prior to evidentiary hearing constitute ineffective assistance of Counsel under Martinez

Pursuant to SC Code Ann. 17-27-45 (C) 2014. Trial counsel was ineffective under Strickland v. Washington 466 U.S. at 699, 104. Sct. 2052. Petitioner motions this Court pursuant to SCRCP Rule 15 (b) where a Judgment was entered May 5, 2016. This motion brought pursuant to Rule 29 SCRCrimp, SCRCP Rule 59 (b), and 60 (b) (2), SCRCP. During a Summary Judgment hearing held on September 9, 2015, Judge Hyman Continued the evidentiary hearing until December term. There was no Summary Judgment issued to the Applicant by the attorney general or the Judge. PCR Judge Deadra Jefferson ruled Judge Hyman issued an Order and Applicant did not appeal. This ruling is mistak

and error of law pursuant to SCRCP Rule 60(B)(1). Exceptional Circumstances exist. See Kemp V. United States -- U.S. -- 142 S.Ct. 1856, 213 L.Ed. 2d 90 2022, that warrants a new trial.

In regards to Applicant's newly discovered evidence, Terance Prizzie affidavit was filed in the Clerk of Court. Terance Prizzie testimony would change the result of a new trial was granted, has been discovered since trial and could not by exercise been discovered based on trial Counsel ineffective assistance. Lorelle Proctor failed to Subpoena Terance Prizzie and Jenie Fowler. Terance Prizzie testimony is material to the issue innocence, and is not merely cumulative or impeaching. See affidavit of Terance Prizzie; See January 27, 2009 hearing transcript page 29 line 8-24; September 9, 2015 Summary Judgment hearing page 11-19; A hearing is necessary. Extraordinary Circumstances exist. State V. Irvin, 270 S.C. 539, 545 243 S.E. 2d 195, 197 (1978); State V. Porter, 269 S.C. 618, 621, 239 S.E. 2d 641, 643 (1977) Clark V. State, 315 S.C. 385, 434 S.E. 2d 266 (1993); Underwood V. State, 309 S.C. 560, 425 S.E. 2d 20 (1992)

Petitioner moves this Court pursuant to 15-3-920 of the 1976 code of laws of South Carolina which provides in pertinent part: The Court may, before or after judgment, in furtherance of justice and on such terms as may be proper, amend any pleading ... by ... (C) inserting other allegations material to the case or (d) when the amendment does not change the substantially the claim or defense. See Also SCRCP Rule 71.1 (a)(e), SCRCP and 60(b)(1), SCRCP, like the rest of these rules of civil procedures apply in post conviction Relief Proceedings under the Uniform Post Conviction Act only to the extent that [it is] not inconsistent with applicable state statutory provisions and rules. See Post Conviction Statue; SC Code of law 1976 § 17-27-30 Jurisdiction of Court, S.C Code Ann §§ 17-27-10 to 120 (1985) SCRCP Rule 15(b)

(1) Trial Counsel Lorelle Proctor was ineffective for failure to subpoena favorable Witness Terance Prizzie, and North Charleston Police Department 911 dispatcher Jenie Fowler in violation of this Constitution of the United States, and the Constitution of laws of this State. Strickland V. Washington, 466 U.S. 668, 695, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Ard V. Catoe, 372 S.C. 318, 331, 642 S.E. 2d 590, 596 (2017), Cert denied, -- US -- 128 S.Ct. 370, 169 L.Ed. 2d 247 (2007); Caprood V. State 338 S.C. 163, 169, 525 S.E. 2d 514, 517 (2000)

I specifically told my appointed public defender back in 2006, that I was with my brother Terance Prizzie on March 25, 2006, and that I was not in Charleston, South Carolina. I was in Atlanta on 3-24-06, a left for Blakely, Georgia that night. I arrived to my brother's house March 25, 2006 around 6am to 7am. I gave Lorelle Proctor my Mother number to contact my brother so she could subpoena him for my trial on February 2, 2009

She did not subpoena any of my alibi witness the first or second trial, she was deficient in her performance. I also told her to subpoena Jenie Fowler, the dispatcher who received the 911 call on March 25, 2006. She failed to subpoena Jenie Fowler and during the second trial she told me she subpoena the wrong Jenie Fowler. She also misrepresented to the trial judge Roger Young that there were two Jenie Fowler. This was not the truth. (See trial transcript page 631 line 1-25, page 632 line 1-25) After i was wrongfully convicted, i exercise due diligence under the Freedom of Information Act and learned through Beth Woodall, North Charleston legal department that there was only one officer named Jenie Fowler that work for North Charleston Police Department during February 2, 2009. My public defender was ineffective and i was prejudice by deficient performance. My public defender also failed to receive the 911 tape from North Charleston Police Department. She had failed to investigate the whereabouts of the 911 tape. The 911 tape was later destroyed on June 25, 2006. There is reasonable probability that, but for counsel's error, the result of the trial would have been different.

(2) Trial Counsel Lorelle Proctor was ineffective for failing to investigate. After-discovered evidence show a 911 tape did exist for the March 25, 2006 murder. The undisclosed evidence would had reveal the crime happened a different way the State witness testified to. This is a clear Brady violation. The State misconduct can be shown by the trial record in its entirety. The State witness was the only evidence linking Applicant to the crime. The State failed to disclose the 911 tape, and the identity of the 911 caller. This warrant reversal, as the omission deprived me of a fair trial. See Sheppard V. State, 357 S.C. 646, 651, 594 S.E. 2d 462, 465 (2004) Fundamental fairness has been violated. See State V. Gathers, 295 S.C. 475, 481, 369 S.E. 2d 140, 143 (1988)

(3) Trial Counsel Lorelle Proctor was ineffective for given me erroneous advice to waive my substantiale Sixth Amendment right to effective assistance of counsel. Public Defender Lorelle Proctor was my counsel starting from March 30, 2006 until January 27, 2009. The first trial began on July of 2008, and ended with a mistrial. Ms. Proctor ineffective for failing to order the first trial transcript. I was indigent and need the full transcript to effectively prepare my defense, and cross examine witness, and also raise the appropriate jury instruction, and directed verdict. She failed to prove me with the transcript; and told me that only portions of the transcript was ordered, but never provided. This violated my equal protection and due process right.

Ms. Proctor came to the Charleston County Detention Center and advised me to represent myself because she could not argue any of my Brady claims, and speedy trial claims. She also stated she was unable to subpoena Coroner Rae Wooten to testify for my first trial regarding biological evidence, DNA that was found on a raise window at 5061

Delta Street where the Victim, Antwan Bryant was found dead. Trial counsel failed to have the police Collect the DNA after March 25, 2006 when the DNA was still fresh for collection in order to have experts test the DNA. The motion for expenses could have been brought under Ake v. Oklahoma, 470 U.S. 68, 77, 105 S.Ct 1087, 84 L.Ed 2d 53. She did not perform her duties as Counsel. She told me that if I represent myself I would not get convicted and the Judge would dismiss because the State failed to disclose evidence, and destroyed DNA. There is reasonable probability that, but, for Counsel's error, the result would have been different.

(4) Trial Counsel was ineffective for failing to have DNA tested, and raise the facts that there was biological DNA evidence on a raise window at 5061 Delta Street, which were not collected by police in bad faith during the January 27, 2009 hearing as an officer of the Court. Trial Counsel was fully aware that the evidence could have exonerated me. She instead Coerce me at the Charleston County Detention Center to waive all my rights. See Johnson v. Zerbst, 304 U.S. 458, 468, 585 S.Ct 1019, 1024, 82 L.Ed 1461.

PCR Court failed to adequately consider whether the evidence was material, failed to distinguished the materiality of the Suppressed evidence with respect to Petitioners guilt from the materiality of evidence with respect to his punishment. The withheld evidence, DNA, 911 tape, and the 911 caller's identity were material to the question whether he committed Murder. The PCR Court decision is controlled by error of law, and mistake. Applicant move to set aside judgment under Rule 60(B)(1)(3); See Brady v. Maryland, Cone v. Bell

I, Terrell McCoy hereby declare under the penalty of perjury that the foregoing is true and Correct. Executed at 430 Oaklawn rd, Pelzer, SC 29669 dated 10-3-2023

(5) Petitioner moves this Court pursuant to SCRCP Rule 60(b)(1), The PCR Court ruling was controlled by error law. Petitioner was deprived a procedural due process right to call Lorelle Proctor as a witness during (PCR) held on December 14, 2015. Petitioner has a due process right under S.C. Code Ann. 17-27-90 (2014) "All grounds for relief available to an applicant under [the PCR Act] must be raised in his original, Supplemental, or amended application. The evidence of material facts not previously presented and heard requires vacation of conviction and sentence in the interest of justice; the conviction was in violation of the Constitution of the United States or the Constitution of this State. Rule 71.1(a)(e), SCRCP

(6) The PCR Court deprived (me), Petitioner a procedural due Process to call Solicitor Burns Wetmore, regarding State misconduct under Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996), where Solicitor presented false evidence, and failed to correct false testimony by Angela Bunker that the blood smears on the door jamb, window, and curtains were not related to the homicide that occurred in the living room. (February 2.-6, 2009 trial transcript page 341 line 22-25, 342 line 1-25, 343 line 1-17, 348 line 13-16) See Giglio v. United States, 405 U.S. 150, 92 S.Ct 763, 31 L.Ed. 2d 104 (1972), the deception can also be shown during the draw of the Juror. (See trial transcript page 20 line 22-24 through page 44) Solicitor false information that Juror 196, had a Criminal record was not supported by the voir dire record.

I made several objections. He also stated Juror 136, was a women, and he question her communication skills. Juror 136 was not a women but a man name William Johnson, See trial transcript page 37 line 11-22.

This deliberate deception deprived Petitioner equal protection which guarantee the defendant that the State will not exclude members of his race from the jury venire on account of race. These members were purposefully excluded. Strauder v. West Virginia 10 Otto 303 100 U.S. 303, 25 L.E d. 664 (1880); Batson v. Kentucky, 476 U.S. 79, 96-98, 1956. Duncan v. Louisiana, 391 U.S. 145, 156, 88 S.Ct 1444, 1451, 20 L.Ed. 2d 491 (1968)

X Jeneil Moody 256020
PCI C.x.3
4300 Oaklawn rd
Pelzer SC 29669

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIA-2013-cp-10-1994

Exhibit 14

Terrell McCoy, 256076
Applicant,

The State of South Carolina
Respondent

Motion to Reconsider
Supplement(s)
Timely
SCRCP Rule 59(e)
Rule 60(B) 1

FILED
2023 SEP -5 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY DCL

This motion is only to Supplement the original motion to reconsider SCRCP Rule 59 (e) that was mailed on August 8, 2023. This motion is timely, Applicant received notice of order denying SCRCP Rule 60 (B)(3)(5) on 8-8-23. On 8-22-23, the clerk directed Applicant to redact "So Ordered" from the motion and resubmit. This motion follows:

Applicant asserts the Solicitor Burns Wetmore, Greg Voigt, and Peter McCoy Knowingly used false testimony of Cerenda Snowden. The Solicitors have Constructive Knowledge Cerenda Snowden gave false statements to police (See S.C. Code ann 16-1-90 "Suborn of perjury) and used this witness to testify falsely under oath.

Solicitors would use perjury testimony of Angela Bunker to create fraudulently testimony that [DNA] blood discovered and photographed by Coroner Rae Wooten were not related to the victim who was found dead at 5061 Delta street in the living room, to cover up any unfavorable evidence characterized as "exculpatory" in the North charleston police department files. The Defendant's Exhibit 44 and 45 (See trial transcript pg 523 line 9-25, 524 line 1-20; pg 525 line 1-25; pg 528 line 1-25)

Solicitor have Constructive Knowledge of police reports prior to witness Subornation of perjury. There was [DNA] Concealed intentionally to defraud the Court. The DNA was favorable to Applicant's defense. Solicitors used Angela Bunker to testify falsely that the DNA Found on the walls, Door Knob, and bedroom window were not related to the victim murder, and that police were unaware of blood on a raise window in one of the bedrooms. Coroner Rae Wooten, was not called as a witness for the State. This is Clear and convincing evidence the Solicitor's scheme to defraud the Court. (see trial transcript page 421 line 11-22, 588 line 8-16 Page 578 through 579

Officer Douglas Armstead testify he was aware of the blood on the window, (see trial transcript page 292 line 1-25 Exhibit No. 8) But was never collected by Angela Bunker. Coroner Rae Wooten testified for the defense. Ms. Wooten testified when she

photographed the DNA on the raise window, Crime Scene investigators were present. (see trial transcript page 523 line 9-25, 524 line 1-20, pg 525 line 1-25; pg 528 line 1-25. Defendant's Exhibit 44 & 45)

The Solicitor Suborn perjury from Angela Bunker to cover up the Blood on the window b/c it was favorable to Applicant's defense. The facts presented at trial show that the victim hands were tested positive for lead particle, and gun powder residue. The victim left hand was tested positive. (See sled testimony pg 565 line 18-25; 566 line 1-20)

The Solicitor explained he or his office Subpoena the March 25, 2006 911 tape. The 911 tape was later destroyed June 20, 2006. The affidavit of Kriston D. Neely was after discovered evidence dated December 11, 2015. During Applicant's trial, Solicitor Burns wetmore misrepresentation to the court that no evidence was destroyed and all evidence was disclosed to the defense. (See pg 51 line 1-25, 52 line 1-15, 62 line 16-18, pg 70 line 13-23, pg 75 line 3-7, 77 line 3-25, 78 line 1-7; pg 631 through 636)

The existence of the 911 tape prove the Solicitor scheme to defraud the court to cover up what Cerenda Snowden stated in her first statement given on March 25, 2006. She gave a total of three (3) False statement to police. This is a clear violation of SC code 16-1-90. The solicitor have constructive Knowledge of all police report, witness statement and allowed Cerenda Snowden to Suborn perjury in a scheme to defraud the Court and obtain a Conviction.

Applicant "attempt to call Jenie Fowler as a witness. The solicitors misrespresentation that the Subpoena for Jenie Fowler went to another Jenie Fowler in a scheme to defraud the court, (See trial transcript page 631 and 632.) to cover up the 911 call.

The Solicitor Burns wetmore Suborn perjury to testify differently in the second trial because Applicant won a hung jury in his first trial. In the Second trial the Solicitors Suborn perjury From Cerenda Snowden to cover up the facts police did in fact found the front door had been broken near the door knock, and latch area (pages 414 line 22-25 - Second trial) but see the first trial, the testimony change for the fourth time. This is Suborn perjury and a scheme to defraud the Court because Applicant won a hung jury. See first trial transcripts

Attorney general Rutlege Johnson was made aware of the Affidavit of Kriston D. Neely during Applicant's PCR hearing. See PCR transcript page 39 line 4-25. Attorney general have Constructive Knowledge of the truth and honesty that evidence was available but intentionally destroyed. Rutlege Johnson as a officer of the Court could have moved for a new trial, when Applicant requested in his SCRCP Rule 59 (e), instead filed a propose Order of dismissal on December 15, 2015.

Its deception of Solicitor to trial Judy Roger Young that all evidence was disclosed and that a 911 tape did not exist. Trial Judge Roger believed officers of Court and ruled the evidence did not exist. (See trial transcript pg 635 line 25 through page 636) Compare to pretrial arguments pages 49 through pages line 1-16)

and compare these to Affidavit of Kriston D. Neely.

Compare Rae Wooten testimony, regarding DNA blood on raise windows pages 521 through pages 526 line 1-25

To Angela Bunker testimony. Rae Wooten, was to the Coroner for Charleston County

in 2006. Her official capacity to investigate deaths in the City of North Charleston (pg 576, 577 line 1-18)
The Solicitor scheme to defraud the Court by not calling Rae Wooten in this murder case is obvious. Ms. Wooten Integrity. Ms. Wooten testified she observed the blood on the windows, and she photographed the pictures as exhibit 44 and 45 pge 523, 524, 525

No detective or CSI wanted to admit material fact that blood on the bedroom window. This would have weaken the State case. Cerenda Snowden first statement, in which she testified as false statement, stated she touch the victim as he was dying then ran to the bedroom and raise the window to jump out. See First false Statement by Cerenda Snowden

The intentionally destruction of the 911 tape to cover up Cerenda Snowden first statement, in which she testified as false statement that she heard a loud boom and her door flew open and she ran into the living room and found the victim bleeding badly.

The Solicitor Burns Wetmore constructive Knowledge is evidence of the Solicitors office deception a scheme to defraud the Court.

False statements is subornation of perjury. 16-1-90.

The intentional destruction of the 911 tape ~~show~~ prevented Applicant from fairly presenting his defense, therefore he was unable to obtain the actual name of the witness who called police. The false statements given to police, and the witness fourth false testimony should never been allowed. ~~Petitioner~~

Applicant was convicted as an result. Judgment should be vacated. Lorelle Proctor State appointed public defender misrespresentation can be shown during the January 27, 2009 hearing. See January 27, 2009 hearing pg 3-

The Amended PCR order date June 14, 2019 is Contempt. The South Carolina Supreme Order dated February 01, 2019 mandated the PCR court issue a Order which comply with the law within (30) thirty days. The Order is Void.

The Amended PCR order is "Mistake" pursuant to Rule 60 (B)(1). The order does not mention the affidavit of Kriston D. Neely. The PCR order is a error of law. See Brady V. Maryland, 373 U.S 83 1963

If Angela Bunker had not use deception, by intentionally destroying the blood that was found on the door knob, walls, and raise window, Applicant could had sent the blood samples to Sled for testing to determine if the blood was related to the homicide in the living room. See trial transcript 421 line 11-22; pg 396 Because she testifed falsely stating the blood on the walls and door knob leading to the bedroom were not related to the victim.

The scheme to defraud the Court could be shown to cover up who blood was on the walls, door knob, and bedroom window, and evidence in the trial record shows the victim left hand tested positive for round lead particles, and on the left back hand gun shot residue: See transcript pages 562 line 18-25; page 563 line 1-25; pg 564, 565, 566 line 1-7; pg 571 line 1-25; pg 572 line 1-2 574 line 21-25; pg 575 line 1-6.

The PCR Judges amended order failed to do Something the law requires to be done. See Ex parte Robinson, 19 Wall 505, 510, 86 U.S. 505, 22 L.Ed. 205, 207

The power to punish for Contempt is inherent in all Courts. Its existence is essential to the prosecution of order in judicial proceedings, and the enforcement of the Judgments, order and writs of the Courts, and Consequently to the due a administration of justice, In Re Brown, 333, S.C 414 511 S.E. 2d 351) Contempt for failing to Comply with order State V. Bowers 270 S.C. 124, 241 S.E. 2d 409 (1978)

The power to punish for Contempt is inherent in all Courts and is essential to preserration of order in judicial proceedgs. State V. Havelka, 285 S.C. 388, 330 S.E. 2d 288 (1985) wilful disobedience of an Order of the Court may result in Contempt. Spartenburg County Dept of Social Services V. Padgett, 296 S.C. 79, 370 S.E 2d 892 (1988); Curlee V. Howle, 277 S.C 377, 287 S.E. 2d 915 (1982). 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 facts the Solicitor Burns Wetmore and Peter McCoy Suborn perjury by using false Statement Under SC Code 16-1-90, and the facts Greg Voigt failed to Subpoena the 911 tape prevented Applicant from fairly presented his defense, The facts the Solicitor Misrepresented to the Court all evidence was disclose to the defense prevented Petitioner from faily presenting his defense. The facts The Solicitors Burns Wetmore and Peter McCoy Misrespresentation that the Subpoena for Jenie Fowler went to another Jenie Fowler or that she doesn't work at North Charleston police department were scheme to defraud the Court, when the facts reveals by Beth Woodall that she worked at NCPD All this included proves extrinsic fraud. See Hazel-Atlas Glass Co. V. Hartford-Empire Co 322 U.S 238 "Generaly speaking, only the most egregious misconduct, such as bribery of a judg or membors of a jury, or the fabrication of evidence by a party in which an attorney is implicated will Constitute fraud on the Court. Less egregious misconduct such as non disclosure of the Court of the facts allegedly pertinent to the matter before it will not ordarrily rise to a level of fraud on the Court. (quoting Rozier 573 F. 2d at 1338 (In order to set aside a Judgment or order because of fraud upon the Court under Rule 60(B) .... It is necessary to show an Unsconsinable plan or schene which is designed to improperly influence the Court in its decision. See Chewning V. Ford Motor Co, 354 S.C. 72, 86, 579 S.E. 2d 605, 612 (2003)

For these reason, Applicant request this court to Reconsider.

(4)

8-31-23

Jarell McCoy
RCI C.I.X 3
430 Oaklawn Rd

Exhibit 15

AH
AG
SoL
GS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-01994

Terrell McCoy, #256070
APPLICANT

State of South Carolina
RESPONDENT

Submitted by: Judge Roger M. Young, Sr.	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter comes before the Court upon Applicant's Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Upon review of Applicant's motion;

IT IS HEREBY ORDERED that Applicant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.

FILED
2024 MAR 21 PM 1:38

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

Circuit Court Judge | 2134 **Judge Code** | 3/19/24 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

_____ _____
_____ _____
_____ _____

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Terrell McCoy, #256070, Applicant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Order Denying Applicant's Motion to Reconsider has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Terrell McCoy, #256070 (MOB-0270-B)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

This 21st day of March, 2024.

Vickie H.
Vickie H., Legal Assistant
for Respondent

SWORN to before me this 21st day of March, 2024.

Notary Public for South Carolina.
My Commission Expires: 5/20/2025

Exhibit 16
1 of 2

The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

April 17, 2024

Terrell McCoy, #256070
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Terrell McCoy v. State
Appellate Case No. 2024-000601

Dear Mr. McCoy:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02.

Please note that the responsibility for ensuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Patricia A. Howard

CLERK

cc: Danielle Dixon

Exhibit 17

club.

Q. Now, how late did you stay there?

A. Probably around 4:00.

Q. 4:00 in the morning?

A. Yeah. It been late. I can't say exactly 4:00, but it been late at night. That is around about the time the club closed.

Q. That is about the time it closes, 4:00 in the morning?

A. Uh-huh.

Q. And then after that, what did you do?

A. Go to my aunt's house, on Gary Street.

Q. Okay. And it's your testimony that you were never around when this murder happened?

A. Yes.

Q. So you don't know who was involved.

A. No, I don't.

Q. You don't know who shot Antwan Bryant?

A. No, I don't.

Q. And you remember making this statement to North Charleston?

A. Yes.

Q. Is that correct?

MR. WETMORE: Just a moment, Your Honor.

BY MR. WETMORE:

Q. One final thing, Mr. Holcombe. I'm not trying to check you now with two women. I just asked about your relationship with Carinda. Do you know who Carinda Snowden, Carinda Williams is?

A. Yes.

Q. Because you mentioned in your direct testimony going over to her house.

A. Yes.

Q. She was just a friend of yours?

A. Yeah, everybody be around her house.

Q. But you guys weren't involved -- according to you, you didn't consider your relationship to be more than just friends?

A. Yes.

MR. WETMORE: Nothing further.

THE COURT: Redirect?

MR. TERRELL McCOY: No.

THE COURT: You can step down.

THE WITNESS: All right.

THE COURT: All right. Call your next witness.

MR. TERRELL McCOY: Your Honor, I call Tonia Theus.

TONIA THEUS,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TERRELL McCOY:

Q. How, you doing, Ms. Theus?

A. All right.

Q. Could you please tell the jury where you work.

A. At Arby's.

Q. What do you do at Arby's?

A. I'm a manager.

Q. I'm going to take you to Saturday, March 25, 2006 around 3:30. You was approached by Detective Sergeant Deckard and Detective James Hill. Do you recall that?

A. I know I was approached by the police, but I don't know exactly what time it was.

Q. When you was approached by the police, why did they approach you?

A. When they first came to the house, they didn't exactly tell me what they was there for. They just asked for you, and I had told them that you wasn't there, that you was gone out of town, and they asked to search the house. I let them search the house, and they was just looking around at papers and stuff.

Q. Did they have a search warrant when they searched your house?

A. No.

Q. So you gave them permission to search your house?
A. Yeah.
Q. What did they ask you? They were just asking --
MR. WETMORE: Objection, Your Honor.
BY MR. TERRELL McCOY:
Q. What did they ask you?
MR. WETMORE: Objection. He's asking for hearsay.
THE COURT: That would be hearsay, asking what the police asked. You can ask her what she told the police.
BY MR. TERRELL McCOY:
Q. Can you tell us, what did you tell the police again?
A. They asked me -- well, let me see. What I told the police? Okay. I told them Friday I went to work, and I got off about 1:00 something, and I went to Big Lots and McDonald's and came home.
Q. Now, you and I have some type of relationship during the time of March 25, 2006, correct?
A. Yes.
Q. And how long were we dating before March 25, 2006?
A. About two years.
Q. And can you fairly say -- did y'all live together or is y'all just friends?

A. We were intimate.

Q. So was there anybody -- so y'all practically go to sleep and wake up together, correct?

A. Yeah.

Q. Have I ever missed a night sleeping with you?

A. Only unless you was out of town.

Q. And why would I go out of town?

A. To promote your record.

Q. Say that again?

A. You had a CD going on, and you were promoting your CD.

Q. So how many times -- out of -- can you say how many times out -- since we were dating, how many times I've been out of town?

MR. WETMORE: Objection, relevance. His travel plans --

THE COURT: He can ask the question.

THE WITNESS: You went out of town a couple of times, actually.

BY MR. TERRELL McCOY:

Q. Have you and I ever gone out of town together?

A. Yeah.

Q. And where have we went -- where did we ever go?

A. We went to Atlanta.

Q. And what do we do in Atlanta?

A. Well, we went to the hurricane relief concert, and then we was -- I don't know the streets' names, but passing out your CDs and stuff to people.

Q. So you fairly say that the defendant always goes out of town, correct?

A. Yeah.

Q. Now, has the defendant ever gone any other places other than Atlanta, that you know of?

A. Not that I know. I mean, you have went to other places that -- out of town, but, I mean, other than that, like you went to New York and I know Texas.

Q. Can you tell the jury, why did I go to New York?

A. Because you were supposed to have a record deal.

Q. Can you please say that again.

A. You were supposed to get a record deal.

Q. And how long -- how long -- what was the time before -- let me rephrase that.

When was this during the time -- I mean, when would all this occur before the time of March 24th -- how long apart that was?

A. I'm not sure.

Q. You're not sure? So you said I never missed a night with you unless I'm out of town, correct?

A. Right.

Q. Now, on Friday, March 24th, did you see me? Did I

spend the night with you, March 24, 2006?

A. On March 24th? You drop me off to work Friday morning.

Q. Right.

A. And when I got off of work, I see you for a little bit, and you said you was going out of town, so I ain't seen you after that.

Q. And did you see the defendant pack any type of clothing?

A. Yeah, you took some clothes.

Q. Can you fairly say how much clothes did he take?

A. I can't say.

Q. But you saw him pack clothes?

A. I seen you pack clothes, but I can't say, like, pants or shoes or shirts.

Q. Did you see him with anything, like a packaging --

A. I mean, you had boxes of CDs. I mean, you always carried your CDs so --

MR. TERRELL McCOY: Your Honor, I have no further questions.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MR. WETMORE:

Q. Ms. Theus, you didn't mention this, but about 5:30 in the morning, 5:45 in the morning on March 25th of

2006, were you at 5061 Delta Street where this murder happened?

A. No.

Q. You weren't there?

A. No.

Q. So you don't know what happened?

A. I don't know what happened.

Q. You don't know how the victim was killed?

A. No, I don't. Only time when I know what happened was when the police didn't come -- when they came to my house, they didn't tell me what was going on, but soon everybody got the call on my phone and asked me if I seen the news and all that. That is exactly how I found out what happened.

Q. So you were not at the scene of the crime when this murder happened, correct?

A. No.

Q. So you don't know who was there or what happened?

A. No, I don't.

Q. And that same time period, at about 5:30, 5:45 in the morning, Saturday, March 25th, you indicated you were not with the defendant either?

A. No, I wasn't.

Q. So you don't know exactly what he was doing, do you?

Attachment 16 Exhibit 18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2013-CP-10-1994
TERRELL MCCOY, Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	)	**AMENDED APPLICATION FOR POST CONVICTION RELIEF**

FILED
2015 DEC -4 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Applicant, Terrell McCoy, now having the benefit of appointed counsel and pursuant to a ruling by Judge Larry B. Hyman, Jr. on September 9, 2015, alleges the following:

1. Terrell McCoy is detained at Broad River Correctional Institution under Inmate Number: 256070.
2. He was convicted and sentenced in Charleston County for Murder on February 6, 2009 under Indictment Number: 2006-GS-10-4987.
3. He was granted his request to proceed to trial pro se by order of Judge R. Markley Dennis, Jr. on January 27, 2009.
4. That order relieved Lorelle Proctor (original attorney) from her duties in representing Mr. McCoy.
5. A timely Notice of Appeal was filed and his appeal was perfected by Robert Dudek (appellate attorney) of the Office of Appellate Defense.
6. His conviction and sentence were affirmed by the South Carolina Court of Appeals.
7. He filed a Petition for Re-Hearing which was denied.
8. He filed a Petition for Writ of Certiorari which was denied and Remittitur was issued on March 8, 2013.
9. The Applicant filed an *in forma pauperis* application for post conviction relief on April 4, 2013.

10. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on April 16, 2013.
11. The State filed a Return on May 19, 2014.
12. Applicant's original attorney provided ineffective assistance of counsel in failing to obtain evidence and witnesses for trial prior to being relieved as counsel.
13. The State engaged in prosecutorial misconduct depriving the Applicant of a fair trial in violation of his Constitutional rights by failing to disclose evidence, destroying evidence and submitting inappropriate testimonial evidence.
14. Applicant's appellate attorney provided ineffective assistance of counsel in failing to argue relevant grounds for appeal.

Wherefore, the Applicant requests that the Conditional Order of Dismissal be rescinded and his Application for Post Conviction Relief be reinstated and a hearing on the merits scheduled.

Respectfully submitted,

Rodney D. Davis
Attorney for Applicant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com
(843) 323-4353

December 4, 2015

IX. "Applicant presented material evidence during his PCR hearing that a 911 tape did exist during March 25, 2006." "During Applicant's trial, Applicant was told the 911 tape did not exist." "The solicitors told the judge that neither did he or his office subpoena the 911 tape from their client (NCPD). This constitutes fraud upon the court." "Applicant explained to the trial judge he subpoena the 911 tape and wanted the jury to hear it, but was told it did not exist."

X. "PCR judge committed misconduct by stating in its order Applicant did not present trial counsel to PCR to testify eliminating the court's ability to make an independent factual determination as to what advice, if any, trial counsel provided regarding the consequences of his proceeding pro se. This is misconduct. During the December 14, 2014 PCR hearing, PCR counsel Rodney Davis attempted to call Lorelle Proctor, but PCR judge would not let trial counsel testify concerning the advice she gave Applicant to waive his Sixth Amendment right to counsel. This constitutes misrepresentation by trial counsel."

XI. "PCR judge explained there is no case in United States were [sic] pro se litigant argued ineffective assistance of trial counsel claims. This constitute fraud."

As relief, Applicant requests "equitable relief is granted." Applicant also requests a hearing on this motion.

On October 26, 2022, Applicant filed a pro se motion to supplement his Rule 60(b)(3) motion, alleging:

1. A party may seek to set aside a final judgment for fraud upon the court independent of Rule 60(b)(3) grounds for relief for fraud;

2. Applicant is not seeking a successive PCR; rather, he is moving pursuant to Rule 60(b)(3) based upon fraud upon the Court;

3. "PCR judge committed fraud upon the Court by stating in its order Applicant did not present trial counsel to PCR to testify eliminating the Court's ability to make an independent factual determination as to what advice, if any, trial counsel provided regarding the consequences of his proceeding pro se."

4. "This Order constitute[s] 'Fraud upon the court' which PCR counsel attempted to call Lorelle Procter and PCR Judge Dedra Jefferson denied trial counsel testimony. This constitutes fraud upon the court and more evidence of misconduct depriving Applicant the ability to present a case or . . . the opportunity to be heard. See Chewing v. Ford Motor Co., 346 S.C. 28, 550 S.E.2d 584 (2001)."

5. "PCR judge failed to acknowledged PCR counsel filed a SCRCP Rule 15(B) motion before the evidentiary hearing on grounds trial counsel was ineffective before she was relieved as counsel. Although Applicant proceeded pro se at trial, he could raised ineffective assistance of trial counsel claims only if the lawyer's ineffectiveness conclusively appears from the record. See U.S. Bernard, 708 F.3d 583 (2013) 4th Cir. PCR judge explained there is no case in the United States where pro se litigant argued ineffective assistance of counsel claims. This is fraud upon the Court."

6. "Applicant mailed the initial SCRCP Rule 60(B)(3) motion to the Clerk of Court 10/7/22 pursuant to Houston v. Lack. Applicant moves to amend pursuant to SCRCP Rule 15(b) to include the facts that this motion is timely."

7. "Solicitor Burns Wetmore and Peter McCoy committed fraud upon the court; the solicitor's office for the 9th Circuit General Sessions Court was served with a SCRimP Rule 5 & 6 motion requesting that all evidence be provided to Applicant's defense pursuant to Brady v. Maryland. Applicant presents material evidence that a 911 tape did exist during March 25, 2006. See Kriston D. Neely Affidavits as exhibits in this record. During Applicant's second trial, the solicitor told the judge that he neither his office subpoena the 911 tape from their client. (NCPD) See trial transcript page 634 line 6-25. This constitutes fraud upon the court."

7. "During Petitioner's trial, Applicant/Petitioner explained to the trial judge he subpoena the 911 tape and wanted the jury to hear it but was told it did not exist. Fraud upon the Court. See trial transcript page 633 line 1-9. It did exits but was intentionally destroyed."

6. Trial Judge Young state that he would allow Applicant to play the 911 tape to the jury, but the State informed the Court the 911 tape did not exist.

7. Applicant presented a affidavit by Kriston D. Neely which attest that the 911 tape did exist but was later destroyed. Applicant was unable to obtain a adverse jury instruction because of misconduct by State, in which the judge believed the evidence did not exist.

8. Applicant objected to the State using preemptory strikes to strike black jury member. Applicant is black male.

9. The SC Supreme court vacated the PCR judge order and mandated that the judge issue a order which comply with the law. The Supreme Court also mandate that the PCR judge issue a order within 30 days of the highest court order dated February 2, 2019. PCR judge failed to issue a order in a timely matter. The order was issued in June of 2019. Petitioner filed a notice of appeal and a SCRCP Rule 59(e) to preserve his rights.

10. Applicant is entitled to relief under Rule 60(B)(5) SCRCP prior judgment ahs been vacated by the SC Supreme Court.

Applicant requested equitable relief and that the Court set aside the judgement pursuant to Rule 60(b)(5)(3).

On April 20, 0223, Clarissa Warren Joyner, Esquire, filed a letter with the Clerk of Court clarifying she no longer represents Applicant in this PCR matter.

On May 10, 2023, Respondent filed a Return to Applicant's October 2022 Rule 60(b)(3) motion asserting it was untimely and barred by res judicata. Respondent also asserted Applicant did not set forth a prima facie showing of extrinsic fraud, and Applicant raised issues that were more suitable for an appeal rather than a Rule 60(b) motion.

On May 18, 2023, Applicant filed an affidavit asserting he acted with due diligence in discovering the 911 tape was destroyed before his criminal trial and detailing the steps he took to

As relief, Applicant requests the original action be vacated and the State "stop using Applicant's name in conjunction with this case . . . where evidence was intentionally destroyed preventing the Applicant from being heard."

On November 11, 2022, Applicant filed a "Notice of Motion pursuant to Rule 60(b)(5), SCRCP," alleging

> 1. The South Carolina Supreme Court granted, vacated, and reversed the PCR judge order on February 2, 2019. The prior judgment upon which it is based has been reversed or otherwise vacated, due to the facts that the judge did not make specific findings of fact and conclusions of law on each issue presented during Applicant's PCR hearing.
>
> 2. The PCR judge issued an amended order in which Applicant timely filed a SCRCP Rule 59(e) objecting to the sufficiency of the order. The Petitioner established his entitlement to relief y a preponderance of the evidence pursuant to SCRCP Rule 71.1(B) and SC Code Ann. 17-27-45(C); 17-27-80; 17-27-90. During the PCR hearing Petitioner presented affidavits by Kriston D. Neely which attest that the State committed misconduct by failing to disclose material evidence, which Applicant/Petitioner could have used in his defense to impeach witness, pursuant to Brady v. Maryland.
>
> 3. Applicant complained during trial that his attorney had made specific request for the evidence. Attorney Lorelle Proctor explained to the trial Judge Roger Young she made specific request for the material evidence.
>
> 4. The State committed misconduct under 60(b)(3), Solicitor Burns Wetmore and Peter McCoy explained that neither did they or their office subpoena the 911 tape (material evidence) from their clients.
>
> 5. The evidence was exculpatory. Applicant testified during PCR hearing that the 911 tape was material evidence and needed b/c it contradicted the witness testimony. This witness, Cerenda Snowden, gave multiple statements to police and admitted to lying to police.

8. The PCR judge did not allow Applicant to call counsel Lorelle Proctor as a witness, denying Applicant one bit of the apple. This denial is more evidence of fraud upon the court.
9. Solicitor Burns Wetmore admitted he did not subpoena the 911 tape. This is evidence of misconduct and fraud upon the court.

10. The trial court denied Applicant's motion for a charge on spoilation of evidence.

On June 12, 2023, Applicant filed a "Reply to Respondent's Return to Applicant SCRCP Rule 60(B)(3)(4)(5) motion, wherein he reiterated many of his prior arguments and asserted Respondent's return was another example of fraud upon the Court.

On June 22, 2023, Applicant field a Motion to Strike Respondent's Return to Applicant's Rule 60(b)(3) motion, again asserting Respondent's return was an attempt to fraud the court. Applicant alleged:

1. Respondent's return is not supported by facts.

2. Kris Neely's affidavit was introduced at the PCR hearing, wherein she admitted the 911 tape was destroyed.

3. State witness Cerenda Snowden was not credible, gave different accounts to law enforcement, and committed perjury.

4. The solicitor admitted he did not subpoena the 911 tape, which is evidence of fraud upon the court.

5. The return does not address the fact the South Carolina Supreme Court vacated the PCR court's first order.

6. "The PCR judge's order does not comply with the law due to the existing facts that the State prevented Applicant from presenting his defense at trial and during civil proceeding (PCR). This constitute extrinsic fraud."
7. "The failure to collect DNA evidence, so that the evidence could have been sent to SLED for testing prevented Applicant form presenting his defense."

8. "The facts that Angela Burker committed perjury constitutes fraud."

obtain the tape. Applicant again averred the destruction of this evidence prevented him from fully defending his case.

On May 22, 2023, Applicant filed a pro se "Memorandum of law to support Applicant's Motion 60 B (3)(4)(5)." In it, he reasserted many of his prior arguments, to include:

> 1. Solicitor Burns Wetmore and Peter McCoy committed fraud by concealing evidence which was later destroyed before Applicant's trial. The conceal evidence was a 911 tape which could have been used in Applicant defense to show he did not commit the crime. Also the evidence could have been used to rebut the state theory of what occurred on March 25, 2006. The fraud upon continued through court appointed public defender who coerced Applicant to waive his Sixth amendment right to assistance of counsel and commitment perjury by informing the Court Applicant filed a motion to withdraw counsel. There is no record to support Lorelle Proctor arguments.
>
> 2. The fraud upon the court continues throughout Applicant's PCR hearing, where attorney general, Rutledge Johnson (deceased) was made aware of the State misconduct. Instead of moving for a new trial under . . . the State drafted a fraudulent order for PCR judge Deidra Jefferson to sign. This order constitutes fraud upon the court because it prevents Applicant from presenting his defense.
>
> 3. The PCR judge's order is more evidence of fraud upon the court committed by officers of the court. The order prevent Applicant from presenting his case.
>
> 4. The proposed order filed by the attorney general prevents Applicant from presenting his defense where evidence was proved to have been intentionally destroyed by the State. This misconduct is evidence of fraud upon the court under Rule 60(b)(3).
>
> 5. Affidavit of Kris Neely introduce into PCR record . . . is sufficient evidence the police destroyed material evidence in Applicant criminal case. This is evidence of fraud upon the court. .
>
> 6. State witness Cerenda Snowden gave false statements to police and committed perjury during Applicant's first and second trial.
>
> 7. North Charleston Police Angela Bunker committed perjury during second trial when she testified about the collection of DNA blood evidence.

On June 29, 2023, Applicant filed a motion for a new trial based on newly-discovered evidence pursuant to Rule 60(b)(2). In that motion, he alleges new evidence in the form of an April 27, 2023 affidavit filed by his brother wherein his brother avers Applicant was with him in Georgia the day this crime was committed.

Respondent's Return Opposing Applicant's Motions

Respondent filed a return and an amended return opposing Applicants motions. In its amended return, Respondent submitted Applicant's various claims related to Rule 60(b) can be summed up as follows:

1. Claims of fraud related to the destruction of the 911 tape;

2. Claims related to the South Carolina Supreme Court vacating the first PCR order;

3. Claims related to trial court error;

4. Claims related to PCR court error;

5. Claims of fraud related to alleged false proposed order submitted by the former Assistant Attorney General;

6. Claims of fraud related to perjured trial testimony;

7. Claims of fraud related to the collection of DNA evidence;

8. Claims related to new alibi witness.

Respondent argued (1) these claims were untimely, (2) Applicant's claims related to the 911 tape and DNA evidence were barred by res judicata, (3) Applicant did not set forth prima facie evidence of extrinsic fraud, (4) Applicant's claims related to trial court error and PCR court error were more suitable for direct appeal, (5) Applicant did not make a prima facie showing that the amended PCR order of dismissal was void, and (6) Applicant did not make a prima facie showing of newly discovered evidence. Before this Court are the Clerk of Court records of the

underlying conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's 2013 PCR application, the order of dismissal, the Supreme Court's order remanding this matter to the circuit court for more specific findings, the amended order of dismissal, the Court of Appeals' order denying certiorari, and the remittitur. For the reasons set forth below, this Court denies Applicant's Rule 60(b) motions to set aside the amended PCR court's order of dismissal.

The 60(b) Motions are Untimely

Rule 60(b), SCRCP, provides:

> **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud, misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.
>
> The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. . . .

This Court finds Applicant's Rule 60(b) motions are untimely. In his Rule 60(b)

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AG

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

2013-CP-10-1994

Terrell McCoy, #256070,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER DENYING APPLICANT'S RULE 60(b) MOTIONS, MOTION TO STRIKE RESPONDENT'S RETURN, AND PETITIONS FOR WRIT OF MANDAMUS

This matter is before the Court by way of various Rule 60(b) motions to set aside judgement filed by Terrell McCoy (Applicant) as part of his 2013 post-conviction relief (PCR) action. Respondent has filed a return and amended return contending the motions are untimely, the claims are barred by res judicata, Applicant has failed to set forth a prima facie showing of extrinsic fraud, the claims related to trial court error and PCR court error should have been raised on direct appeal, Applicant misconstrues the meaning of the South Carolina Supreme Court's prior remand order in this case, and Applicant did not set forth a prima facie case of newly-discovered evidence. For the reasons set forth below, Applicant's Rule 60(b) motions to set aside judgment are DENIED.[1]

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a forty-year sentence. In July 2006, the Charleston County Grand Jury indicted Applicant for murder. (2006-GS-10-4987). On July 15, 2008, Applicant proceeded to a jury trial. He was

[1] Applicant also filed a Writ of Mandamus on June 7, 2022, and April 27, 2023, reiterating many of the allegations raised in his various Rule 60(b) motions. For the reasons set forth herein, this Court finds a hearing ~~is not warranted~~ and denies Applicant's Writ of Mandamus.

2006-GS-10-4987

represented by Lorelle Proctor, Esquire. Applicant's first trial ended in a mistrial after the jury could not reach a verdict.

On January 27, 2009, the Honorable R. Markley Dennis heard the Applicant's motion to relieve counsel and proceed *pro se*. Judge Dennis granted the motion and requested Proctor be available as standby counsel.

On February 2-6, 2009, a second jury trial was held before the Honorable Roger M. Young. Applicant proceeded pro se with Proctor as standby counsel. The jury convicted Applicant of murder, and Judge Young sentenced him to fifty years' imprisonment. Proctor subsequently filed a motion to reconsider the sentence, and Judge Young reduced the sentence to forty years.

Applicant filed a timely Notice of Appeal, which was perfected by Appellate Defender Robert Dudek. Dudek filed a brief arguing the trial court erred in allowing Applicant to proceed pro se. The Court of appeals affirmed. State v. McCoy, No. 2011-UP-471 (S.C. Ct. App. filed October 26, 2011). Applicant filed a petition for rehearing, which was denied. Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was denied. The remittitur was sent March 8, 2013.

On April 4, 2013, Applicant filed a PCR application alleging he is being held in custody unlawfully due to (1) due process violation, (2) ineffective assistance of counsel, (3) ineffective assistance of appellate counsel, (4) lack of subject matter jurisdiction (fraudulent indictment), (5) prosecutorial misconduct (including Brady violation claims), (6) double jeopardy, (7) newly discovered evidence, and (8) actual innocence.

On December 14, 2015, an evidentiary hearing convened before the Honorable Deadra L. Jefferson. On May 6, 2016, Judge Jefferson issued an order denying relief and dismissing

Applicant's PCR application with prejudice. Applicant filed a motion to reconsider pursuant to Rule 59(e), SCRCP, which was denied.

Applicant filed a petition for a writ of certiorari, and the Supreme Court of South Carolina granted certiorari. On February 1, 2019, the Court remanded the order of dismissal back to the circuit court, instructing the circuit court to make findings of facts and conclusions of law to address each allegation raised by Applicant.

On June 14, 2019, the circuit court issued an amended order denying relief and dismissing Applicant's PCR claims with prejudice. Applicant filed a petition for a writ of certiorari, which was denied on May 18, 2022. The remittitur was sent October 20, 2022.[2]

Pending Rule 60(b) Motions

On June 7, 2022, Applicant filed a motion pursuant to Rule 60(b), alleging:

> 1. Police engaged in misconduct by purposely destroying exculpatory evidence;
>
> 2. Fraud upon the court is proven by a December 2015 affidavit from Kriston D. Neely, wherein she admits the City of North Charleston destroyed a 911 recording and CAD report pertaining to Applicant's criminal trial on June 25, 2006, and March 25, 2009, in compliance with its retention policy; and
>
> 3. The Supreme Court of South Carolina found the PCR court's first order of dismissal did not address all grounds raised.

As relief, Applicant requests the amended Order of Dismissal be vacated and the Court grant him the relief requested in his 2013 PCR application.

On October 24, 2022, Applicant filed a pro se motion to set aside the judgment pursuant to Rule 60(b)(3). Applicant asserted fraud upon the court in the following manners:

> I. "PCR Judge Deadra Jefferson knowingly committed fraud upon the court, and misconduct along with attorney general Rutledge

[2] On February 15, 2023, Applicant filed a petition for habeas in the Federal District Court; that action is still pending. C/A No. 9:23-00089-MGL-MHC.

Johnson. Both officers of the Court were made aware on December 14, 2014, that the State committed misconduct; Fraud/and or nondisclosure (2) Intentional nondisclosure of material facts (3) fraud upon the Court (4) spoilation of evidence."

II. "During PCR hearing held on December 14, 2014, PCR Counsel Rodney Davis introduced an affidavit by Kristen D. Neely, which attest that on March 25, 2006, there was a 911 tape that existed, and later destroyed in June 2006. This material evidence prevented Petitioner/Applicant from presenting all of his case, and or deprived him of the opportunity to be heard on his defense." "The evidence destroyed was material pursuant to Brady v. Maryland and could have been used in his defense."

III. "Attorney General Rutledge Johnson and Samantha Weidner are fully aware that the State failed to produce documents during Petitioner's trial held in 2009. Applicant has appealed, and filed a post-conviction relief application in April 4, 2013."

IV. "Rutledge Johnson has filed fraudulent documents with the court preventing Applicant from fully presenting his case and being heard. This constitutes fraud."

V. "The solicitors Burns Wetmore and Peter McCoy has presented perjured testimony during Petitioner's trial. Trial judge Roger Young explained that perjury needed to be handled after Applicant's trial once he received the trial transcript."

VI. "Both solicitors explained that they did not subpoena material evidence, despite being served with a SCRCrimp Rule 5 and (6) motion by Applicant's attorney."

VII. "Detective Angela Bunker committed perjury by testifying that on March 25, 2006, she was not trained to collect evidence at a crime scene."

VIII. "Coroner Rae Wooten testified that she observed blood on an open window leading to a back yard, and that crime scene investigators were present inside the bedroom when she discovered the evidence. Coroner Rae Wooten photographed the evidence which was presented at trial as Defendant [Exhibit 44 and 45]."

VIII. "Both officers admitted that the evidence was never collected or preserved by police. This constitutes fraud upon the court. The evidence was destroyed as a result. Both officers are trained by SLED."

motions, Applicant raises allegations of fraud upon the court from his February 2009 trial, which occurred more than thirteen years before Applicant filed his first 60(b) motion. Pursuant to Rule 60(b)(3), Applicant did not timely raise these claims. To the extent any of his claims of fraud arise from the December 2014 PCR hearing, Applicant waited more than seven years to file this motion—making it untimely. Finally, to the extent any of thes claims of fraud arise from the June 2019 Amended Order of Dismissal, Applicant waited three years to file this motion, making it untimely.

Likewise, Applicant did not timely raise his claim related to his purported alibi. Pursuant to Rule 60(b)(2), a party may move for a new trial based upon "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." On June 29, 2023, Applicant asserted for the first time he had an alibi witness. In support of this claim, Applicant submitted an affidavit from his brother alleging Applicant was with him in Georgia when the murder occurred. If true, this is information Applicant would have been aware of at his February 2009 trial. This Court finds Applicant could have discovered this alibi with due diligence in advance of his 2009 trial, and it is patently unreasonable to wait more than fourteen years to raise an alibi. Thus, this claim is barred as untimely.

Finally, Applicant did not bring his claim related to Rule 60(b)(5) within a reasonable time. On June 14, 2019, the PCR court entered an amended order of dismissal following remand by the South Carolina Supreme Court. On November 11, 2022—more than three years later—Applicant filed an amended motion contending the PCR court's amended order is void because the South Carolina Supreme Court vacated the PCR court's *first* order. This Court finds it is not reasonable to wait more than three years before claiming the June 2019 amended order is void. Thus, this Court finds this motion is untimely.

Applicant's claims are barred by res judicata

This Court finds Applicant's claims of Brady violations related to a 911 call and untested blood evidence are barred by res judicata. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). "Under the doctrine of res judicata, "'[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" Id. (quoting Hilton Head Center of S.C., Inc. v. Pub. Serv. Comm'n of S.C., 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) (alteration in original). "To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Id.

Applicant's claims related to a 911 call and untested blood evidence were addressed by the PCR court in its Amended Order of Dismissal. Regarding the 911 call, the PCR Court found "[t]he trial record is abundantly clear that the Solicitor's office did not ever have the 911 tape in its possession"; Applicant—who proceeded pro se at trial—never sought to enter the CAD report into evidence; and appellate counsel was not ineffective for not raising the preserved issue related to the 911 call. Likewise, the PCR court addressed the issue of the untested blood evidence and found it did not constitute a Brady violation. This "missing" 911 tape and untested blood evidence was raised at trial in 2009 and again as part of Applicant's PCR action. These issues have been previously litigated as part of this same underlying conviction with the same parties and are thus barred by the doctrine of res judicata. Thus, this Court finds these claims are barred by res judicata.

Conclusion

Based on the foregoing, Respondent respectfully requests this Court decline to consider Applicant's Rule 60(b) motions as untimely. To the extent the Court considers the motion, Respondent asks this Court to find the allegations are barred by res judicata; Applicant did not set forth a *prima facie* showing of extrinsic fraud; the claims related to trial court error and PCR court error should have been raised on appeal; Applicant misconstrues the meaning of the Supreme Court's remand order, which did not void the subsequent amended order of dismissal; and Applicant has not made a showing of newly-discovered evidence. Respondent submits that because Applicant has not made a *prima facie* claim of relief, this Court doe not need to schedule a hearing on this motion.

Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

July 25, 2023

compliance with the Supreme Court's remand instructions in issuing the amended order. Thus, the Supreme Court's vacating of the first order of dismissal does not void the amended order of dismissal.

Applicant has not made a prima facie showing of newly discovered evidence

On June 29, 2023, Applicant asserted for the first time he had an alibi witness. Applicant attempted to circumvent the untimeliness of his alibi evidence by couching it as newly-discovered evidence. In support of this claim, Applicant submitted an affidavit from his brother alleging Applicant was with him in Georgia when the murder occurred. If true, this is information Applicant would have been aware of at his February 2009 trial. Respondent submits Applicant could have discovered this alibi with due diligence in advance of his 2009 trial. Thus, this evidence does not meet the high threshold of newly-discovered evidence, and Applicant has not set forth a basis for a hearing on this issue. See Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) ("A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) *Could not by the exercise of due diligence have been discovered before the trial*; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching." (emphasis added)).

[Conclusion and Signature Page Follows]

particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion." Smith Companies of Greenville, Inc. v. Hayes, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993).

Applicant alleges the PCR court committed fraud because (1) it was aware that the State committed misconduct, fraud, and/or nondisclosure; (2) the PCR court's order stated Applicant did not present trial counsel to testify, whereas the PCR court would not allow counsel to testify concerning the advice she gave Applicant; and (3) the "PCR judge explained there is no case in United States were [sic] pro se litigant argued for ineffective assistance of trail counsel claims." However, these are all allegations of PCR court error that he could have pursued on appeal. Applicant *did* appeal of the denial of his PCR application, but the Court of Appeals denied certiorari. Applicant cannot now seek to circumvent the decision of the Court of Appeals by filing a Rule 60(b) motion. Likewise, to the extent Applicant is now raising allegations of PCR court error that he did not raise in his appeal, Applicant cannot do so using a Rule 60(b) motion.

Finally, Applicant's claims of trial court error are issues that should have been pursued on direct appeal. Rule 60(b) is not an appropriate avenue for these claims, and these claims should be dismissed.

Applicant has not made a prima facie showing the Amended PCR order is void

Applicant avers the Amended Order of Dismissal is void because the Supreme Court of South Carolina vacated the PCR court's first order of dismissal. Applicant misconstrues the meaning of the Supreme Court Order. Pertinently, the Supreme Court remanded the matter "to the PCR judge to issue an order that contains specific findings on each of the allegations raised by Petitioner at the PCR hearing and in his Rule 59(e) motion." Thereafter, pursuant to the remand order, the PCR court issued the amended order. The PCR court was acting in

Applicant has not made a *prima facie* showing of extrinsic fraud

"A judgment may be set aside on the ground of fraud only if the fraud is 'extrinsic' and not 'intrinsic.'" Hagy v. Pruitt, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000). "Extrinsic fraud is collateral or external to the trial of the matter." Id. "It is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" Id. (quoting Hilton Head Center, 294 S.C. at 11, 362 S.E.2d at 177). "Intrinsic fraud, on the other hand, is fraud presented and considered in the trial. Id. at 431-32, 529 S.E.2d at 718. "For example, perjury is intrinsic fraud and will not support an action to set aside the judgment." Id. at 432, 529 S.E.2d at 718.

Applicant's allegations of "fraud" all involve claims that were litigated at trial and in the PCR hearing. For example, his allegations of Brady violations were raised at trial and again at his PCR hearing. Applicant has had an opportunity to present a case and be heard on these issues; thus, they are claims of intrinsic rather than extrinsic fraud. Likewise, Applicant's claims of perjury are claims of intrinsic fraud. See id. ("[P]erjury is intrinsic fraud and will not support an action to set aside the judgment."). Finally, Applicant's claims of fraud by the former Attorney General relate to the proposed order submitted by the Attorney General. Applicant has not made a prima facie showing of fraud in this regard, and as discussed below, the remedy for an inaccurate or incomplete order is through a direct appeal. Because Applicant has not made a *prima facie* showing of extrinsic fraud, the Court should deny this motion without a hearing.

Rule 60(b) is not a substitute for an appeal

Applicant's allegations of "fraud" by the PCR judge are allegations more suited for an appeal. "A party may not invoke [Rule 60(b)] where it could have pursued the issue on appeal." Tench v. S.C. Dep't of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001). "Relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment,

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Terrell McCoy, #256070 Applicant,

v.

STATE OF SOUTH CAROLINA Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order Denying Applicant's Rule 60(b) Motions, Motion to Strike Respondent's Return and Petitions for Writ of Mandamus has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Terrell McCoy, #256070 (DX-0010-B)
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

This 3rd day of August, 2023.

Vickie Hall

Vickie Hall, Legal Assistant
for Respondent

SWORN to before me this 3rd day of August, 2023

Notary Public for South Carolina.
My Commission Expires: May 16 2029

The Supreme Court of South Carolina

Terrell McCoy, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-000755
Lower Court Case No. 2013-CP-10-01994

ORDER

Petitioner has filed a petition for a writ of certiorari, following the denial of his application for post-conviction relief (PCR). Petitioner's arguments to this Court encompass allegations of (1) ineffective assistance of counsel against standby trial counsel for failing to warn him about the dangers of self-representation, (2) error by the PCR judge in denying petitioner's request to relieve PCR counsel and proceed *pro se* at the PCR hearing, and (3) multiple claims of ineffective assistance of appellate counsel. We grant the petition for a writ of certiorari and dispense with further briefing.

Our review of the Appendix indicates Petitioner raised numerous issues in his PCR application and at the PCR hearing. At the conclusion of the hearing, the PCR judge announced that she would issue a form order that day denying the PCR application. The PCR judge asked the State to submit a proposed, formal order and to transmit a copy to opposing counsel. The PCR judge noted that she expected to rewrite portions of the State's proposed draft so the final version would conform to her own preferences as to PCR orders.

Upon reviewing the order denying Petitioner's PCR application, we conclude many of the issues Petitioner presented to the PCR judge were not ruled upon. For example, the PCR judge issued a broad ruling finding appellate counsel was effective before addressing only two of the specific issues raised by petitioner—the failure to appeal the denial of a motion under *Batson v. Kentucky*, 476 U.S. 79

(1986), and a request for a jury charge. Petitioner filed a Rule 59(e), SCRCP, motion, which arguably preserved several additional issues that were presented at the PCR hearing. However, the PCR judge issued an order summarily denying Petitioner's Rule 59(e) motion without specifically discussing the issues raised by Petitioner.

This Court recently addressed our continuing concerns over PCR orders that do not comply with S.C. Code Ann. § 17-27-80 (2014) (requiring the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented"), and Rule 52(a), SCRCP (stating "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon"). *See Reese v. State*, 425 S.C. 108, 110, 820 S.E.2d 376, 377 (2018) ("Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it." (quoting *Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992))). In *Reese*, we noted *Pruitt* was decided twenty-six years earlier, and we cited numerous cases reiterating the law and our admonition that it be followed. *Id.* at 109-11, 423 S.E.2d at 377-78.

Because the PCR judge's orders denying Petitioner's PCR application and his Rule 59(e) motion did not rule on the merits of all of the issues properly presented, the orders did not comply with the law. Accordingly, we vacate the orders dismissing Petitioner's PCR application and denying the Rule 59(e) motion, and we dismiss the proceedings before this Court without prejudice. This matter is remanded to the PCR judge to issue an order that contains specific findings on each of the allegations raised by Petitioner at the PCR hearing and in his Rule 59(e) motion. The new PCR order shall be issued within thirty (30) days of the date of this order. The PCR judge shall notify this Court, in writing, that she has timely complied with this order. Following the issuance of a legally sufficient PCR order and a ruling on any Rule 59(e) motion, the aggrieved party may serve and file a new Notice of Appeal.

C.J.

J.

J.