The State of South Carolina
In The Supreme Court

---

aPPeal From adminiatrative Judge
Honorable Williams P keesley
Case No # 2000-GS-32-00689
warrant # G-213779

State of South Carolina . . . . . Respondent

V

James C williams . . . . . APPellant

Notice of aPPeal

James C williams aPPeals the dismissal of the Honorable Williams P keesley dated AUGust-16-2013 The aPPellant received written notice of this dismissal on aUgust 21-2013

James C Williams
James C williams
282929 P-B-60
4848 Goldmine Hwy
Kershaw SC 29067

Proof of service

I, James C Williams #282929 do hereby certify that on this date i placed in the United States Mail Postage PrePaid at kershaw Correctional Institution Four Copies of the Foregoing notice of appeal listed Person(s)

Donald V Myers
Solicitor Eleventh
Judicial Circuit
Po Box 874 Lexington SC
29290 71

Beth a Carrigg Clerk
of Court 205 East main
Suit 128 Lexington SC

Assistance Attorney
Withmire Po Box 11549
Columbia SC 29211

David mauldin
assistant Public
defender office
407 1/2 W main
St Lexington SC
29072

James C Williams
James C Williams
282929 P. B. 60
4848 Goldmine Hwy
Kershaw SC 29067

FILED

STATE OF SOUTH CAROLINA 2013 AUG 19 PM 2:5 COUNTY OF LEXINGTON BETH A. CARRIGG CLERK OF COURT LEXINGTON SC	IN THE COURT OF GENERAL SESSIONS FOR THE ELEVENTH JUDICIAL CIRCUIT
The State of South Carolina, v. James Chester Williams, #282929, Defendant.	Indictment # 2000-GS-32-00689 Warrant # G-213779 **ORDER FOR STATUS CONFERENCE REGARDING MOTION ON CLAIM OF AFTER-DISCOVERED EVIDENCE**

A hearing/status conference was held on June 20, 2013, to try to determine how to proceed regarding the documents being filed by James Chester Williams seeking a new trial. He also filed a document seeking to relieve his attorney. The court dismisses the motion for a new trial claiming after-discovered evidence. The court relieves the attorney from further participation in the case, with the exception of filing a notice of appeal, if Mr. Williams desires to appeal.

WPC #1

After a jury was impaneled in March 2002, Mr. Williams entered a plea of guilty to murdering his wife. The presiding judge, The Honorable Marc H. Westbrook, accepted the defendant's guilty plea and the recommended sentence of imprisonment for 30 years. An appeal was filed and ultimately dismissed.

Mr. Williams filed two previous Post-Conviction Relief Actions, but has not prevailed on either. He also has filed a petition for habeas corpus in the federal courts, which he claims he withdrew. His claims have been rejected on appeal more than once.

On July 23, 2012, Mr. Williams filed a "Motion for After-Newly Discovered Evidence." He sent a letter on October 12, 2012, questioning the status of his motion. The court, upon learning of this motion, reviewed the documents and issued an order that was filed October 19, 2012. In view of the confusing nature of the assertions being made by Mr. Williams, the court took the extraordinary step of appointing an attorney for him to see if anything could be developed to support the claim for a new trial based on after-discovered evidence (or any other reason). In that order the court mentioned issues and concerns, including the fact that the defendant is citing a SLED report as after-discovered evidence, but seems to want to conduct discovery to seek out new matter.

The Public Defender's office was designated to represent Mr. Williams and, in December, Assistant Public Defender David Mauldin, an experienced trial attorney, began working on the case. He learned that Mr. Williams was claiming newly-discovered evidence in the form of SLED reports that he claims were never made available to him. However, Mr. Mauldin obtained copies of the files of the attorney who handled the plea (Mr. Gorski) and the appellate file, and he learned that the reports are in those files, and that they were supplied to the defense by the Solicitor's office in the normal course of discovery. In the conference on June 20, 2013, Mr. Williams stated that he had seen two Gunshot Residue Analysis forms (these forms were marked as court's exhibits for the June 2013 status conference), but had not seen the reports from SLED dated October 18, 1999 and April 24, 2000 (which were also marked as court's exhibits). The only conclusion that can be drawn is that these reports were given to Mr.

Williams' attorney long before the plea, but Mr. Williams claims that he had not seen them.

If they were withheld from him (and there is no credible evidence that they were), the court was still at a loss to understand how those reports would benefit the defendant and entitle him to a new trial. The October 18, 1999 report relates to gunshot residue taken from the victim and the defendant. Mr. Williams was swabbed for gunshot residue, but he fled from the scene and was not captured until about 18 hours later in another county. The report only indicates that the test was not performed because there had been too long a lapse of time to comply with the testing protocol. The gunshot residue test found residue on the victim's left palm and the back of her right hand. The report states that there were round, lead particles found. Nothing conclusive was found on the back of the decedent's left hand.

WPA #3

The October 1999 SLED report also mentioned clothing that was examined. The defendant's socks, pants, shirt, underwear, and tennis shoes were examined. The victim's t-shirt was also examined. The report found no holes or "physical effects indicative of gunpowder residue" on the defendant's clothing. It found residue and physical characteristics on the victim's t-shirt that were consistent with a contact wound. The victim was killed with a shotgun.

The SLED report of April 2000 related to the defendant's clothing. No blood was detected on his socks, shirt, underwear, or tennis shoes. Samples were lifted from his pants and sent for DNA analysis and blood identification.

Mr. Williams admits that he was present at the scene. His children were also there. The recitation of facts given by the Deputy Solicitor at the plea indicated that the

victim and defendant were estranged. The defendant came over to the victim's apartment. An argument ensued. The defendant left the apartment, went to his vehicle, retrieved a shotgun, and returned to the apartment. Once inside, he had the victim come into a bedroom outside the view of the children. However, the children could hear the discussion. It was reported that the victim asked the defendant something to the effect of whether he was going to kill her. One shot was then fired, and the defendant fled. The defendant admitted his guilt to Judge Westbrook and never took issue with the recitation of facts during the guilty plea.

The defendant went to a location where his family resided. When he was found, he was hiding. The shotgun was found and a box of ammunition. One shell was missing. The defendant's palm print apparently was on the box of ammunition.

Mr. Williams seems to believe that the absence of any mention of blood on his clothing is newly-discovered evidence that proves he is not guilty. He was present at the scene, however, and the report indicates that samples were taken from his pants and submitted for analysis. He has offered no hint of newly-discovered evidence related to these reports that could form the basis of granting a new trial.

Mr. Williams told his attorney that the victim was wearing a skirt and that there was no forensic examination of the skirt. The wound was to the victim's neck. Other than the blanket assertion that there was no analysis done of the skirt, there has been no showing that anything related to the skirt could support a new trial. After the appeals and PCR cases were denied, the skirt was destroyed. Since there was no trial, it was never entered into evidence, and the Sheriff's Department eventually threw it away. There is no assertion that the destruction of the skirt was improper. It seems to be pure

speculation on the part of the defendant that a forensic examination of the skirt would have yielded evidence that would show that the defendant never fired the weapon.

There is simply nothing in the way of newly-discovered evidence that would warrant allowing this claim to proceed. There are no affidavits, no test results, no new material at all that was unknown to the defendant at the time of the plea or which could not have been discovered through the exercise of reasonable diligence.

Mr. Williams said that a SLED agent visited him at the prison and told him that the agent had kept up with this case over the years and that there was no evidence that Mr. Williams committed murder. The court had the attorneys contact SLED. The agent was located and said he knows Mr. Williams from having grown up together. He also admitted that there had been a conversation between them at the prison. So, the court instructed the agent to come to court and waited while the SLED agent in question drove from Florence to Lexington.

WPC #5

When the SLED agent arrived, Mr. Williams immediately reversed himself. He began by saying that he did not want to get the agent in any trouble, which implied that he was trying to shield the agent from admitting that the conversation had occurred as Mr. Williams originally reported it. However, the court wanted to hear from the agent himself to see if the agent knew of any impropriety or newly-discovered evidence. When it became apparent that the agent was going to tell the court his version of what occurred, Mr. Williams admitted that he had lied under oath. He tried to claim at times that he said things differently, but it is indisputable that Mr. Williams lied and that he only admitted to his deceit when the court brought the SLED agent to testify.

The SLED agent was placed under oath and stated that he was at the prison working on another case. He said that he had grown up with the defendant and simply wanted to pay Mr. Williams a friendly visit while at the location, completely unrelated to work. He credibly and emphatically denied having ever told Mr. Williams that he had kept up with the case, that he viewed anything about the evidence as being insufficient to support a murder conviction, or that he knew of anything that had been done improperly in the case. When questioned, the agent testified that he did not know of any evidence that might benefit Mr. Williams and that he did not know of any impropriety in the prosecution.

Having given Mr. Williams several hours to think about his claims and to give the court any indication that there might be some after-discovered evidence claim that should be explored, it was apparent that he has no such information. At best, he wants to reopen the case and conduct a fishing expedition.

WPM #6

Throughout the proceedings, Mr. Williams maintained that he is innocent. He asserted that the plea was coerced – that "they" threatened his children. When asked to explain how he was threatened or coerced, and how the children were threatened, he said that the children were going to have to testify. As indicated above, the children were present when the events took place. They were material witnesses. The fact that Mr. Williams might want to spare his children from having to testify is not evidence of any threat or coercion.

Mr. Williams claimed that he was never told about certain rights, including his right against self-incrimination. The transcript of the guilty plea completely refutes his assertions in this regard. When he persisted in this claim, the court read to him out

loud, the portions of the transcript where the judge covered his rights and asked the defendant to explain how he has any claim of not knowing his rights. He had no specific response, other than to keep asserting denials. It is clear that the judge covered those issues adequately. Further, Mr. Williams has had two PCR cases, and he did not prevail. He did not pursue federal habeas corpus relief against his PCR counsel.

Mr. Williams was asked about his assertion of actual innocence. He has no indication that he knows of any evidence that can be explored that would go to actual innocence. The only thing he has in that regard is his general assertion of innocence.

Finally, Mr. Williams became emotional and crying at the end of the proceeding. It was difficult to understand him, but it is clear that he said that he effectively has a life sentence because of his age and that he has tried repeatedly to have someone help him, without success. He said over and again that he is as innocent of this crime as everyone else in the courtroom. Then, he accused Judge Westbrook, his former attorney Mr. Gorski, and the Solicitor's office of tricking him and promising him that if he pleaded guilty, he would be able to have the conviction overturned on PCR. He claims that promise happened in the courtroom. It is a preposterous assertion. There is nothing in the record to support that claim. Judge Westbrook is now deceased and unable to refute that claim. There is nothing to indicate that it warrants further exploration.

To justify allowing further pursuit of the motion for a new trial based on after-discovered evidence, the defendant would have to possess information that he could share with the court to show that evidence might reasonably be developed to support the following elements: (1) that there is evidence that would probably change the result

if a new trial were granted; (2) which was discovered since the plea; (3) which would not in the exercise of due diligence have been discovered prior to the plea; (4) that is material; (5) and, is not merely cumulative or impeaching. There is nothing in this record to indicate that the defendant has knowledge of anything that might lead to the development of admissible evidence on these points.

The court has also reviewed Rule 29(b), SCRCrP, which reads, as follows:

> **(b) New Trials Based on After-Discovered Evidence.** A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.

Williams #8

The pending motion was filed July 23, 2012. So, if Mr. Williams just discovered this evidence, the motion was made within one year of the discovery. However, having now given the defendant the opportunity to explain his assertion, he has not produced any indication that further discovery is likely to lead to admissible evidence showing that SLED reports contained information establishing that the shooting of his wife was accidental, which would exonerate him on the murder charge. Both reports were in his file, disclosed by the State, and in existence at the time that his case was called for trial. He had forms dealing with gunshot residue testing. He cannot establish that those reports were withheld by the prosecution or that they somehow constitute newly-discovered evidence of an accidental shooting. As for mechanical problems with the

weapon, the only indication is that Mr. Williams knew of problems with the mechanism of the weapon all along.

As noted in a previous order, in addition to the claim related to the SLED report, which appears to be one that was initially properly stated on its face, there are other assertions of fraud and misconduct by various officials, including the prosecutor and the defense attorney. Mr. Williams cites a civil rule, Rule 60(b)(3), SCRCP. Rule 60 reads, in part:

RULE 60
RELIEF FROM JUDGMENT OR ORDER

> **(b) 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: . . .
>
> **(3)** fraud, misrepresentation, or other misconduct of an adverse party; . . .
>
> 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. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

WM #9

There is no indication that Mr. Williams can produce any evidence of fraud or misconduct by anyone associated with his case. In fact, the only indication that the

court has of such impropriety occurred when Mr. Williams came into court on June 20, 2013, and admittedly lied under oath.

The court has gotten a motion from the defendant seeking to relieve counsel. Prior to that, the court received a copy of a petition for a writ of mandamus that the defendant presumably sent to the Supreme Court of South Carolina seeking to require the court to rule on the motion for a new trial. Mr. Williams may be able to assert a motion for a new trial in the Supreme Court of South Carolina, but the copy of the document that this court was provided merely asked to have this court rule upon his motion.

Having given the defendant every opportunity reasonably justified, including appointing an attorney to investigate his claims, there is no evidence and no indication that there are matters that further investigation might uncover that might warrant the relief being sought. Moreover, almost all of his claims would be procedurally barred since he has been given PCR hearings and appeals. The court dismisses this motion and relieves the attorney, though the attorney may submit a notice of intent to appeal, if Mr. Williams desires.

Wilk #10

THEREFORE, IT IS ORDERED that the motion for new trial based on after-discovered evidence is dismissed, there being no indication of any evidence that might be developed to support such relief.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this order to David Mauldin of the Public Defender's office, the Solicitor's office of the Eleventh Judicial Circuit, and the South Carolina Attorney General's office.

IT IS FURTHER ORDERED that a copy of this order be sent by the Clerk of Court to Mr. Williams at the following address: (James C. Williams, #282929, Kershaw Correctional Institution, PB#60, 4848 Goldmine Highway, Kershaw, SC 29067).

AND IT IS SO ORDERED.

William P. Keesley
Chief Judge for Administrative Purposes
General Sessions

Lexington, South Carolina

August 16, 2013

#11

FILED
2013 AUG 19 PM 2:57
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC