Original

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari To Greenville County,

Edward W. Miller, Circuit Court Judge

Case No.: 2013-CP-23-1860

Elliott Hatton.....Appelant,

V.

State of South Carolina.....Respondent.

PETITION FOR WRIT OF CERTIORARI

Elliott Hatton, #158373

Perry Correctional Institution

Q-1-B 112

430 Oaklawn Road

Pelzer, S.C. 29669

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ISSUES PRESENTED

1). Did the PCR Court (Hon. Edward W. Miller) and the South Carolina Attorney General (Alan Wilson) deny Appellant Due Process of Law under the South Carolina Constitution and the United States Constitution's Fourteenth Amendment by failing to provide him with a fair hearing and impeding his constitutional claims from being heard?

STATEMENT OF CASE

The Appellant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Appellant was indicted March 1997 for possession with intent to distribute (PWID) crack cocaine (1997-GS-23-1728), first degree criminal sexual conduct (CSC) (1997-GS-23-1730) and first degree (1997-GS-23-1731). He was represented by Attorneys Clay Allen and Daniel Farnsworth. Appellant was found guilty on May 21, 1997 by Hon. Rodney A. Peeples and sentenced to concurrent terms of twenty five years for PWID crack cocaine, second offense and thirty years for first degree CSC. Judge Peeples then ordered the first degree CSC sentence to be consecutive to a sentence of life imprisonment for first degree burglary. A notice of Appeal was filed with the South Carolina Court of Appeals. S.C. Appellate Defense (Aileen P. Clare) filed a Anders brief and the Court dismissed the appeal (State v. Hatton, Op. No. 99-UP-342 S.C. Ct. App. filed June 2, 1999). The Remittitur issued June 18, 1999.

Appellant's initial PCR (1999-CP-23-3410) was filed on August 26, 1999. A evidentiary hearing was convened on August 27, 2002 with PCR counsel, David Gantt and Hon. John W. Kittredge presiding. The PCR was dismissed by order dated December 17, 2002. A proper notice of Appeal was filed and dismissed November 4, 2004.

Appellant pursued a Federal Habeas Corpus (0:05-2955-JFA-BM). Hon. District Court Judge Joseph F. Anderson issued a order granting summary judgement on September 15, 2006.

Appellant then proceeded to file a second PCR application on April 2, 2013, wherein on October 24, 2013 a evidentiary hearing was convened with Hon.

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Edward W. Miller as PCR Judge and ex-Head Solicitor of Greenville County Robert M. Ariail's son, Robert M. Ariail as Appellant's PCR lawyer. A order of dismissal was issued on November 7, 2013 and a series of letters were sent to this Honorable Court attempting to find out how to proceed after Appellant's PCR counsel has filed a timely notice of appeal and abandoned Appellant. This Petition for Writ of Certiorari follows.

ARGUMENT I.

The PCR Court (Hon. Edward W. Miller) and the South Carolina Attorney General (Alan Wilson) denied Appellant Due Process of law under the South Carolina Constitution and the United States Constitutions' Fourteenth Amendment by failing to provide him with a fair PCR hearing and impeding his constitutional claims from being heard.

Appellant adopts and incorporates the claims, laws, rules, statutes and all memorandums of law filed in this PCR action (2013-CP-23-1860) in support of his Petition for Writ of Certiorari.

Do to Appellant being a layman of the laws and ignorant of the formats necessary to properly present this Writ of Certiorari. Appellant will explain what the PCR Court and Attorney General's office did to deny him due process of law.

1) Appellant's second PCR application attempted to raise claims of his "trial lawyer and appellate counsel being ineffective," and how his initial PCR lawyer refused to amend his initial PCR application or even attempt to challenge these valid constitutional claims.

A). So Appellant's second PCR application actually stems from being denied due process of law in his initial PCR application and now a continuous denial of due process of law in his second PCR application. In truth Appellant has never received a "full and fair bite" at the PCR apple.

Appellant made the following claims in his second PCR application:

2) Appellant's first PCR lawyer failed to raise that trial counsel was ineffective for failing to challenge the State's indictment under S.C.R.Crim.P Rule 3(c).

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a) Appellant's second PCR, the Attorney General and the PCR Court "impeded" Applicant from having this claim properly presented and properly ruled on.

b) Appellant asserted that Greenville County General Sessions Court and Greenville County Solicitor's office have continuing practice of implementing racial discrimination in the enforcement of Rule 3(c). See State v. Jane Blackwell, Greenville County General Sessions Court. Indicted for obstruction of justice Honorable Judge Wyatt T. Saunder's dismissed the charges on March 3, 2008 because the State failed to comply with Rule 3(c).

3) Appellant's initial PCR lawyer failed to subpoena SLED agents that analyzed his DNA. Appellant was also denied the opportunity to confromt and cross examine Office Sorrow, who was deceased. Officer Sorrow's report and evidence within it was allowed into evidence at Appellant's trial. These acts violated Appellant's Constitutional Rights of the Sixth Amendment (Confrontation Clause). See Pointer v. Texas, 380 U.S. 400 (1965) and its progeny.

At Appellant's trial, his trial counsel failed to object to SLED Agent, Ms. L.S. Gallman's testimony to other agents' work and test conducted in the lab. See Trial Transcript p.370, 11.7-20. Trial counsel also failed to subpoena any of the agents to question them under oath concerning the DNA results. See Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (requires the analysts to testify in person. Under Crawford, a witness testimony against a defendant is inadmissible unless the witness appears at trial or if the witness is unavailable the defendant had a prior opportunity for cross examination. 541 U.S. at 54).

In the case at bar (Appellant's), the other analysts test results were alluded to under oath, but no such results were ever given and no affidavit(s) were submitted. However, the SLED agent Ms L.S. Gallman was allowed to testify in front of Appellant's jury that other agents performed certain tests concerning the DNA. This testimony was prejudicial to Appellant and violated his confrontation right under the constitution. Pointer v. Texas, 380 U.S. 400 (1965). See also Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009) and Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011).

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In summation, Appellant's United States' Constitutional Rights under the Sixth Amendment (Confrontation and ineffective assistance of counsel) were violated along with the Fourteenth Amendment due process clause rights. The State also vouched for the credibility of a deceased officer (Sorrow) as they used his report as evidence of Appellant's guilt, and the initial PCR lawyer failed to raise these claims and then the second PCR lawyer did the same.

4) Appellant"s trial counsel failed to procure a independent DNA expert on behalf of the defense and failed to properly challenge the State"s proficiency of the DNA test. The only expert to testify about the DNA evidence was the State's expert (Ms. L.S. Gallman). See Ake v. Oklahoma.

The initial PCR counsel and present PCR counsel both failed to raise this ineffective assistance of trial counsel claim. Strickland v. Washington, 466 U.S. 668 (1984).

5) Appellant was denied effective assistance of trial counsel and initial PCR counsel and present PCr counsel both failed to raise this claim. Trial counsel did not challenge Appellant's multiple indictments that arose from one incident and should have counted as one under Title 17-25-50 S.C. Code of Laws 1976.

At the March 1997 term of court for Greenville County General Sessions Court, the Grand Jury indicted Appellant for CSC first degree (1997-GS-23-1730); Burglary first-degree (1997-GS-23-1731); and possession with intent to distribute crack cocaine (1997-GS-23-1928).

All these indictments arose from Appellant's August 3, 1996 arrest. In Bryant v. State, 384 S.C. 525, 534 (2009), Section 17-25-50 states ... in determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, not withstanding under the law they constitute separate and distinct offenses.

All of Appellant's charges were "so closely connected in point of time that they should be considered as one offense. See Robinson v. State, 387 S.C. 568 (2010). Trial counsel and both PCR counsel failed to present these arguments in violation of Appellant"s Sixth and Fourteenth Amendment Constitutional Right. See State v. Gordon, 356 S.C. 143, 154 (2003).

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6) Appellant's trial lawyer made a number of objections during the trial that were ruled on by the judge and Appellate counsel failed to argue any of them on direct appeal. Instead Appellate counsel submitted a Anders brief. Both PCR counsels failed to raise this issue.

There was actually seven or eight meritorious issues that should have been argued on direct appeal and had the probability of resulting in a new trial. See the following:

A) Motion to suppress in and out of Court identification by the victim Ms. Alysa Lee. Tr.p.33, l.25; Tr.p.34, ll.1-5; and Tr.p.36, ll.1-25.
B) Motion to suppress evidence of black jacket; denied confrontation rights to the deceased officer Sorrow and failure to establish a complete chain of custody or secure an affidavit and signature as required under Rule 16, S.C.R.Crim.P. See Tr.p.318, ll.15-25; Tr.p.319, ll.13-25; Tr.p.320, ll.1-19.
C) Solicitor vouching for a "deceased witness." Tr.p.320, ll.20-25.
D) State was allowed to publish a report by SLED forensics serology DNA analyst (Ms. L.S. Gallman) to the jury that had not been entered into evidence. Tr.p.371, ll.14-25.
E) Motion for directed verdict and other objections. Tr.p.383.
F) Pitting one witness against another. Tr.p.464, ll.22-25.
G) Speculation of the witness. Tr.p.473.
H) Renewal of directed verdict and all motions and objections made throughout trial. Tr.p.478.

A defendant (Appellant) is constitutionally entitled to effective assistance of appellate counsel and the raising of one issue on Appellant's direct appeal that was unproductive denied Appellant effective assistance of appellate counsel See Evitts v. Lucey, 469 U.S. 387 (1985) and Smith v. Robbins, 528 U.S. 259 (2000)(Appellate counsel's failure to raise non-frivolous issues on appeal despite theme being available, constitutes ineffective assistance of appellate counsel under the Sixth Amendment of the United States Constitution).

7) After Appellant's PCR application was filed he forwarded his "application for a order for expenses for DNA testing (i.e. Expert Assistance)" to the

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court. Assistant Deputy Attorney General, Karem C. Ratigan did a response and objection to the same on August 23, 2013. Said objections were sent to the Chief Administrative Judge, Hon. D. Garrison Hill.

A) Appellant responded in September 2013 to the State's response and objections to his request for a order for expenses for DNA testing.

B) Apellant pointed out to the court a number of very meritorious issues about his request and sent the Chief Administrative Judge actual proof that the Assistant Deputy Attorney General, Karen C. Ratigan was knowingly misleading the court with a number of things concerning the DNA the the procedural posture of the case.

C) Appellant pointed out the following:

The State's response and objections to Appellant's request for a order for expenses for DNA testing stated his 1999 PCR application (1999-CP-23-3410) or any amendments never raised the issued of whether trial counsel should have challenged the DNA test.

This information was false. Appellant's 1999 PCR application did challenge this very issue. Appellant provided a exhibit he labeled exhibit (A) pointing out issues 4 and 5 within his amended PCR application. These same amended issues 4 and 5 were ruled on in Hon. John W. Kittredge"s PCR order (1999-CP-23-3410) of dismissal, dated December 12, 2002 and filed December 17, 2002. Another exhibit labeled exhibit (B) was attached.

The State went on to allege Appellant filed a Petition for Writ of Habeas Corpus in the South Carolina Federal Court's on October 17, 2005 and did not raise the issue of whether trial counsel should have challenged the DNA test. Once again this information was false because Appellant did raise said issue at ground two in his federal habeas corpus petition and provided a exhibit labeled (C) to prove it.

The State's next contention was the PCR act was not the proper procedure to request for a order DNA testing. This is simply not true. Appellant never raised a sole claim of DNA. He filed a PCR application with several other constitutional claims and then amended his application to request a order for expenses for DNA testing, which was appropriate. See S.C. Code of law Ann. §17-27-60 (1976) and 17-3-50 (2003).

The State's last point of objection was Appellant's second PCR

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application failed to articulate why the DNA test used at his trial was suspect or should have been challenged.

8) Appellant's second PCR application (2013-CP-23-1860) shows his original PCR application (1999-CP-23-3410); the amendments to it; his federal writ of habeas corpus and his second PCR application all articulate that Appellant:

I) Took a Jury trial claiming his innocence.

II) Continuously has requested independent DNA testing.

III) That the chain of custody on the DNA evidence was fatally flawed and incomplete.

IV) That Appellant was denied the opportunity to confront and cross examine material witnesses in the chain of custody concerning this DNA.

V) Appellant's original PCR transcript (1999-CP-23-3410) discussed the DNA problems.

Honorable Judge Garrison never made any ruling upon Appellant's request for expenses and then mysteriously judges get switched in this PCR case, to Hon. Edward W. Miller and somehow without any orders of appointment for R. Mills Ariail, Jr., to get involved in this PCR action he is appointed to assist Appellant.

It's clear why Mr. Ariail"s alleged appointment to this PCR action was never brought to the attention of Appellant. His father use to be the Head Solicitor for Greenville County Solicitor's office and his father is the one who prosecuted Appellant's case. Out of the hundreds of PCR lawyers that could have been appointed in this case, allegedly the State appoints the Solicitor's Son to assist Appellant. This presents a appearance of impropriety that Appellant would not be given a fair PCR hearing or due process of law, and this is exactly what happened.

Appellant has claims for years he is innocent of these charges and only evidence tying him to this case is DNA that the chain of custody is fatally flawed in and the State has continuously impeded acry attempt made by Applicant not to have this DNA independently tested and has refused to acknowledge its own chain of custody shows Appellant is not the person who committed these crimes.

9) How about at Appellant's Jury trial, the officer who handled this DNA evidence said he got it from the nurse at the hospital (the beginning of the State's chain of custody), but when the nurse took the stand, under oath she

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testified she had absolutely no idea what the officer was talking about and she never tested and DNA of Appellant or gave the officer said DNA.

So these blatant acts of ex-head Solicitor Robert Ariail are being hidden at the expense of my freedom. Even in the most unusual coincidences that Solicitor Ariail's son Robert Ariail, Jr., was appointed to Appellant's case, the Attorney General and Hon. Miller both clearly saw the inescapable impropriety of a conflict of interest and should have ethically decided to reappoint another lawyer to assist Appellant. But instead, Appellant was striped of his due process rights under the United States Constitution"s Fourteenth Amendment by these acts.

Now because of Appellant"s indigency and having the deck stacked against him, he can't even produce a PCR transcript and lower court record to present with his petition for writ of certiorari. To condone the actions herein described is to totally ignore this Honorable Court's precedents and are United States Supreme Court precedents that combined together spell out how due process of law is suppose to be distributed in PCR proceedings. See Young v. Ragen, 337 U.S. 235 (1949); Al-Shabazz v. State, 527 S.E.2d 742, 746 (S.C. 2000); Case v. Nebraska, 381 U.S. 336 (1965); Finklea v. State, 255 S.E.2d 447, 448 (S.C. 1979); Harvey v. South Carolina, 310 F.Supp. 83, 85 (D S.C. 1970).

Appellant asserts the Constitution of the United States "shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any state to the contrary not withstanding U.S.Const. Art. VI. See Keeler v. Mauncey, 330S.C. 568 (S.C. App. 1998).

Our due process clause of the Fourteenth Amendment to the constitution of the United States protects citizen against state action. Rules and laws based upon the Fourteenth Amendment are suppose to be binding upon State Courts through the Supremacy clause. See Henry v. City of Rock Hill, 376 U.S. 776, 84 S.Ct. 1042 (1964)(Per Curiam).

But here in Appellant's case it appears the PCR court(s) are ignoring United States Supreme Court precedent rules and laws. See Evitts v. Lucey, 469 U.S. 387 (1985); Smith v. Robbins, 528 U.S. 259 (2000); Martinez v. Ryan, 132 S.Ct. 1309 (2012); Young v. Ragen, 337 U.S. 235 (1949); Case v. Nebraska, 381 U.S. 336 (1965); Crawford v. Washington, 541 U.S. 36; Pointer v. Texas, 380

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U.S. 400 (1965); Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011); Strickland v. Washington, 466 U.S. 668 (1984); and Ake v. Oklahoma.

Appellant should not only have his case sent back to the PCR court for a evidentairy hearing, he should be appointed new PCR counsel outside the Coumty of Greenville because the here in allegations and Appellant's motion for order of expert expenses should be granted. If but not for Appellant being denied due process of law his PCR would have most probably been granted. Appellant also request a extension of time to ascertain his PCR transcript and lower court record to properly prepare a appendix for the court's review.

CONCLUSION

For the forgoing reasons Appellant's Petition for Writ of Certiorari should be granted.

Date: January 21, 2014

S/ Elliott Hatton

Elliott Hatton, #158373

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certioprari To Greenville County

Edward W. Miller, Circuit Court Judge

Case No. 2013-CP-23-1860

Elliott Hatton.....Appelant,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I, Elliott Hatton, (Appellant), hereby certify that I have this day served Appellant's Petition for Writ of Certiorari upon the South Carolina Supreme Court, by depositing one (1) original and one (1) copy of the same in the United States mail (by and through the Perry Institution's Legal Mail System. The following parties have been served at the following addresses: 1) Daniel E. Shearouse, Clerk/ The Supreme Court of South Carolina/ P.O. Box 11330/ Columbia, S.C. 29211; 2) Alan Wilson/ South Carolina Attorney General's Office/ P.O. Box 11549/ Columbia, S.C. 29211.

SWORN AND SUBSCRIBED TO before me
This 21 day of January, 2014

Notary: Tamara Caldwell

My Commission Expires
Expire: September 25, 2023

S/ Elliott Hatton

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