

In the State of South Carolina
In The Supreme Court

Amended Pro-Se Brief In Response
To Appellate Defenders Johnson Petition

Dana Middleton
Petitioner

vs.

State of South Carolina
Appeal from Spartanburg
County Roger L. Couch
Special Court Judge
Respondents

Case # 2009-CP-42-6725

Added

Amended Responds

To Johnson Petition

Pro-Se Brief

Robert M. Pachak
Appellate Defender
South Carolina
Commission on
Indigent Defense
Division of Appellate
Defense
P.O. Box 11589
Columbia S.C. 29211
Attorney for Petitioner
Pro-Se Petitioner
430 Oaktown Road
Perry. Corr. Inst.
Petzer. S.C. 29669

Attorney General's Office
P.O. Box 11544
Columbia S.C. 29211
Respondents
The Supreme Court of
South Carolina
Daniel Shearouse
Clerk of Court
P.O. Box 11330
Columbia S.C. 29211

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S.C. SUPREME COURT

ISSUE

Defendant was denied his right to put up a defense to corroborate his Innocence.

Facts

Defendant had several alibi witnesses including Mrs. Shalonda Mitchell, his mother, also Sherry Miller. See: (Page 34 line 8-14) Also (page 64 line 7-10) Several more alibi witnesses were presented who were not called.

Argument

There could have been no Strategic reason for Counselor Waiving an alibi defense at a trial, or upon Judge instructions at the end of trial, when a defendant has claimed to be in another place at the time and commission of a crime. (See: Ford vs State, See: Riddle vs. State.) Related to ~~the~~ alibi claims in the South Carolina Court of appeal and Post-Conviction-Relief in South Carolina, also to receive more insight and case law related to this claim.

Defendants mother was ready to testify in his defense. Shalonda Mitchell possibly did not testify because defense Counselor refused to investigate this claim or simply refused to call Shalonda Mitchell as a witness. See: (~~Page~~ ^{P. 2} page 78-line 18-24) other witnesses were not called including Ornie Mack until unavailable. Defendant "Middleton" stood upon his Innocence all the way up until being pressured to plead guilty by his Attorney whom he showed his unwillingness to have as his Attorney due to her Insufficient representation, Inadequate representation and investigation, and her refusal to present defendants alibi defense and be sure of their appearance at trial by Supreme even if forced by contempt of court to testify. See: (~~Page~~ ^{P. 2} page 44 line 22-45 and line 3) See Also: (page 64-line 7-10). See: (page 64 Line 7-10) which directly Proves Public defenders inability to investigate claims of defense.

Furthermore, At defendants Post-Conviction-Relief Hearing Mr. Ballenger testified that he never identified defendant "Middleton" as a defendant of this crime as Investigative reports indicated. This evidence further corroborates defendants claim of Innocence Also Proves trial Attorneys failure to Investigate the alibi, because if she had sufficiently Investigated it could have been known of this claim Mr. Ballenger and Sherry Miller which would have related to the police reports being false.

Overall, Petitioner Showed the Court also the Judge (After Picking a Jury) which proved his willingness that he was very unsatisfied his Attorney conduct, and ~~very~~ that he wanted a New Attorney because his Present Attorney was Insufficient and they had no Client Attorney Relationship whatsoever, No Trust or firm foundation Relationship was established whatsoever. Defendant was unsatisfied with the unprofessional norms and conduct of Tanya The Attorney and Her unwillingness to properly Investigate and Present his defense related

To the alibi and Mr. Ballenger that he ^{the} defendant requested a New Attorney
threw his family, also by Judge threw the Public Defenders Office. See, (Trial
Page 6 line 1-19) Defendant Also made aware Judge that he was not a
defendant who could Represent himself.

Further More, Tanya Jones further exercised her inadequance of
Preparing the defense by allowing the Judge to force defendant to deny his
defense of alibi (After her Awareness of that alibi) See, (Trial Page 17 line 15-24)
This clearly Proves defendants inability to understand knowingly and intelligently
his Plea See, (line 24 Alon). - Also See, (Trial Page 31 line 1-5) where Attorney made
remarks against defendant stating "It's No Excuse for the charges against Mr.
Middleton."

Further More it's a Brady violation of Rule (5) which will be later claimed
in other arguments, but defendants (~~PCR~~ page 32 line 11 - page 33 line 15) proves that it
was someone else fitting the discription of the Petitioner running around Grace
Committing crimes while defendant was locked away waiting for trial for these
crimes being expected. Also See, Exhibit #3 ~~Appellate~~ ^{State} on Post-Coviction-relief. This
Material was direct evidence or Impaching evidence which could have directly
Impached or Proven Innocence of it lesser Proven doubt in the State case
against defendant noting the State had no forensic(s) Evidence. Also the State
Case was based off a false Investigative Report of (Odele ArtoBurn) ~~Appellate~~ ^{State}
Exhibit #3 (about Mr. Ballenger)

Conclusion

Petitioner requests a reversal of his Guilty Plea based upon the fact(s)
Issue(s) and argument(s) presented above also the case dismissed based
upon ~~the~~ Insufficient evidence, if not a trial shall be provided for petitioner.
So he can present his alibi defense and prove his Innocence with an adequate
Attorney to Interpret the law. If not for this unprofessional conduct of the
Judge and Lawyer a different result would have happen in the outcome of
and if a trial would have been taken.

ISSUE

Police Misconduct and
Prosecutor Misconduct.

And
In Violation of 14th Amendment
To Due Process

Facts

See State Exhibit #3 on
Post-Conviction-Relief

Argument

State Exhibit #3 known as a Greer Police Department Supplemental Report proves itself false. The Police Detective who Investigated this case, Dale Arterburn falsified this report about a State(s) Key witness Mr. Ballenger the Police turned this report over to the Prosecutor who allowed this evidence to enter Motion to discovery without objection or Investigation. Once defendant was aware of this false information it crippled his defense and made it seem a miscarriage of justice which it was. The prosecutor also Police who have a duty not to expose false evidence to the defense, and Rule (5) forces the prosecution to disclose any favorable evidence to the defense also to notify the defense of any Documentation falsified due to the testimony of a witness. This claim was never known by the defendant until Post-Conviction-Relief when Mr. Ballenger testified. See (P.C.R. Page 66 line 25 - page 68 line 25) Also defendant Mr. Middleton have proof by conferring with another Inmate that Detective Dale Arterburn have a history of falsifying Documentations(s) against defendants charged in cases from Greer. See The Case Albert S. Kelly vs. State. Who is Incarcerated with a 65 year Sentence, in which similar incident occurred. In this case (Kelly vs. State) he also had alibi witness. Even Juvenile Waiver Hearing proves Middleton wanted to stand upon his Innocence and go to trial.

Conclusion

A different Result would have happened in the outcome of the guilty Plea and defendant would have insisted upon going to trial had it not been for this false report. Defendant requested reversal of his conviction based upon it being involuntary and unknowingly made under Pressure and Coercion, a verdict of admission of the charges based upon insufficient evidence, or dismissal of the case with the elements of double jeopardy being present.

ISSUE

Newly Discovered
Evidence

Fact(s)

Petitioner Discovered at his Post-Conviction-Retrial evidentiary Hearing that a Greer Police Department Supplemental Report was falsified by Detective Arterburn that a witness Mr. Ballenger have directly pointed ~~out~~ the finger at the defendant as being the person he seen running from the scene of a crime which took place at Mr. Bings off Wade Hampton in Greer S.C. In actual reality it was not Mr. Middleton, in fact that Mr. Ballenger never identified anyone. Further More, Mr. Middleton came into contact with ~~Mr. Middleton~~ an Inmate named Albert S. Kelly who notified him that Detective Dale Arterburn falsified Police Reports against him about searching apartments in Drummond Village where direct evidence of Innocence was located related to his case, (and that he Albert Kelly is willing to come forth and verify this claim ~~and~~ ~~direct evidence~~ for petitioner ~~to~~ to back up his claim. This Detective who also falsified evidence against him also to destroy his alibi and destroy direct Brady Material and Rule (5) violation to prove direct Innocence. This claim can be proven by Kelly in Transcript direct words of Detective Arterburn also Supplemental report and Post-Conviction Testimony. It's a known fact that several other prisoners can come forth from the Greer Area, and prove this same behavior unlawfully conducted by the Greer Police Department and Arterburn. ~~Even Prisoner that~~ This evidence was discovered at the post-conviction Hearing in which the false documentation was discovered about the supplemental report. ^{State} ~~Appellate~~ Exhibit #3 when Mr. Ballenger testified. Therefore this claim is in compliance with Newly Discovered Evidence, also Petitioner just came in contact with Mr. Albert S. Kelly #299334 who is willing to come forth with his case which is still pending in Greenville S.C. to prove this claim for defendant, also to bring attention to Detective Arterburn and the Misconduct of the Greer Police Department.

Conclusion

Based upon this Newly Discovered Evidence the petitioner case shall be reverse and remanded for a Jury Trial, if not the case shall be ~~be~~ dismissed based upon Insufficient Evidence.

Issue

Subject-Matter-Jurisdiction

Fact(s)

Defendant was never presented with a
arrest warrant in General Session(s) to
Inform him charges

Argument

The warrants must be present in order to present them to the Grand Jury upon making their decision in which if the state have sufficient evidence to forward the case to a trial (also) to prove the case have actually been through the process of a Grand Jury and reviewed by True Bill presentation upon the Indictments (Stamped) along with a copy of the arrest warrant number(s) including charges made from start of investigation, a warrant is nothing more than a piece of the charges being made against him and that he have been charged, but, the warrant is very important because before the case can be presented in anyway the warrants must be adequate so they can become the cover, or title for the charges ~~anytime~~ anytime presented to the court in anyway, therefore them being absent on the indictment shows that the Grand Jury never had the warrants presented to them in order to decide whether there was sufficient evidence to waive the charges to General Session or even take the defendant to trial. Therefore, this make defendant aware that his Indictments are in violation of Subject(s) Matter(s) Jurisdiction over this case which was presented to the General Sessions, if it never went through the process of a Grand Jury. I never received warrants. Therefore the Indictments were forged and falsified.

Conclusion

The Indictments shall be Squashed and an urgent release of Petitioner Based upon the falsity of his Imprisonment. Petitioner is being held in custody unlawfully and have been held for the past 5 years without the process of law being followed in violation of 14th and 15th Amendment violations of Due Process, both Federal and State.

In addition this Issue was not raised at Post-Conviction-reflect but being that this Issue is a Subject-Matter-Jurisdictional, it can be raised at anytime. So petitioner is respectfully raising this Issue now.

CHECKLIST

When a civil rights case from a state, local or federal prisoner is received, the Office of the Clerk of Court shall determine whether the case is in proper form. The term "in proper form" means that the Clerk of Court has received:

- (1) A complaint with your original signature on the appropriate form or in a form substantially similar;
- (2) The full filing fee or an Application to Proceed without Prepayment of Fees and Affidavit (Form AO 240) requesting to proceed *in forma pauperis*;
- (3) A Financial Certificate form (from all prisoners except pre-trial detainees) completed by the plaintiff and by an officer or employee of the institution where the plaintiff is confined or of the prison system in which the plaintiff is confined;
- (4) A separate Form USM-285 for each defendant sued if the plaintiff is proceeding *in forma pauperis* (Note that the plaintiff **must** provide information sufficient to identify the defendant(s) on the Form(s) USM-285. The United States Marshal cannot serve a defendant that is not properly identified, and defendants that are not served may be dismissed as parties to a case.);
- (5) A separate summons form for each defendant sued ***or*** one summons listing all defendants and their addresses;

If you need additional space on any of the forms, you may submit additional pages. The plaintiff must use letter-sized paper [8 x 11 inch] and write or type text on one side of a sheet of paper only. Do not write or type on both sides of any sheet of paper. Do not write to the edge of the paper, but maintain one inch margins on the top, bottom and sides of each paper submitted.

Note to Inmate: *If you are detained in a county jail, city jail, or local detention center, you do not have to submit the Financial Certificate. You must submit the Form AO 240.*