

State of South Carolina
County of Richland

In South Carolina Court of Appeals
Appellate Case # 2014-000975

Robert Antonio Ashford, 238768,

Appellant,

vs.

State of South Carolina,

Respondent.

Motion For Extension With Declaration
Of Bernard McFadden, 199135; And Af-
fidavit Of Robert Antonio Ashford, 23-
8768, With Memorandum Of Law In
Support

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MAY 28 2014

SC Court of Appeals

Issue # 1: Where the record shows appellate attorney failed to argue the trial court malfunctioned via admitting confession without Jackson vs. Denno hearing and no final order of dismissal was mailed to Appellant at Kershaw mailroom dismissing this case, did the circuit court err?

Issue # 2: Where the record shows appellate attorney failed to argue the trial court malfunctioned via admitting identification evidence from a show-up without a hearing and no final order of dismissal was mailed to Appellant at Kershaw mailroom dismissing this case, did the circuit court err?

Written Explanation

The Clerk of Court Jenny Abbott Kitchings' May 13th, 2014, letter directed Appellant

P. 1 of 5

3
Ashford to explain why he could not raised these issues in a timely application for Post-Conviction.

Explanation: At the end of August 2012, the court of common pleas never forwarded a final order of dismissal, only a conditional order. Therefore, Appellant Ashford was never given an opportunity to argue miscarriage of justice, malfunctioning of the court or an excuse for procedural default or errors apparent from the record as a result of ineffective assistance of appellate counsel M. Anne Pearce within the meaning of Sawyer vs. Whitney, 505 U.S. 333, 351, 118 S.Ct. 2574, 2525 (U.S. 1992) (citing Engle 456 U.S., at 135, 102 S.Ct. at 1576 - principles of finality and comity "must yield to the imperative of correcting a fundamental unjust incarceration.") Thus, the Court has held, federal court may review procedurally defaulted, abusive, or successive claims absent a showing of cause and prejudice if failure to do so would thwart the ends of justice.); see also Ryan vs. Gonzales, 133 S.Ct. 696, ___ (U.S. 2013) (Because federal habeas corpus is a guard against extreme malfunctions in the state criminal justice system, not a substitute for ordinary error correction through appeal, the types of errors redressable on habeas corpus review should be apparent from the record); State vs. Hill, 714 S.E.2d. 879, ___ (S.C. App. 2011) (holding that improper submission to jury of defendant's two written statements, which had not been admitted into evidence, was reversible error); and State vs. Creech, 441 S.E.2d 635, 640 (holding that failure to conduct Jackson vs. Denno hearing to determine admissibility of alleged confession was reversible error).

Motion For Extension

1) That Appellant Ashford submits that a (10) day dead-line has been set

P. 2 of 5

by the Clerk of this Court, time starting from a May 13th, 2014, letter.

- 2) That no extension has previously been sought;
- 3) That an extension is sought to allow time to review the trial transcript and other reference material;
- 4) That granting an extension will not effect any other scheduled times of this court in this case;
- 5) That reviewing reference material will have a favorable impact on winning relief sought, precluding motions to dismiss submitted by the state.
- 6) That no conference with the State had been had with the state; and
- 7) That an extension will not cause, and the state cannot show, prejudice to their defense.

Declaration of Bernard McFadden, 199135

1) That I, Bernard McFadden, 199135, was approached by Robert A. Ashford, 238768, and ask to assist him in drafting the response in this case because of the complex procedure.

2) Before filing the Notice of Appeal, I - without the trial transcript - did a brief discussion of what took place at trial to determine whether the issues presented in the state habeas petition drafted by another jail-house lawyer were frivolous.

3) After finding such issues not frivolous, I pondered whether I will have time to help Appellant Ashford with drafting the requested response in this case pursuant to Johnson vs. Avery, 393 U.S. 483, 490 (1969) with only a (10) day dead-line as instructed by Kitchings' May 13th, 2014, letter.

4) That I submit that I have a pending 5/27/2013 dead-line in McFadden vs. York, et al., Case # 8:13-CV-02278-JMG-JDA and will

5
not be able to respond before 5/27/2014. However, if an extension is granted, I may be able to prepare a response for Ashford.

5) I do declare under penalty of perjury that the foregoing is true and correct this 20th day of May 2014. S/ Tom [Signature]

Bernard McFadden, 199135

Affidavit of Robert A. Ashford, 238768

Personally Appeared Before Me, One Robert Antonio Ashford, 238768, who is being duly sworn, deposes and states:

1) That I am the above appellant and do not understand the procedure in how to file and serve the requested response.

2) That the initial filings were done by another inmate named Felton Yawn, that's no longer at this facility, so I asked Bernard McFadden to assist me with filing this requested response.

3) That more time is needed also to review the relevant areas of trial and appellate records, and if an extension is granted, we can demonstrate a malfunctioning of the court, a miscarriage of justice, a cause for procedural default or no order to appeal in the above captioned case before petitioning the federal court with a federal writ of habeas corpus.

4) That I have read this document and understand its content.

Further Affiant, Sayth Not.

Sworn and Subscribed Before Me
This _____ day of _____ 2014

Notary Public For South Carolina

Respectfully Submitted,
S/ Robert A. Ashford
Robert A. Ashford, 238768
Kershaw C.I. / 4848 Goldmine
Hwy., Kershaw, S.C. 29067

My commission expires: _____

P. 4 of 5

Proof of Mailing
Appellate Case #: 2014-00975

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly-addressed-stamped-envelope in the US Mail this 20th day of May 2014; such matter being: Motion For Extension with Declaration of Bernard McFadden, 199135; And Affidavit of Robert Antonio Ashford, 238768, with Memorandum of Law In Support:

- 1) Allen Wilson, S.C. Attorney
General, P.O. Box 11549,
Columbia, South Carolina
29211; and
- 2) Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629, Columbia, S.C.
29211

Sworn And Subscribed Before Me
This _____ day of _____ 2014

Notary Public For South Carolina
My commission expires: _____

Robert A. Ashford
Robert A. Ashford, 238768
Appellant, Pro-se

Robert A. Ashford, 238768
Kershaw CI/MA
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Date: 5/20/2014

Jenny Abbott Ketchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629, Columbia, S.C. 29211

RE: Ashford vs. State, Appellate Case # 2014-000975

Dear Clerk:

Enclosed, please find Ashford's Motion For Extension with Declaration of Bernard McFadden, 199135; Affidavit of Robert Antonio Ashford, 238768, with Memorandum of Law In Support for filing in your office.

cc:

Allen Wilson, Atty. Gen.
Personal File

Sincerely,
S/ Robert Ashford
Robert A. Ashford, 238768

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