

SUPREME COURT OF SOUTH CAROLINA

1. (7 Total)

Mr. Emory W. Roberts Jr.

Appellant, Pro se

Appellate Case No. 2024-001521

Case No.: 2020-CP-08-01349

V.

State of South Carolina

PCR Court

Respondent.

Brief: "Abuse of Discretion
or Failure to Exercise Discretion".

Re: Abuse OF Discretion or Failure To
Exercise Discretion.

: Due Process Of Law

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S.C. SUPREME COURT

Questions Presented To The Court

2.)

- 1.) Whether trial judge "abused her discretion or failed to exercise her discretion" when her ruling denying discovery in a criminal case was controlled by an error of law or, was grounded in factual conclusions, without evidentiary support?
- 2.) Whether PCR Judge's ruling, finding that Mr. Roberts was not denied due process of law, and a fair trial when he was denied discovery in a criminal case - was "an abuse of discretion or failure to exercise discretion" where his decision/ruling was guided by erroneous legal principles... or rested upon a clearly erroneous factual finding?
- 3.) Whether trial judge's ruling denying disclosure of the state grand jury impanelment documents despite a "Protective Order" that was issued to do so... constituted "an abuse of discretion or failure to exercise discretion" where her decision/ruling was guided by erroneous legal principles... or rested upon a clearly erroneous factual finding?

Relevant Facts

3.)

On September 15, 2016, a Protective Order was issued and filed by James R. Parks, Clerk (Former) of the State Grand Jury, in order to disclose State Grand Jury material for the purposes of providing the pre-trial discovery required in criminal cases. (See Exhibit Z-3). Despite the issuance of the Protective Order - the trial judge refuse to honor it. At trial, before the swearing of the jury, the defendant stated to the trial judge: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, Page 15, lines 5-6); In response, trial judge erroneously denied defendant discovery/disclosure, and, ultimately, his substantive right to "mount or prepare a defense" when she stated: "You don't get those, sir. In South Carolina, [All] Grand Jury proceedings are secret. [Nobody] gets those." (See Exhibit A-2) (Tr. July 24-28, 2017, Page 15, lines 7-9). It should be noted that there was no convening of the State Grand Jury as evidenced by Exhibit P-2) (Emphasis) and the only reasonable conclusion for such an erroneous ruling denying discovery which persisted throughout the course of the proceedings (Tr. July 24-28, 2017, Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis). Accordingly, trial judge's ruling was contrary to the purpose of issuance of the Protective Order (Exhibit Z-3), and also trial judge "abused her discretion or failed to exercise her discretion" when her ruling was controlled by an error of law or, was grounded in factual conclusions, without evidentiary support. Subsequent to defendants, later on, there was a PCR hearing was held in front of R. Kirk Griffin

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on April 18, 2023. As a result of the hearing, PCR Judge R. Kirk Griffin found that Mr. Roberts due process of law relating to trial judges denial of discovery was "not infringed," although procedural due process pursuant to S.C. Code Ann. § 14-7-1720(A)(5); S.C. Code Ann. § 14-7-1700; Rule 5, SCRCrimP; was violated by trial judges erroneous rulings. Mr. Roberts contends that... Brady v. Maryland, 373 U.S. 83 (1963); and Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005) supports his position that PCR Judge R. Kirk Griffin "abused his discretion - or failed to exercise discretion" where his decision/ruling was guided by erroneous legal principles... or rested upon clearly erroneous factual findings - especially, in light of the fact that a "Protective Order" (See Exhibit Z-3) was issued to disclose State Grand Jury material - and trial judge's rulings was [contrary] to this order (Emphasis).

5.)

Argument: An "Abuse of discretion" occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. State V. Oates, 421 S.C.1, 803 S.E.2d 911. Accordingly, Judge Jefferson "Abused her discretion or failed to exercise her discretion when her ruling denying disclosure of State Grand Jury impanelment documents was controlled by an error of law or, was grounded in factual conclusions, without evidentiary support. (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 85, lines 5-7).

Contrary to trial judge's erroneous rulings "A defendant is allowed to obtain and use the impanelment documents in [preparing a defense] and [ensuring protection of his due process rights]. Evans V. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510; Removing veil of secrecy after a defendant has been indicted was consistent with legislative intent expressed in statute. Code 1976 § 14-7-1770. Trial judges "Abuse of discretion" or "failure to exercise discretion denied Mr. Roberts procedural due process, which unfairly weighed proceedings against him, resulting in an infringement upon his Sixth Amendment right to a [fair trial].

Section 14-7-1770(C) "A defendant has the [right] to review the documents to determine whether to "timely" challenge the legality of the State Grand Jury which indicted him. "A defendant must challenge the legality and sufficiency of the process of the state grand jury [before the jury renders a verdict] ... Code 1976, § 14-7-1140. Judge Jefferson did not comply with constitutional, statutory or other legal requirements or to further justice when she "Abused her discretion or failed to

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exercise discretion pursuant to Section 14-7-1720 (A)(5); thereby, her rulings constituted "An Abuse of discretion where her decision was guided by erroneous legal principles... or rested upon a clearly erroneous factual finding. See., United States V. ChiKvashvili, 859 F.3d 285; Also see, Westberry V. Gisl-Aved Gummi AB, 178 F.3d 287, 261 (4th Cir. 1999); In the same vein, PCR Judge R. Kirk Griffin "Abused his discretion or failed to exercise discretion when he found that Judge Jefferson "did not" deny Mr. Roberts due process of law where her decision/ruling was guided by erroneous legal principles... or rested upon a clearly erroneous factual findings that rendered his trial marred by procedural irregularities, thus, denying him his Sixth Amendment [right] to a fair trial, when he was infringed his procedural right pursuant to § 14-7-1720 (A)(5) and his substantive right to mount or prepare a defense, relating to the erroneous ruling by trial judge denying discovery in a criminal case in the form of the state grand jury impanelment documents (which do not legally exist). "A defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of his due process rights." Evans V. State (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510; therefore PCR Judges findings represented "An Abuse of discretion where his decision was guided by erroneous legal principles... or rested upon a clearly erroneous factual finding. See., United States V. ChiKvashvili, 859 F.3d 285; also see, State V. Oates, 421 S.C. 1, 803 S.C. 2d 911.

Conclusion

Despite the issuance of a Protective Order Filed on September 15, 2016 (See Exhibit Z-3) to disclose State Grand Jury material in compliance with S.C. Code Ann. § 14-7-1720(A)(5); Brady v. Maryland, 373 U.S. 83 (1963); Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); S.C. Code Ann. § 14-7-1700; Rule 5, SCR CrimP; trial judge "abused her discretion or failed to exercise discretion."

The Court should hold that trial judge and also PCR Judge's rulings constituted "an abuse of discretion where both Judge's decisions was guided by erroneous legal principles ... or rested upon a clearly erroneous factual findings relating to Mr. Roberts due process of law and right to a fair trial when he was consistently denied his procedural right pursuant to Section 14-7-1700 and his substantive right to mount or prepare a defense when he was denied disclosure of impanelment documents (or rather lack of as they did not legally exist).