

SEP 23 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr. Circuit Court Judge
No. # 2013-002755

William L. Gainey

Petitioner

vs

State of South Carolina

Respondent.

PETITIONER'S PRO-SE WRIT OF CERTIORARI

William L. Gainey # 347919
McC.I./E. 4-251-A
386 Redemption Way
McCormick SC 29899

Appellate Defender for Petitioner
Benjamin J. Tripp

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ISSUES PRESENTED

- (1) Whether the record supports counsel was ineffective for not objecting and or moving to have Petitioner's indictment dismissed when Petitioner was not indicted within 90 days as required by S.C.R. Crim. P. Rule 3(c); in violation of Petitioner's Fourteenth Amendment right to equal protection.
- (2) Whether PCR counsel was required to file a 59(c) motion when the order of dismissal did not address Petitioner's claims regarding Rule 3 as required by law, in violation of Petitioner's Fourteenth Amendment right

STATEMENT

For the record of this brief, the
Petitioner agrees with his Appellate
Defender's Statement upon his Johnson
petition for writ of certiorari.

ARGUMENT (1)

The record supports Counsel was ineffective for not objecting and/or moving to have Petitioner's indictment dismissed when Petitioner was not indicted within 90 days as required by S.C.R. Crim. P. Rule 3 (c)⁽¹⁾, in violation of Petitioner's Fourteenth Amendment right to equal protection

(1) In pertinent part, Rule 3 (c), S.C.R. Crim. P., states that action on warrant within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the Clerk of Court, assigned a criminal case number

Petitioner testified at his P.C.R. hearing that it took over five (5) months for the State to indict him SEE: Ex.

A "arrest warrant dated June 22, 2010"; Ex.

B "indictment True Billed Nov 18, 2010"

Also see App. p 95 L18 - p 96 - L14,

Petitioner also testified that he had wrote the Clerk of Court asking about an extension twice. But the State had

and presented to the Grand Jury (2) formally dismissing the warrant, noting on the face of the warrant the action; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.

never gotten an extension as required by Rule 3 (d) ⁽²⁾ thus denying him equal protection of the law per. the 14th Amend. SEE: App. p 95 L18 - p 96 - L14.

Where, Ware Shoals High School principal, Jane Blackwell charge of obstruction of justice were dismissed against her after she was not indicted within 90 days of the warrant being issued SEE: Ex. C, and Ex. D.

Petitioner further argue that this court

(2) In pertinent part, Rule 3 (d), SCR Crim. P., states that extensions of time, the solicitor may petition the circuit court for an order delaying action on the warrant, as set forth above, for successive ninety (90) day periods if the circuit court specifically finds good cause for such delay for each successive ninety day period

(6)

Should respectfully grant his petition for writ of certiorari to allow full briefing on the issue, where the record clearly shows counsel was ineffective for not objecting and/or moving to have petitioner's indictment dismissed when petitioner was not indicted within 90 days as required by S.C.R. Crim. P. Rule 3 (c).

ARGUMENT (2)

PCR counsel, William Runyon was required to file a 59 (c) motion⁽¹⁾ when

(1) In pertinent part, 59 (c), S.C.R. Civil P. states that a motion to alter or amend the judgment SHALL be served not later than 10 days after receipt of written notice of the entry of the order

The order of dismissal did not address
Petitioner's claim(s) regarding Rule 3
SEE: 17-27-80 ⁽²⁾ Also see App. P 108-114

Petitioner argues that this court has
repeatedly has ruled that PCR counsel is
required to file a 59 (e) motion when
the order of dismissal does not address
each issue raised SEE: McCray v State
408 SE2d 241; Pruitt v State 423 SE2d 127;
and Bryson v State 493 SE2d 500. And
as an officer of the court PCR
counsel, Runyon should have known

(2) In pertinent part: the court SHALL make specific
findings of fact and state expressly its
conclusions of law, relating to EACH issue
presented....

of the above cited codes and laws. Plus
the rulings upon Marlar v State 653 SE2d
266 and Bostick v Stevenson 589 F3d 164
And the fact I "Petitioner" could not
have filed his own 59 (c) motion
without the aid of PCR counsel
SEE: S.C.R. Civil P. Rule 11; State v Cabrera
Pena 567 SE2d 472; Foster v State 379
SE2d 907; Miller v State 697 SE2d 527

But here PCR counsel undermined
Petitioner's DUE PROCESS per the 14th
Amend. to the U.S. Const. as well as
S.C. Const. Also see Martinez v Ryan
132 S.Ct. 1309. Thus, Petitioner argues

that this court should respectfully grant his petition for writ of certiorari to allow full briefing on the issue, where this issue should be remained back to the PCR court for a ruling as required by law

CONCLUSION

Based on the foregoing arguments counsel's Benjamin J. Tripp motion to be relieve as Petitioner's counsel should be denied. And ordered to fully brief his issue and Petitioner's arguments upon his pro-se brief

Date 9-19-20

Respectfully submitted
William J. Dainy

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
#2013 - 002755

Clerk of Court to Florence County - William H. Seals, Sr.
Circuit Court Judge

William L. Gainey

Petitioner

vs

the State

DESIGNATION OF MATTER

TO BE INCLUDED IN THE RECORD ON APPEAL

Petitioner proposes the following be included in the record on appeal

- (1) Ex. A - arrest warrant
- (2) Ex. B - Indictment
- (3) Ex. C - News paper report - of Principal Blackwell's dismissal of her charge

I certify that this designation contains no matter which is irrelevant to this appeal

Date 9-19-14

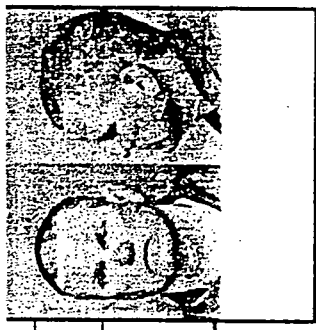
William L. Gainey
William L. Gainey #347919
McC.I./F-4-251-A
386 Redemption Way
McCormick, SC 29899

ARREST WARRANT

M-376520

STATE OF SOUTH CAROLINA
 County/ Municipality of FLORENCE

THE STATE
against



WILLIAM LEE GAINEY
Address: PATRICK HWY
HARTSVILLE SC 29550
Phone: _____ SSN: _____
Sex: M Race: W Height: _____ Weight: _____
DL: SC DL#: 008626255
DOB: 01/18/1969 Agency ORI#: SC0210100
Prosecuting Agency: FLORENCE MUNICIPAL COURT
Prosecuting Officer: DRAYTON
Offense: ATTEMPTED MURDER

Code/Ordinance Sec. 16-03-0029 Offense Code: 3410

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN
A copy of this arrest warrant was delivered to defendant WILLIAM LEE GAINEY on 06/22/2010

Signature of Constable/Law Enforcement Officer
Debra D. Jais

RETURN WARRANT TO:

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA
 County/ Municipality of FLORENCE

Personally appeared before me the affiant LARRY DRAYTON being duly sworn deposes and says that defendant WILLIAM LEE GAINEY did within this county and state on 06/21/2010

State of South Carolina (or ordinance of County/ Municipality of FLORENCE) in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0029 / ATTEMPTED MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT ASSAULTED THE VICTIM IN THE REAR PARKING LOT OF SOUTH MCQUEEN STREET IN THE CITY OF FLORENCE. THE DEFENDANT WHOM IS THE EX-BOYFRIEND OF THE VICTIM AWAITED FOR THE VICTIM TO EXIT HER PLACE OF EMPLOYMENT. THE DEFENDANT APPROACHED AND ASSAULTED THE VICTIM AS SHE SAT IN HER VEHICLE. THE DEFENDANT USED A RAZOR TYPE INSTRUMENT TO CUT THE VICTIM ABOUT HER NECK AND THE ABDOMINAL AREA CAUSING GREAT BODILY INJURY WHICH CAUSED A SUBSTANTIAL RISK OF DEATH. THE VICTIM WAS HOSPITALIZED AND IS BEING TREATED FOR THE INJURIES THAT SHE RECEIVED. AFTER BEING MIRANDIZED THE DEFENDANT PROVIDED A TAPED STATEMENT AGAINST HIS PENAL INTEREST ADMITTING THAT HE DID CUT THE VICTIM ABOUT HER NECK AND FLED THE SCENE WITHOUT RENDERING FIRST AID.

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of FLORENCE

Affiant's Address FLORENCE POLICE DEPT., 180 N. IRBY
Affiant's Telephone 843-665-3191

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

on 06/21/2010 It appearing from the above affidavit that there are reasonable grounds to believe that defendant WILLIAM LEE GAINEY did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of FLORENCE)

DESCRIPTION OF OFFENSE: MURDER / ATTEMPTED MURDER

2006 JUN 21 14 PM 12:10
SHERIFF
COUNTY, SC

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/22/2010
MUNICIPAL COURT JUDGE
Debra D. Jais

Judge's Address BOX DD-CITY-COUNTY COMPLEX ROOM 506
FLORENCE SC 29501
Judge's Telephone 843-665-3148

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Case: 2010-005933

(EX A)

WITNESSES

LARRY DRAYTON Florence Police Department

DOCKET NO. 2010-GS-21-1469

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2010

THE STATE

vs.

WILLIAM LEE GAINNEY

ARREST WARRANT NUMBER

M376520

ACTION OF GRAND JURY
TRUE BILL

Denise Rame
Foreperson of Grand Jury
Date: 11/18/10

VERDICT

Indictment for
ATTEMPTED MURDER

Foreperson of Petit Jury

Date:

CERTIFIED: A TRUE COPY
Maice J. Stewart
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

2010 NOV 18 PM 1:03

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

(EXB)

Ex. C



Staff file photo

Former Ware Shoals High School principal Jane Blackwell speaks with television reporters in March after warrant against her on obstruction of justice charges was dismissed by a judge after she was not indicted within 90 days of the warrant being issued, in accordance with statute.

MARCH

March was a month of legal issues in Greenwood.

The warrant against former Ware Shoals principal Jane Blackwell on obstruction of justice charges was dismissed by a judge after she was not indicted within 90 days of the warrant being issued, in accordance with statute.

Blackwell's warrant stemmed from the investigation of an incident in which Jill Moore, Ware Shoals' former cheerleading coach and guidance clerk, allegedly purchased alcohol for two minor cheerleaders and put them in a "highly inappropriate" situation involving a sexual relationship she was having with a National Guardsman. Moore also was alleged to have entered a pretrial intervention program in March that, if completed, would expunge her record of all charges. Moore had been charged with contributing to the delinquency of a minor and providing alcohol to minors.

Ex C

WILLIAM LEE SAWNEY,
386-REDEMPTION R/FAY
McCORRICK CORRECTIONAL INST.
McCORRICK SOUTH GREEN - 29899

Ex. D

10-1468

RE:

INDICTMENT No.

2010-ES-21-1469

FLORENCE COUNTY, S.C.
CCCP & GS

2013 MAY 10 AM 11:35

DEAR HON. CLERK,

PLEASE STAMP (DOCK AND FILE THIS LETTER WITH YOUR OFFICE, AND SERVE A COPY BACK TO ME, FOR MY FILES, ALONG WITH THE REQUESTED DOCUMENTS, "THE EXTENSIONS".

RULE 3 DISPOSITION OF ARREST WARRANTS
(d) SECTION - EXTENSION OF TIME.

NEED COPIES WHEREAS SOLICITOR OFFICE FILED FOR EXTENSION, AND FILED IN YOUR OFFICE.

THANKING YOU IN ADVANCE, FOR YOUR EFFORTS IN MY BEHALF.

MAY - 8TH - 2013
McCORRICK, SC

William Lee Sawney

CERTIFIED: A TRUE COPY
Marie Lee Special
CLERK OF COURT
FLORENCE COUNTY, S.C.

PROOF OF SERVICE

I William L Gainey certify that I have served my pro-se brief and designation of matter upon the below Hon. Clerk of Ct. By placing the above said into the MC Corr. Just. mail room on this 19th day of Sept 2014 to be placed in the U.S. mail with postage prepaid

S.C. Supreme Ct. Clerk
Daniel Sheavouse
P.O. BOX 11330
Columbia SC 29211

SUBORN to before me
this 19 day of Sept 2014

Jeff Frankler
Notary Public

my Commission Expires 12-16-2019

William L Gainey

Supreme Ct. of S.C.
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

Date: 9-19-14

Dear Mr. Shearouse

RECEIVED

SEP 23 2014

S.C. SUPREME COURT

Please find enclosed for filing
my pro-se brief and designation of
matter.

Would you please return me back
a filed copy of each.

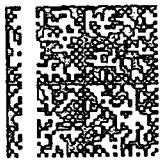
Thank you

cc: Personal file

Sincerely
William J. Davis

William L Gaine -H 347919
386 Redemption Way F4A-251
M^c Cormick, S.C. 29899

Supreme Court of South Carolina
Clerk: Daniel Shearouse
P.O. Box 11330
Columbia, S.C. 29211



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