

FEBRUARY 24, 2014

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEARHOUSE, CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

MICHAEL D. McFADDEN #126806
AILENDALE CORR. INST. - F58227
P.O. BOX 1151
FAIRFAX, S.C. 29827

RE: CIA No#. 2013-000121

DEAR MR. SHEARHOUSE:

ENCLOSED PLEASE FIND THE "PETITIONERS AMENDMENT
TO HIS BRIEF" IN THE ABOVE ENTITLED CASE.

Yours Truly,

SI Michael D. McFadden
MICHAEL D. McFADDEN #126806
AILENDALE CORR. INST. - F58227
P.O. BOX 1151
FAIRFAX, S.C. 29827

RECEIVED

MAR 05 2014

S.C. SUPREME COURT

LEGAL MAIL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO WILLIAMSBURG COUNTY

GEORGE C. JAMES, JR., CIRCUIT COURT JUDGE

MICHAEL D. MCFADDEN

PETITIONER,

V.
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE No. 2013-000121

AMENDMENT TO PETITIONERS BRIEF

RECEIVED

MAR 05 2014

S.C. SUPREME COURT

MICHAEL D. MCFADDEN, PRO SE
ALLENDALE CORR. INST. - F5B227
POST OFFICE BOX 1151
FAIRFAX, S.C. 29827

ISSUE PRESENTED

THE STATE ERRED IN NOT PROVIDING THE PETITIONER A COMPLETE TRANSCRIPT OF HIS LOWER COURT TRIAL UNDER APPELLATE COURT RULES (RULE 207). THEREBY, VIOLATING THE PETITIONERS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION.

LEGAL MAIL

STATEMENT

PETITIONER MICHAEL D. MCFADDEN IS A STATE PRISONER CONVICTED DURING THE APRIL 1992 TERM OF WILLIAMSBURG COUNTY GENERAL SESSIONS COURT BEFORE JUDGE D. MARION SHULER. PETITIONER WAS SENTENCED TO IMPRISONMENT FOR AN AGGREGATE PERIOD OF SIXTY YEARS IN THE CASE.

LEGRAND CARROWAY REPRESENTED PETITIONER AT TRIAL, AND ASSISTANT SOLICITORS CLIFTON NEWMAN AND WELLS DICKSON APPEARED ON BEHALF OF THE STATE IN THE CASE.

THE PETITIONER WAS CONVICTED OF ARMED ROBBERY, KIDNAPPING, AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

THE PETITIONER HAS FILED THIS APPEAL ALLEGING NEWLY DISCOVERED EVIDENCE CLAIM OF ACTUAL INNOCENCE SUPPORTED BY A WITNESS' AFFIDAVIT SWEARING TO PETITIONER'S INNOCENCE ESTABLISHING A GENUINE ISSUE OF MATERIAL FACT NOT CONCLUSIVELY REFUTED BY THE RECORD IN THIS CASE.

IN FILING HIS BRIEF IN THIS CASE, THE PETITIONER MADE THIS COURT AWARE THAT THE TRIAL TRANSCRIPT WAS INCOMPLETE, MISSING PAGES 22 AND 23, WHICH MENTIONS KEITH PRESSLEY'S CONVERSATION WITH INVESTIGATING POLICE OFFICER MICHAEL GRAHAM. THE INFORMATION GIVEN TO OFFICER GRAHAM WAS THE DIRECT CAUSE OF PETITIONER'S ARREST AND ULTIMATE FALSE IMPRISONMENT. KEITH PRESSLEY HAS NOW SUBMITTED AN AFFIDAVIT SWEARING TO THE FACT THAT HE LIED ON PETITIONER AND WORKED WITH THE INVESTIGATING OFFICERS TO FALSELY HAVE PETITIONER ARRESTED IN ORDER TO ELUDE DRUG CHARGES.

THE MISSING PAGES OF THE TRIAL TRANSCRIPT DIRECTLY RELATES TO KEITH PRESSLEY AND IS MATERIAL IN THE

PETITIONER PREPARING A COMPLETE DEFENSE ON APPEAL.

ARGUMENT

By failing to provide petitioner with a complete copy of the trial transcript, the State of South Carolina has violated the petitioner's constitutional rights to due process and equal protection.

To provide petitioner with a complete transcript of petitioner's lower court trial is mandated in accordance with South Carolina Appellate Court Rules 207. "Pages 22 and 23" of the trial transcript are missing, and the missing pages contain information that is very valuable to petitioner in connection with this appeal. GREENE V. BRIGANO, 123 F.3d 917 (6th Cir. 1997); RIBBINS V. REES, 74 F.3d 732, 735 (6th Cir. 1996) (quoting BRITT V. NORTH CAROLINA, 404 U.S. 226, 227, 97 S.Ct. 431, 433, 30 L.Ed.2d 400 (1971)).

In GRIFFIN V. ILLINOIS, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), the United States Supreme Court held that, to satisfy the dictates of the equal protection and due process clause of the Fourteenth Amendment, a state may not condition a defendant's exercise of a right to appellate review upon his ability to pay for that right. Id. at 18-20, 76 S.Ct. at 590-91. Accordingly, "Griffin and its progeny command that a state must provide indigent prisoners with the basic tools of an adequate defense on appeal, when those tools are available for a price to other prisoners."

In BRITT V. NORTH CAROLINA, the Supreme Court held that

LEGAL MAIL

"THE STATE MUST PROVIDE AN INDIGENT DEFENDANT WITH A TRANSCRIPT OF PRIOR PROCEEDINGS WHEN THAT TRANSCRIPT IS NEEDED FOR AN EFFECTIVE DEFENSE OR APPEAL," 404 U.S. AT 227, 92 S.Ct. AT 433. IN ASSESSING AN INDIGENT DEFENDANT CLAIM OF RIGHT TO A FREE TRANSCRIPT, THE BRITT COURT "IDENTIFIED TWO FACTORS THAT ARE RELEVANT TO THE DETERMINATION OF NEED: (1) THE VALUE OF THE TRANSCRIPT TO THE DEFENDANT/PETITIONER IN CONNECTION WITH THE APPEAL OR TRIAL FOR WHICH IT IS SOUGHT, AND (2) THE AVAILABILITY OF ALTERNATIVE DEVICES THAT WOULD FULFILL THE SAME FUNCTIONS AS A TRANSCRIPT." SEE *id.*; RIGGINS, 74 F.3d AT 735.

IN ORDER TO DETERMINE WHETHER PETITIONER WAS ENTITLED TO A COMPLETE COPY OF HIS TRIAL TRANSCRIPT, WE FIRST EXAMINE THE VALUE OF THAT TRANSCRIPT IN CONNECTION WITH HIS APPEAL. SEE BRITT, 404 U.S. AT 227, 92 S.Ct. AT 433. THE TRANSCRIPT ALLOWS THE PETITIONER TO CITE TO SPECIFIC PAGES OF THE RECORD IN SUPPORT OF EACH ASSIGNMENT OF ERROR HE PRESENTS FOR REVIEW. GREENE V. BRIGANO, 123 F.3d 917, 920 (6TH Cir. 1997).

DUE TO MISSING TRIAL TRANSCRIPT PAGES 22 AND 23 THE PETITIONER WAS UNABLE TO EFFECTIVELY PRESENT AN ARGUMENT CONTAINING THE CONTENTIONS OF THE PETITIONER WITH RESPECT TO KEITH PRESSLEY'S CONNECTION AND STATED INFORMATION TO INVESTIGATION OFFICERS, TO PRESENT THOSE ISSUES FOR REVIEW AND THE REASONS IN SUPPORT OF THE CONTENTIONS.

REFERENCED IN THE BRIEFS TO PARTS OF THE RECORD SHALL BE TO THE PAGES OF THE TRANSCRIPT AT WHICH THE EVIDENCE WAS IDENTIFIED, OFFERED AND RECEIVED OR REJECTED.

THE UNITED STATES SUPREME COURT HAS RECOGNIZED

LEGAL MAIL

THE RIGHT TO A TRIAL TRANSCRIPT IN SITUATIONS IN WHICH THERE IS NO RIGHT TO COUNSEL. SEE GARDNER V. CALIFORNIA, 393 U.S. 367, 89 S.Ct. 580, 21 L.ED.2D 601 (1969).

THE STATE NOT PROVIDING THE PETITIONER A COMPLETE COPY OF HIS TRIAL TRANSCRIPT AS MANDATED BY SOUTH CAROLINA APPELLATE COURT RULES HAS MADE PETITIONER UNABLE TO OBTAIN "AS ADEQUATE APPELLATE REVIEW OF HIS CONVICTION AS DEFENDANTS WHO HAVE MONEY TO BUY THEIR TRANSCRIPTS WHO RECEIVE A COMPLETE COPY. GILFILL, 351 U.S. AT 19, 76 S.Ct. AT 590; SEE BRITT, 404 U.S. AT 227, 92 S.Ct. AT 433; RIGGINS, 74 F.3D [REDACTED] AT 235; UNITED STATES V. DEVLIN, 13 F.3D 1361, 1363-64 (9TH Cir. 1994); UNITED STATES V. JONES, 540 F.2d 566, 573 (7TH Cir. 1976); UNITED STATES V. BAKER, 523 F.2d 741, 742-43 (5TH Cir. 1975).

THE MISSING PAGES OF THE TRIAL TRANSCRIPT MUST BE PROVIDED TO PETITIONER IN ORDER TO PROVIDE ADEQUATE APPELLATE REVIEW ON AN ALTERNATIVE THAT FULFILL THE SAME FUNCTION. SEE BRITT, 404 U.S. AT 227, 92 S.Ct. AT 433.

CONCLUSION

WHEREFORE, THE PETITIONER REQUESTS THIS COURT TO ISSUE AN ORDER THAT THE STATE PRODUCE THE MISSING TRIAL TRANSCRIPT PAGES #22 AND #23, OR AN EQUAL ALTERNATIVE, OR OTHERWISE GRANT THE PETITIONER A NEW TRIAL TO REESTABLISH THE TRANSCRIPT.

ALSO, THAT COUNSEL NOT BE RELIEVED IN THIS CASE, BUT ORDERED TO BRIEF THE ISSUES CONTAINED IN THIS AMENDMENT.

THE PETITIONER SUBMITS THAT TO ALLOW THIS ERROR TO GO UNCHECKED OR CORRECTED WILL RESULT IN A TOTAL MISCARriage OF JUSTICE AND A VIOLATION OF THE PETITIONERS DUE PROCESS RIGHTS.

FEBRUARY 24, 2014
FAIRFAX, S.C. 29827

RESPECTFULLY SUBMITTED,

Sl. Michael D. McFadden
Michael D. McFadden #126806
ALLENDALE CORR. INST. FS15227
P.O. Box 1151
FAIRFAX, S.C. 29827

MICHAEL D. MCFADDEN #126804
ALLENDALE CORR. INST. - FS8227
P.O. Box 1151
FAIRFAX, S.C. - 29827

RECEIVED

FEB 27 2014

MAILROOM
ACI

LEGAL MAIL

THE SUPREME COURT OF SOUTH CAROLINA
HON. DANIEL E. SHEARHOUSE, CLERK OF COURT
POST OFFICE Box 11330
COLUMBIA, S.C. - 29211