

The South Carolina Supreme Court
Appellate Court Division
P.O. Box 11629
Columbia, South Carolina 29211

Mr. Mark Ellis Brown)
)
Petitioner Pro Se)
)
v.)
)
The State of South Carolina)
)
Respondent)
_____)

Memorandum
Filed
Pro Se

Appellate Case
No. 2013-001024

Appeal from Richland County

The Honorable Mr. G. Thomas Cooper, Jr.,
Circuit Court Judge

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MAY 16 2014

S.C. SUPREME COURT

May it Please the Court,

Now comes the humble petitioner proceeding Pro Se, setting forth facts and arguments for this most honorable courts consideration in a further attempt to clarify this situation. Attorney Ms. Durant states that she filed the Writ Of Certiorari and Johnson Petition but that the case is without merit. I humbly beg to differ. Petitioner fully admits that he does not have the years of training and expertise that is afforded the lawyer's degree but therefore Petitioner knowing one's case does make a considerable difference. These are issues that go back to the original trial that have not been properly addressed nor fully adjudicated as is normal in any court of law.

There are issues of United States constitutional violations to be considered, not even to mention the fact of blatant prejudice to Petitioner's defense at trial on part of the Prosecution by the Judge's viewing the video tape evidence before trial. This alone was the most damaging and prejudicial piece of evidence possessed by the Prosecution and it was illegally confiscated from my home. This was all done under pretense of securing the premises and checking the dwelling for an intruder. I am sorry but I have never before heard of an intruder hiding in a video cassette recorder (herein after known as VCR). This was an excuse to ramble/rummage/plunder through our personal belongings. I will now set forth and enumerate each issue and give transcript line numbers, I will cite any case that has relevance when I can, and I will try to be brief and to the point.

(1) On page 51 of the Trial Transcript starting at line 22, trial Attorney S. Jahue Moore Esquire for the defense raises

the issue of Petitioner's use of psycho-tropic medications. Now even though South Carolina does not recognize drugs and alcohol use/abuse as a factor in committing crimes, or cause of them, several states and other U.S. Districts do recognize this or these stimulants as a key factor in crimes committed. There have been many U.S. Supreme Court decisions of the same opinion as well as reports and studies done and written not only by the A.M.A. (American Medical Association) and the United States Board of Psychiatry. The effects of mind altering drugs are staggering and quite appalling but irrefutable none the less.

(2) On page 54 from lines 5 through 11, Attorney Moore states that Petitioner was clean of the drugs and that the urges were gone. This shows that there was a difference that was noticeable. Attorney Moore states he is a long time friend of Petitioner and as such he could be sure of his assessment.

(3) Petitioner's codefendant Mrs. Jackie Brown has had a very long battle with mental illness. This is a fact easily provable and yet Judge Barber seemed as though this were a trivial issue. Judge Barber was most definitely poisoned against both Jackie and myself from the beginning which was the whole objective of the Prosecution from the start.

(4) On page 57 from lines 7 through 25 continuing onto page 58 lines 1 through 7 is an assessment from defense Attorney Ms. Tina Herbert of several meetings with codefendant Jackie Brown and her mental state exhibited during their visits together. Ms. Herbert does speak of Jackie's clean minded thinking and understanding since incarcerated at Lexington County Detention Center. But she also talks of Jackie's inconsistency to take her medication properly as prescribed which played a

key factor in her rational and moral reasoning.

(5) Jackie was on a regular regiment of supervision and medication while in the county jail. The person Attorney Herbert was interviewing was obviously better and more stable by then.

(6) The fact that Attorney Moore never tried or attempted to get a Competency Hearing for Jackie states a fatal error and not a trial strategy of any type. It is and was a vital mistake in the case. The PCR narrative gives more than ample justification and reasoning to vacate sentence and remand for further proceedings.

(7) On page 81 of the PCR Application at 9(c) gives clear reasoning and facts as to why sentence should be vacated in all "good faith" and a demand for a further hearing for competency and suppression should be granted.

(8) On pages 166 (p.13) to 167 (p.14) of PCR Transcript Action 207-CP-40-1156 (page 13 lines 3 through 25 and page 14 lines 3 through 25) clearly define the parameter of the search. Permission to search was for a known suspect (i.e. carjacker) which could not be hiding under VCR tapes nor in a VCR machine. The scope of the search was most definitely breached. Petitioner's expectation was violated along with South Carolina's own State rule for warrants. This in itself demands reversal of sentence and vacation of judgment as according to law. Evidence seized in accordance to Wong Sun v. United States is in full violation of the United States Constitution's 4th Amendment.

If a search warrant had have been issued it would by law have had to list with particularity the places and things to be searched, otherwise it would be called a "fishing expedition".

This is and was a blatant violation of the Petitioner's Constitutional rights both State and Federal. Also, all of the said crimes and charges (being the nature of said were of an identical nature and in close proximity of time) should and do come under the statute of the "Spree Doctrine" and therefore sentencing is all combined under one crime - one sentence. The Attorneys Moore and Myers were very much ineffective for not pursuing this outcome. Petitioner would not have been exposed to the length of sentence received with credit and other concessions and Attorneys should have appealed sentence.

The fact that Law Enforcement broke the law itself; improper Search Warrant, exceeding the scope of alleged search warrant, and evidence seized is "fruit of the poisonous tree", is against all protection afforded United States citizens by which the Constitution was designed for. The humble Petitioner asks this court for immediate vacation of sentence and remand for a decision of evidence suppression due to the nature of the way evidence was gathered.

(9) Judge Lloyd should not have seen the video tape evidence illegally seized prior to the actual hearing during the "in-chambers" meeting with counsel. This from the record shows a bias toward Petitioner in the decision of the suppression matter making a "fair and impartial" trial and suppression hearing impossible in front of this judge.

(10) In the Order of Dismissal on page 239 of main transcript (2007-CP-40-01156), someone in the Attorney General's Office lied (under "Failure To Challenge Invalid Warrant" lines 1 through 10) when stating that Attorney Moore recognized Magistrate Whittle's signature; where on page 122 at lines 17 through 25 it is Judge Keesley who actually identifies Whittle and **not** Jahue Moore. This in not only fraud against the Court

but flagrant injustice to law in itself, a blatant attempt by the Attorney General's Office to try and cover up an illegal search and activity.

This shows not only openly done prejudice but also shows the condoning of illegal search and seizures in violation of the United States Constitution. Petitioner asks for relief under these grounds.

In closing,

Petitioner would add that no matter what is or was the case against him, his Constitutional Rights were violated and all evidence against him was illegally obtained. Petitioner's chief argument is Katz v. United States and Wong Sun v. United States. Had but for Counsel's error, this case's outcome would have been very different. The idea of a legal and valid search is embedded in the opinion of Katz.

Respectfully Submitted by Petitioner

May 12 2014

May 12th 2014

Mark Ellis Brown

Mark Ellis Brown #313740

Lee Correctional Institution

990 Wisacky Highway

Bishopville, South Carolina 29010

cc: MEB/file

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Pro Se Response
Of Petitioner

Mark Ellis Brown,
Petitioner,
v.
State Of South Carolina,
Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of the Pro Se Response by Petitioner in this case has been served on Daniel E. Shearouse, Clerk Of Court for The Supreme Court of South Carolina at P.O. Box 11330, Columbia, South Carolina 29211 and a copy filed with Mark Ellis Brown #313740, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010 this 14th day of May 2014.

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S.C. SUPREME COURT

Mark Ellis Brown

Mark Ellis Brown
Petitioner

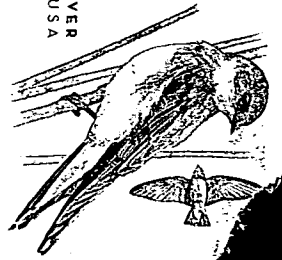
Mark Ellis Brown #313760
Lee Correctional Institution
Florence South #2220
990 Wiscady Highway
Bishopville, South Carolina 29010

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Lee Correctional Institution
Florence South #2220
990 Wiscady Highway
Bishopville, South Carolina 29010

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