

State of South Carolina
In the Appellate Court

Appeal from Dorchester County
Honorable E. Dickson, Judge

The State, Respondent,
vs.

Miguel A. Urena, . . . Appellant.

Belated Appeal

Case No: 2005GS1800198

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SC Court of Appeals

Miguel A. Urena
Lee C.I.
990 Wisacky Hwy
Bishopville, S.C. 29010

State of South Carolina
In the Appellate Court

Miguel Alejandro Urena,
Appellant,

vs.

The State,

Respondant.

Memorandum of Law In
Support of Appellants
Motion for the Appointment
of Counsel and Belated
Notice of Appeal for Good
Cause Shown

This is a Memorandum of Law In Support of Appellants Motion for the Appointment of Counsel upon his Notice of Belated Appeal for Good Cause Shown. This is a notice of appeal asserting claims for the denial of his trial attorney to effectively assist him upon the request to appeal his conviction and sentence. Appellant seeks to ensure the proper steps and to reserve his rights upon exhausting any and all constitutional rights towards seeking relief upon his case that has been violated.

1. Factual Complexity. The appellant challenges the denial of his right of the request to appeal his conviction and sentence, due to failure of his trial attorney not filing his notice of appeal the date his sealed sentence was

unsealed and read to him. The sheer number of claims and witnesses makes this a factually complex case.

In addition, one of the appellants' issues involves the denial of discovery material and translation; it will be necessary to present an interpreter to translate the trial cross-examination that were called by the state, or both. The presence of his counsel to explain other issues requiring expert testimony supports the appointment of counsel. Montgomery vs. Pinchak, 294 F.3d 492, 503-504 (3rd Cir. 2002); Moore vs. Mabus, 976 F.2d 268, 272 (5th Cir. 1992); Jackson vs. County of McLean, 953 F.2d 1070, 1073 (7th Cir. 1992).

2. The Appellants Ability to Investigate. The appellant challenges the denial of access to his discovery material. Appellant is locked up in punitive segregation and has no ability to investigate the facts upon his trial transcript. Appellant is unable to identify, locate and understand the States evidence that was used against his defense while being absent from trial. Appellant is in the same situation with regard to developing the facts as an inmate who has been transferred to a different institution, a factor that several courts have cited in appointing counsel. Tucker vs. Randall, 948 F.2d 288, 391-392 (7th Cir. 1991); Gaston vs. Coughlin, 679 F.Supp. 270, 273 (W.D. N.Y. 1988).

In addition, this case will require considerable discovery concerning the identity of witnesses, the drug examination report, video of the officer's arrest, audio of the arrest and statements about the incident. See Parham vs. Johnson, 126 F.3d 454, 459 (3rd Cir. 1997) holding counsel should have been appointed because "prisoner's lack of legal experience and the complex discovery rules clearly put him at a disadvantage in countering the defendant's discovery tactics."

3. Conflicting Testimony. The appellants account of his arrest by means of his arrest statement but the audio of his recorded arrest and is squarely in conflict with the officers arrest statement. This aspect of the case will be a credibility contest between the state's witnesses video of arrest and the officers trial statement and such evidence as can be located. The existence of these credibility issues supports the appointment of counsel. Steele vs. Shah, 87 F.3d 1266, 1271 (11th Cir. 1996); Gaston vs. Coughlin, 679 F.Supp. at 273.

4. The Ability of the Indigent to Present His Issues. The appellant is an indigent prisoner with no legal training and was assisted by an interpreter, a factor that supports the appointment of counsel. Forbes vs. Edgar, 112 F.3d 262, 264 (7th Cir. 1997). In addition, he is confined to segregation with very limited access to legal materials. Royce vs. Johnson, 969 F.2d 700, 703-704 (8th Cir. 1992) (citing lack of ready access to a law library as a factor supporting appointment of counsel).

5. Legal Complexity. The large number of state witnesses testimony, presents complex legal issues of determining which witnesses were sufficiently personally involved in the constitutional violations of his illegal search and seizure to be held liable. Hendricks vs Coughlin, 114 F.3d 390, 394 (2d Cir. 1997) (holding complexity of supervisory liability supported appointment of counsel). In addition, the appellant had a jury trial without his absence, which requires a much greater legal skills than the appellant has or can develop. Solis vs. County of Los Angeles, 514 F.3d 946, 958 (9th Cir. 2008) (prisoner with eighth grade education and no legal training is "ill-suited" to conduct a jury trial).

6. Merits of the Case. The appellants allegations, if proved, clearly would establish a fourth amendment constitutional violation. The allegations of his trial attorney's ineffectiveness amounts to intentional disregard of deliberate indifference to his legal needs. Estelle vs. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976). On its face, this is a meritorious case.

Conclusion

For the foregoing reasons, the court should grant appellants Notice of Belated Appeal and Motion for Appointment of Counsel.

March 31, 2014.

S/ Miguel Alejandro Ureña
Miguel A. Ureña

I declare under penalty of perjury
that the foregoing is true and correct.