In The Supreme Court Of South Carolina

In The Eleventh Judicial Circuit

RECEIVED
FEB 24 2025
S.C. SUPREME COURT

Ronald D. Michaux, Jr.,	)	Appellate Case No. 2024-000960
Petitioner,	)	
	)	
v.	)	Declaration In Support
	)	
	)	
State of South Carolina,	)	of _Johnson_ Petition
Respondent	)	
	)	

Ronald D. Michaux, Jr. States:

1. I am the prisoner Petitioner in the above-entitled Case. I make this declaration in support of my _Johnson_ petition.

2. Issue 1 - Whether the PCR Court erred in finding trial Counsel provided effective representation where counsel failed to raise a _Batson_ motion.

3. The PCR Court contends that Counsel Mauldin, an experienced defense attorney with over a dozen years trial practice, testified that he was

familiar with Batson and summarized his understanding of the case. That his recollection of my case was that one black female juror had been struck by the State, but the State had sat at least one or two other black people on the jury, and he saw no reason to raise a Batson issue and, if he had seen something that raised his suspicion the Solicitor was taking race into consideration in jury selection, he would have raised the issue. That Assistant Solicitor Bradley Pogue testified he understood the premise of Batson ("preemptory strikes can only be used for, you know, non-racial or non-sexual reasons") and that in this case, it was non-race." That he further testified, "we don't ever strike a juror for any race-based reason." That of the 3 black females that were presented, the State struck just one, and it was because she had a criminal record; and that such a strike would be keeping with standard office practice. That this Court found the testimony of the prosecutor that the strike was based upon the existence of a criminal charge on her record which the State felt could harbor resentment against the State. That I have not met my burden by presenting testimony, as required to prevail on the claim. That I have not shown that counsel was ineffective in failing to raise this claim at trial and I have failed to show prejudice resulted from the failure of this one juror to be seated when the State put forth all of the remaining black female

jurors who were selected as possible jurors.

I assert that trial counsel (David Mauldin), recollection of this case pertaining to the Batson issue is flawed because there were ONLY 3 black females selected for jury duty. See Exhibit A (Tr. p. 70 lines 8-20; Tr. p. 72 lines 5-11.) However, only one black female was selected for jury duty. See Exhibit A (Tr. p. 70 lines 12-19). Solicitor Mr. Bell struck Kimberly Dunlap (black female) from the jury pool, See Exhibit A (Tr. p. 70 lines 8-10) and trial counsel struck the other black female from the jury pool. See Exhibit A (Tr. p. 72 lines 5-10). Out of 3 black females being selected for jury duty, only one was selected. However, there were 9 white females selected for jury duty. Out of 9 white females selected for jury duty, 5 white females were chosen to serve. See Exhibit A (Tr. p. 72 line 24 - p. 73 line 10; Tr. p. 73 lines 15-20; Tr. p. 74 lines 2-7; and Tr. p. 74 lines 21 - p. 75 line 2). I did not have any knowledge before trial or jury selection that trial counsel was gonna strike any black females from jury duty, nor did I tell him to strike any black females from jury duty. The PCR Court contends that. "[O]f the 3 black females that were presented, the State struck just one, and it was because she had a criminal charge on her record." So, the Court found the testimony of the prosecutor that the strike was based

upon the existence of the criminal charge on her record which the State felt could harbor resentment against the State." I assert that the State struck the black juror on the basis of race because she did NOT have a criminal charge on her record. The one black juror that was struck by the State is Kimberly Rena Dunlap and she was charged with criminal domestic violence, first offense, that was either dismissed or nolle prossed by the prosecuting agency. See Exhibit A (Tr. p. 385 line 17 - p. 386 line 1). Furthermore, the assertion that, "the existence of the criminal charge on her record could harbor resentment against the State" lacks merit. First, the uncontroverted facts is that she was initially charged by the police - a law enforcement official - and not the solicitor's office. Second, the Solicitor's office is the agency that decided to dismiss or nolle prossed this charge. Third, Ms. Kimberly Dunlap never testified or write any statements alleging that she harbor resentment against the State, nor did anyone question or depose her as to whether she harbored any resentment against the State. Fourth, no evidence was presented to the trial court or the PCR Court that Ms. Dunlap harbored any resentment against the State. Finally, the assertion by Bradley Pogue that she could harbor resentment against

the State is hearsay. At the time of trial, Mr. Pogue could NOT describe or explain Ms. Kimberly Dunlap's state of mind, memory, or belief to prove that she harbored any resentment against the State. The record is devoid of any facts as to the state-of-mind of Ms. Kimberly Dunlap, a female black juror.

As to the second black female juror - #89 Linda Green - who was struck by trial counsel also establishes a Batson issue. Trial counsel struck her on the basis of race. Trial counsel testified that,"he was admitted to practice law in 1997" and worked for George Sink for a year and a half. See Exhibit A (Tr. p. 337 lines 4-10). That he applied at the public defender and solicitor's office in Aiken in April of 1999 and was at the public defender's office until 2008. That he moved over to Lexington to be a public defender until 2012. Took a break for approx. 10 months and resumed back working for the public defender's office until present date. See Exhibit A (Tr. p. 337 lines 10-17). I assert that trial counsel was instrumental in this Batson issue because he testified that, "in Lexington our jury pool is super minority black." And that, "it didn't even reflect the

population in the county, and you'd be luck to get five on a whole pool." See Exhibit A (Tr.p. 350 lines 10-13). Trial counsel admitted that Lexington exhibits a wide-spread pattern of discrimination during the selection. See Exhibit A (Tr.p. 350 lines 10-13). When trial counsel was asked if, "[he saw] any reason at the time to raise a Batson issue" and he said, "no." See Exhibit A (Tr. p. 350 lines 8-10). This is contradictory facts. I also assert that trial counsel was ineffective for failing to raise a Batson issue to the trial court and his conduct in striking the second black female juror - #89 Linda Green- Violated Rule 1.1, SCRACT Rule 407. Since trial counsel admitted that at the time of his representation of me, he has accumulated over 15 years of practicing criminal law, and jury selection is an integral part of the legal system. Moreover, trial counsel's decision to strike this black female juror is evidence that he failed to act as an advocate in my behalf in this case. So, on one hand, he admits to the PCR Court that Lexington exhibits a wide-spread pattern of discrimination during jury selection, See Exhibit A (Tr.p. 350 lines 10-13) but on the other hand, he strikes the only other

black female selected for jury duty. See Exhibit A (Tr. p. 72 lines 5-10). Trial counsel aided the Solicitor's Office in striking this black female juror by acting as an advocate for the Solicitor's office. Furthermore, trial counsel never conferred or consulted with me either before or during jury selection. So, I never had a say in the selection of the jury. Therefore, I assert that I have proven a genuine issue of material fact that withstands summary judgment in this action.

4. Issue 2 - Whether the PCR Court erred in finding trial counsel provided effective representation where counsel failed to argue the affidavit supporting the arrest warrant lacked probable cause.

5. The PCR Court contends that Counsel testified at the hearing that he had seen the arrest warrant affidavit and did not see any benefit in arguing the affidavit lacked probable cause. That the warrent was obtained after I was in jail and, after having been arrested on the side of the road. That the officer smelled marijuana in the car, determined I was driving without a valid license, and

Based on the record before the court, there are issues of fact with regard to the use of excessive force on June 20, 2019. Plaintiff alleges that the Officers "rammed" his head into the walls and placed the arm lock on both arms causing him to suffer excruciating pain in his shoulders and migraines for several weeks. Defendants have not submitted sufficient evidence for summary judgment to be granted. Defendants have not addressed Plaintiff's allegation that the Officers "rammed" his head into the walls or wing doors or his allegations that the officers used two arm-locks after he was subdued and handcuffed. Plaintiff alleges that he was not allowed to be seen by medical so there are no medical records. Defendants submitted an affidavit from Officer Cleveland attesting that he does not recall the incident Plaintiff claims took place on June 20, 2019. (ECF No. 159-1). However, Cleveland attests that he did participate in an investigation in August 2019, when he gave a handwritten statement to Agent Casares of SCDC Police Services stating that he did not recall the incident. Id. Cleveland reviewed the amended complaint and attests that if he did use force against Plaintiff in the manner described, he was doing so within his discretion as a correctional officer and that he would have used the minimum force required to enforce compliance by Plaintiff. Id. No other affidavits were submitted in regard to these allegations in support of summary judgment. Therefore, there are genuine issues of material fact with regard to the allegations of excessive force by Officer Cleveland

the officer found a small black bag that field tested for cocaine in the car. That the evidence used against me at trial had already been obtained by the time of my arrest and it was sufficient for conviction, and that, "arrest warrants are kind of subsumed by the indictments as far as the charging document." That trial counsel chose to challenge the officer's probable cause regarding the stop and search, instead of the probable cause articulated in the arrest warrant after the search had already been concluded. That counsel's conduct was within the acceptable range of professional assistance and I have not shown prejudice resulting from Counsel's failure to argue the affidavit, in light of the indictment returned by the grand jury and the jury verdict.

I assert that the Fourth Amendment divides responsibility for the issuance of a warrant between the magistrate and the officer who applies for the warrant.' That trial counsel should have still litigated the issue that the affidavit supporting the arrest warrant failed to set forth any facts to support a finding of probable cause because Trooper Harrison never had probable cause to stop me and search the vehicle. Furthermore, Trooper Harrison within his affidavit supporting the arrest warrant presented no evidentiary facts to support his allegations that the magistrate had probable cause to issue the warrant. The affidavit

allegations listed in the grievance. She based on her findings on statements made by the inmate and the correctional officers and had no camera video footage of the incident. Id. at 3. The warden denied the grievance based on the investigation by Police Services which Plaintiff received on January 15, 2020.(ECF No. 154-2 at 4-5). On April 15, 2020, the grievance coordinators received Plaintiff's Step Two grievance form which was denied on May 26, 2020. This action followed.

Defendants filed a motion for summary judgment asserting that Plaintiff cannot meet the elements of his claim for excessive force against Officer Cleveland. Specifically, Defendants argue that Plaintiff's medical records fail to show any injury to state a cognizable claim and that Plaintiff presents no evidence that Defendants acted with a "sufficiently culpable state of mind" to cause Plaintiff's alleged pain or injuries.

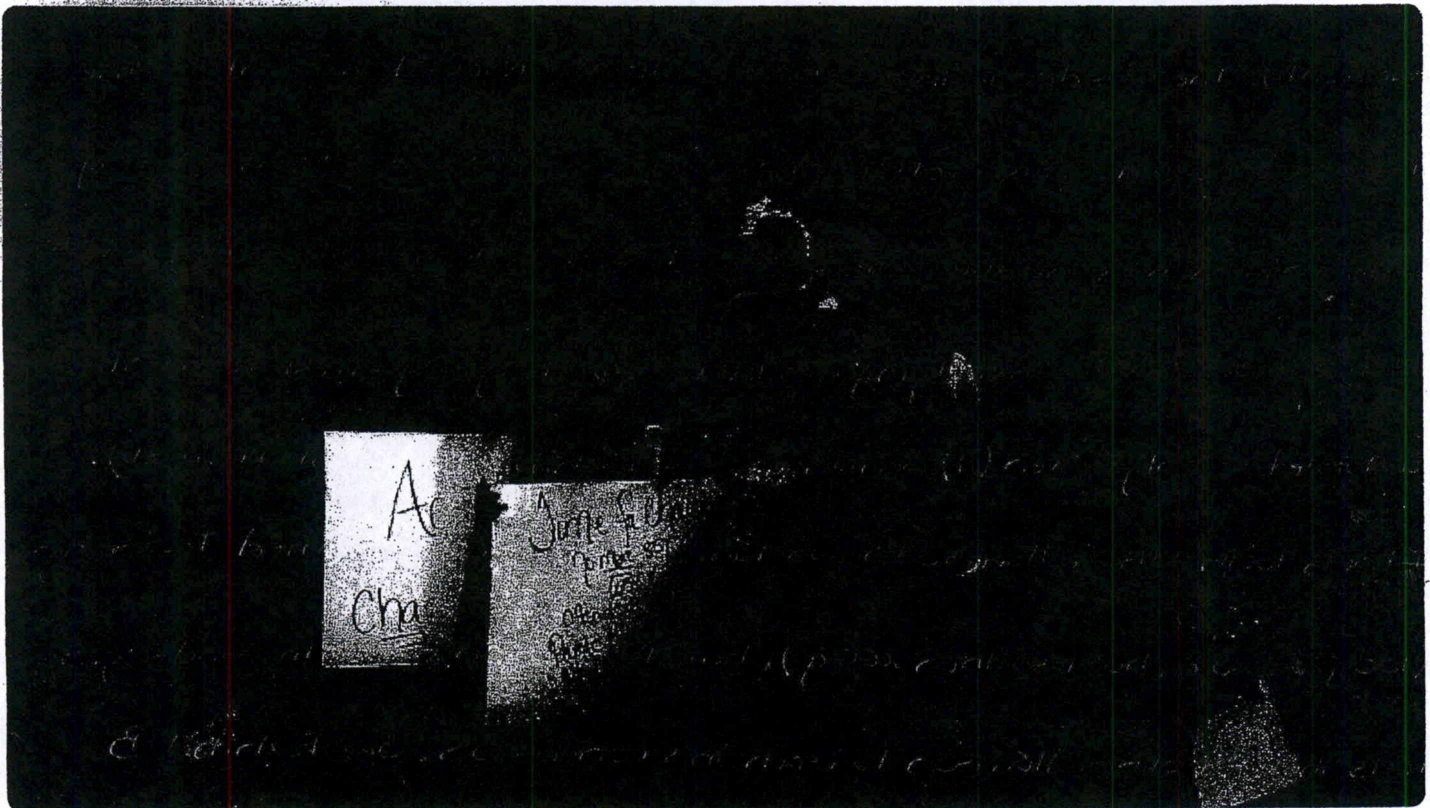
c. Excessive Force

In this case, Plaintiff admits that on June 20, 2019, he refused direct commands to turn around to be handcuffed, the officers forced him to the ground and a struggle ensued until he surrendered to be handcuffed to avoid any injury to his arms or shoulders. However, Plaintiff alleges that after he was handcuffed, Defendants placed him in two arm locks "almost dislocating" his shoulders and rammed his head into the wing doors and walls on the way to his cell. (ECF No. 11).

supporting the arrest warrant failed to set forth any facts as to why he believed I committed this alleged offense. See Exhibit **B** (arrest warrant). The affidavit also did not contain a detailed account of the facts uncovered by the traffic stop, the source of these facts, or any other information the magistrate needed to evaluate the reliability of the officer's sources. The underlying affidavit supporting my arrest warrant consisted of only seven (7) sentences. See Exhibit **B** (arrest warrant). It sets forth Officer Harrison's conclusions that I committed Trafficking (100g or more, but less than 200g), but discloses none of the underlying facts that led officer Harrison to reach this conclusion. See Exhibit B (arrest warrant). I assert that Trooper Harrison did not witness me commit a traffic violation. I was not captured on any audio/video surveillance device committing a traffic violation, he did not state within the underlying affidavit that he captured me on any audio/video surveillance device committing a Trafficking offense, nor did he present any audio/video surveillance devices to the magistrate substantiating his allegation that I committed a traffic violation. Magistrate's normally rely exclusively on the information contained in the officer's sworn affidavit; they rarely take oral

change.org

Petition details   Comments



Reduce current mandatory 85 % to 65 retroactive for all offenders. Parole offered for all offenders- those who are sentenced under determinate or indeterminate sentence consider previous votes Reestablish good behavior and work credit credits

Started   May 17, 2015
Petition to   **South Carolina State Senate**

36,758   **50,000**

testimony or call other witnesses. Trooper Harrison also was aware that the affidavit supporting the arrest warrent was deficient is because he is a "Level One" certified officer that has been ~~with~~ employed with a law enforcement agency for over 20 years. An arrest warrant is only obtainable by a law enforcement officer. Only a level one certified officer can take out a warrant. They need to have completed the cource at the (South Carolina Criminal Justice) Academy. The affidavit in Exhibit C shows the detail that Trooper Harrison should have put in his application for a warrant. See Exhibit C (affidavit). I was prejudice by this because trial counsel could have moved to suppress the drugs allegedly found in the car.

6. Issue 3 - Whether the PCR Court erred in finding trial counsel provided effective representation for not arguing that the grand jury was impaneled outside of a General Sessions term.

7. The PCR Court contends that I chose to abandon this claim at the evidentiary hearing. That PCR Counsel testified "[w]e've reviewed the evidence on the issue involving the grand jury, being indicted

outside the term of the grand jury. That the attorney general has presented the documentation showing that it was, in fact, in a legitimate term for the grand jury and, that is a non-issue").

I assert that this is NOT a non-issue and trial counsel and PCR counsel was ineffective pursuant to Rule 1.1, 1.2, & 1.3, SCRPC, Rule 407 for not arguing and litigating this issue. I asserted that the State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions within my PCR Application. See Exhibit A (Tr. p. 283 - 284). I also assert that the grand jury NEVER convened to bring forth a True-Billed Indictment. Trial Counsel never petitioned for the grand jury transcript involving Indictment No. 2014-GS-32-2606. and PCR Counsel nor the attorney general presented ANY evidentiary facts to the PCR Court substantiating that my indictment was, in fact, in a legitimate term for the grand jury. PCR Counsel's statement to the PCR Court that, "[t]he attorney general has presented the documentation showing that it was, in fact, in a legitimate term for the grand jury," is not evidence. The attorney general NEVER testified at the evidentiary hearing pertaining to the impaneling of the grand jury in this case, nor did he present the

grand jury transcripts involving my indictment, the State's petition, supporting materials, or the judge's order impaneling the grand jury to the PCR Court. Furthermore, I assert that since the grand jury never convened to bring forth a true-billed indictment, the trial court DID NOT have subject matter jurisdiction to sentence me and my conviction is null and void. However, I submit that pursuant to Rule 1.1; 1.2; 1.3; 1.4; and 1.8. of the South Carolina Rules of Professional Conduct, PCR Counsel denied me the opportunity to receive my full bite at the apple pertaining to this issue. PCR Counsel failed to convey pertinent and relevant information as to properly filing this application and amending this application. He never informed or instructed me on conducting discovery during the PCR process before the evidentiary hearing. I never filed any discovery motions, such as: production of documents, interrogatories, depositions, or any other discovery motions petitioning for the State to allow me access to receive and/or review the grand jury transcripts involving Case No. 2014-GS-32-2606, the State's petition, supporting materials, a list of the grand jurors who considered my indictment, and documentary proof that the grand jury was qualified by a circuit judge

in open court. PCR Counsel Knew and had the requisite Knowledge that discovery was imperative for me to pursue so I can properly litigate this issue and present evidentiary facts to the PCR Court to substantiate my argument that the grand jury never convened to bring forth a true-billed indictment.

Within my original PCR application or my 2 amended PCR applications, I failed to submit any affidavits, declarations, depositions, or any other tangible or evidentiary facts which would have substantiated the allegations within the applications. Furthermore, PCR Counsel failed to inform me of this fact. I submit that I am from North Carolina with only an eighth grade education, unlearned in the law, and have been incarcerated behind a locked cell door 24/7 with only a 20 to 30 minute shower every 10 or 14 days since my incarceration within SCDC.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true.

Respectfully,

Bishopville, South Carolina

s/ Ronald D. Michaux

Dated: February 14, 2025