

The State of South Carolina
In the Supreme Court

Appeal from Fairfield County
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge
Case NO. 2024-001475

RECEIVED
OCT 07 2024
S.C. SUPREME COURT

Randevious H. Sims Appellant

V.

State of South Carolina Respondent

Appellants written explanations pursuant to Rule 243(C) South Carolina
Appellate Court Rules

Procedural Background:

The Petitioner entered a guilty Plea on June 15, 2015. I Filed my first (PCR) Post-Conviction Relief application on July 12, 2016, and a second PCR application on October 2, 2023, based on newly discovered evidence and procedural oversights. This motion for rehearing under Rule 243(c) is grounded in Exhibits A and B, the affidavit of service, and additional evidence presented in my second PCR, all of which introduce crucial facts that were not fully considered by the Court and directly impact the legal conclusions in the petitioner's case.

Grounds for Rehearing Under Rule 243(c):

Rule 243(c) allows for a rehearing when the court has potentially misapprehended the facts or the law. The evidence presented in Exhibits A, B, and the affidavit of service contains substantial new information that was either overlooked or misunderstood and fundamentally alters the legal context of the petitioner's guilty plea.

1. Exhibit A - Letter Regarding Rule 5 Motion:

Exhibit A is a letter from clerk of court of Fairfield County, dated March 7, 2023 indicating that no Rule 5 motion was filed in the petitioner's case. This omission directly impacts the procedural handling of detainers and the calculation of credit for time served. The failure to account for this letter during the court's initial ruling constitutes a factual misapprehension and warrants reconsideration under Rule 243(c).

2. Exhibit B - Autopsy Report and Sheriff's letter:

Exhibit B includes an autopsy report and a letter from the sheriff's office detailing the circumstances of Leon Wright's death. The autopsy shows that Wright was shot in the back during an attempted break-in. However, there are inconsistencies in the autopsy report, particularly regarding the bullet trajectory and the circumstances surrounding the incident. These discrepancies raise significant doubts about the original findings and suggest that the court may have misapprehended key facts in reaching its decision.

3. Affidavit of Service:

The affidavit of service, dated December 6, 2023, shows that the summons and complaint were served on the attorney general's office. This proper service of documents ensures that all procedural steps were followed. However, the court did not fully consider the implications of this affidavit in its ruling, which contributed to a misapprehension of the procedural status of the case.

Issue 1: The lower court's Determination that this action is barred as being successive and/or untimely under the statutes of limitations is improper

Supporting facts, Argument, and legal authority:

The Petitioner has demonstrated sufficient grounds for why his current claims were not raised during his initial PCR application. The newly discovered prosecutorial misconduct only came to light after the dismissal of his first PCR application. Specifically, the Honorable Judy M. Bonds, Clerk of Court for Fairfield County, issued a letter on March 7, 2023, confirming that no Rule 5 motion was ever filed in the Petitioner's case, a significant procedural error (see Petitioner's Exhibit A).

South Carolina ~~Code~~ Code of laws 17-27-45(c) mandates that PCR applications based on newly discovered evidence must be filed within one year of the actual discovery of such evidence, or when the evidence could have been reasonably discovered through due diligence. The Petitioner's Second PCR application was filed promptly ~~and~~ within this one-year period following the discovery of the clerk of court's letter.

Legal Precedents:

See *Aicey v. State*, 402 S.C. 363, 739 S.E.2d 63 (2013); *Robinson v. State*, 489 S.E.2d 198 (Ct. App. 1988); *Tilley v. State*, 334 S.C. 495 (1999); *Bailey v. State*, 433 S.C. 399 (2021).

Given the discovery of this significant procedural error, the lower court's dismissal of the PCR claim as untimely and successive was improper.

Issue 2: Brady Violation

Supporting facts, Argument, and legal authority:

The Petitioner's constitutional rights were violated due to the state's failure to file a Rule 5 motion, a critical element in the discovery process of criminal proceedings. The absence of a Rule 5 motion hindered the Petitioner's ability to properly prepare his defense, depriving him of access to potentially exculpatory information.

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution is obligated to disclose evidence favorable to the accused that is material either to guilt or punishment. Then ~~and~~ non-disclosure of such material evidence violates the due process rights of the accused. In the present case, the Petitioner was denied critical information that could have influenced his decision to plead guilty. Had the Petitioner known that a Rule 5 motion was never filed, he would have likely sought to challenge the evidence against him and proceed to trial

In *United States v. Agurs*, 427 U.S. 97 (1976), the Supreme Court expanded upon Brady by identifying three distinct categories of Brady violations:

1. Cases involving non-disclosed evidence or perjured testimony about which the Prosecutor knew or should have known.
2. Cases in which the defendant specifically requested the non-disclosed evidence.
3. Cases in which the defendant made no request or only a general request for Brady material.

In the petitioner's case, the state's failure to disclose the absence of a rule 5 motion falls under the third category of Brady violations. Even though no specific request was made, the suppression of this procedural failure constitutes a material violation of the petitioner's rights. The suppressed evidence was material because there is a reasonable probability that had the defense been aware of it, the outcome of the proceedings would have been different.

In ~~the~~ *Kyles v. Whitley*, 514 U.S. 419 (1995), the Supreme Court emphasized that the suppression of material evidence undermines the confidence in the outcome of the trial. Furthermore, in *Gibson v. State*, 334 S.C. 515 (1999), the South Carolina Supreme Court held that a Brady violation occurs when the government's failure to disclose evidence undermines confidence in the verdict or the plea outcome.

Thus, the lower court's dismissal of this case is improper due to the material nature of the Brady violation. The petitioner's constitutional right to a fair trial and due process was compromised by the state's failure to disclose essential procedural information.

Issue 3: Prosecutorial Misconduct

Supporting Facts, Argument, and Legal Authority:

The prosecutorial misconduct in this case is twofold: the failure to disclose exculpatory Brady material and the subornation of perjury. Prosecutors, as officers of the court, have an obligation to seek justice, not just convictions. In this case, the prosecution's actions, or inactions, resulted in a miscarriage of justice by allowing perjured testimony to influence the court's decision-making process.

As established in *State v. Rayfield*, 369 S.C. 106 (2006), a prosecutor must ensure that justice is done and that no conviction occurs unless it strictly conforms to the law. In the ~~petitioner's~~ petitioner's case, the prosecution's failure to reveal the absence of a Rule 5 motion, coupled with the defense counsel's perjury, violated this standard. By falsely representing that all discovery had been properly reviewed both the prosecution and defense counsel participated in an unlawful subversion of justice.

Perjury and subornation of perjury are serious offenses under South Carolina Code of Laws 16-9-10, 16-9-20, 16-9-30. The evidence in this case clearly shows that the prosecution allowed perjured testimony to influence the proceedings, thus violating the petitioner's constitutional rights. By concealing the absence of a Rule 5 motion, the prosecution acted in bad faith, compromising the integrity of the judicial process.

The failure of the prosecution to act in good faith undermines the fairness of the entire Criminal Justice System. In *Napue v. Illinois*, 360 U.S. 264 (1959), the Supreme Court held that a conviction must be overturned if the prosecution knowingly uses false evidence, including perjured testimony, to obtain a conviction. The petitioner's case demonstrates clear violations of this principle.

The misconduct by both the prosecution and defense counsel not only violated the petitioner's right but also undermined the public's confidence in the judicial process. The integrity of the court is paramount, and any act that seeks to prevent justice, such as subornation of perjury, must be addressed with the utmost severity.

Therefore, the petitioner asserts that the lower court's decision regarding prosecutorial misconduct was improper and requests that the court reconsider the case in light of these violations.

Request for deadline to respond; ~~the court should~~

Given the urgency of this matter and the significant constitutional issues at stake, the petitioner respectfully requests that the court set a deadline for the opposing party to respond by (20 days). This will ensure the expeditious resolution of the issues raised in this petition for rehearing.

Conclusion:

In light of the Substantial new evidence, the material Brady violations, and the prosecutorial misconduct that have come to light since the initial PCR, the petitioner respectfully submits that the lower court's decision was based on a misapprehension of the facts and the law. The failure to properly address these issues constitutes a violation of the petitioner's constitutional rights. Accordingly, the petitioner respectfully requests that the court grant this petition for rehearing under Rule 243(c).

51 - Randerious Sims
Randerious H. Sims
Appellant pro se
#610 Hwy #4 west
Bennettsville South Carolina
#29512

October 2, 2024 A.D.