STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

JIMMY D. MEGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE 2014-000548

SUPPLMENTAL APPENDIX

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Jimmy D. Heyns Jr., # 277400
Evans C.I. F2B-234 (Kiawah)
610 Hwy 9 West
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December, 1 2013

RE: SCRCP 59 e/ Final Orders

12th Judicial Circuit
Hon. Michael Nettles
Chief Administrative Judge
180 N. Irby St. MSC-XX
Florence, SC 29501

Dear Judge Nettles:

Your Honor, I understand that I filed Applications in 2009 trying to get the court to look at issues that could have been raised with the exception of the Rule 607 issue dealing with the transcript issue. I filed a request within 30 days requesting such tape to verify the accuracy of this transcription and the Court Reporter wrote me back indicating first that tape was misplaced and then conveying to me that there was no tape. Futher in the 2009 action the Court Reporter did not sign the Transcripts of the proceed. The issue here is that I could not have had a Appeal on this inaccurate information. I objected specifically to what the Record had recorded about the testimony of my Expert Witness Dr. Thomas V. Martin.

I work as a Law Clerk at the Evans Correctional Institution, and on March 4 2013 The Prison Law Library was updated to include the "West Law Correctional Site". As discussed in my 2013 PCR Application, Memorandum, and Additional Brief that I filed. I have discovered a 1951 Attorney General's Opinion, and several cases that open the door being able to bring the issues I was unaware to bring in my initial hearing. Specifically, Your Honor, If you look at the record where Dr. Martin Testifies, he indicates his finding as of that moment in time as to the state of mind of me at the time of the hearing. Please see (ROA Pg. 721 Lns. 2-4 Lns 12-19). Had I been able to testify I would have put the necessary evidence on the record to be granted relief. As SCRCP 71.1 indicate [I] have the burden of establishing my entitlement for relief by a preponderance of the evidence. Me not being able to testify at the hearing has not allowed all my issues to be presented on the record to allow Appellant review. Therefore Your Honor, I do not belief I have been given my "One Bite" at the apple. Futher, Counsel Redmond's conduct was ruled to be the product of trial strategy, however, upon the recent revelation of In Re Redmond 6/d S.E.2d. 409, which entails conduct during the time he represented me at my Criminal Trial (1990-2005). Counsel Redmond admitted to violating the Rules of

professional conduct as a result of some difficulties with the loss of his [illegible] during that period. There were a total of nine clients that were the victims of this and I believe had the PCR Court had [illegible] at the time of my 2007 hearing, the Court would have ruled differently and that like the other conduct in which he admitted to during that time span, his actions here was likewise the produce of such difficulties as a result of the loss of his father.

I am respectfully asking for this Court to further take into consideration the evidentuary fact that there is no case law out there to determine the applicability of § 16-3-810, where there was no guidance for the Court to know how to apply such elements. I would humbly ask your honor, to look at subsection B which clearly state <u>any person violating the provisions of subsection a of this section is guilty of criminal sexual conduct of the second degree and will be punished as provided by § 16-3-653.</u> The indictment did not put me on notice as to the other offense that I am supposed to be guilty of, and, does the State have to meet the elements of the <u>is guilty of</u> offense. The State clearly failed and counsel did not object to this. I would ask the Court to look at even if the Court would have ruled against me on these motions. The issue being presented to the South Carolina Appellate Court on direct Appeal. I have been denied the ability to have our Appellate and Supreme Court to make a determination on this Novel issue of law. I want to Thank you for your thoughtful consideration on this matter. Again thank you and God bless.

With kind Regards....I am,

James D. Hayes Jr.

cc. A/W
M/A
J/H/F

Enclosures:
Rule 59 (e)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	TWELFTH JUDICIAL CIRCUIT
)	
Jimmy D. Meggs Jr.,)	
SCDC # 277400,)	HON. MICHAEL NETTLES,
)	CHIEF ADMINISTRATIVE JUDGE
vs. Petitioner,)	2009-CP-21-730
)	
State of South Carolina,)	2009-CP-21-3147
)	
Respondent.)	Case No. 2013-CP-21-0874
)	SCRCP 59 (e)

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk Of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging "a" child for Sexual Performance (2001-GS-21-663 and 664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665, 666). He was Represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James B. Brogdon, Jr. to concurrent terms of three years for each charge of contributing to the delinquency of a minor and twenty years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals

affirmed Applicant's conviction and sentence State v. Meyys Op. No. 2004-UP-460 (S.C. Ct App. Filed August 31, 2004). After an unsuccessful petition for rehearing, The Applicant petitioned the South Carolina Supreme Court for a Writ of Certiorari, but the Court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January, 10 2006.

2006-CP-21-553

The Applicant subsequently filed his first PCR Application on April 4 2006 (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December, 11 2007. The Applicant raised the following allegations in his first PCR Application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. During this first hearing Dr. Thomas V. Martin was qualified as an expert witness, testified and gave such testimony to a medical degree of certainty. Dr. Martin stated on direct that "even now Mr. Meyys is suffering from paranoia due to being transported from SCDC to the County jail

and that Petitioner was exhibiting signs of such even now. Dr. Martin indicated at the PCR hearing that he had made this determination just prior to testifying. Futher Judge Russo indicated, and only discovered later after the hearing that he was in the Prosecuting agency at the time they prosecuted the Petitioner. Therefor due to the Petitioner's debilitated condition he was not able until he was afterwards taken off such medication and taken out of a special housing unit for mentally ill inmates. Judge Russo denied and dismissed the PCR Application with Prejudice by Written Order March, 4 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written order filed May, 5 2008. A Timely Notice of Appeal was filed. However, The South Carolina Supreme Court denied the Petition for Writ of Certiorari and issued a remittiur on April 5, 2010.

2009-CP-21-780

Applicant filed his second PCR Application on April 23 2009. The State Made its Return and Motion to Dismiss on July, 7 2009. The Honorable Thomas A, Russo issued a Conditional Order of Dismissal on July 9, 2009. Applicant responded to the Conditional Order of Dismissal. However, Judge Russo dismissed the Application by Final Order dated May, 7 2010. Therefore this Order was final.

2009-CP-21-3147

Technically, this third PCR Application is not final because there has not been a Final Order Issued. There was however, a Return by the State on January, 17 2013, almost three years after it was filed with the Florence County Clerk of Court (Filed December, 30 2009). The State Responded with a Motion to Dismiss. This Court Subsequently served Applicant with a Conditional Order of Dismissal, Allowing the Applicant 20 days to respond as to why this order should not become final. The Applicant served his SCRCP 59 (e) as it relates to this action and is awaiting final disposition of this action. Applicant has subsequently discovered due to the Prison Law Library updated new evidence but due to this Courts not issuing a Final Order in this (2009-CP-21-3147) action it is preventing him from pursuing the Newly Discovered claims as a results of the updates in the Law Library. Futher if the Court delays in issuing a Final Order it may cause the 2013 action to be outside of the one year of discovery thereby blocking the Applicant from bringing his Newly Discovered claims. As the Applicant is awaiting a Final Order, which is totally outside of the Applicant's control, as this is a Judicial Function.

2013-CP-21-874

As outlined in the Application and Memorandum of Law and Amended PCR Application. This Action was filed on April 1 2013. Due to the updates in the Prison Law Library Specifically on March 4 2013 Evans C.I. Upgraded its Law Library to include "West

Law Correctional Web Site" to include up-to-date cases. SCDC has acknowledged this and Applicant has written and received a Request to Staff from Mrs Miller Law Library Supervisor Indicating such updates (See Exhibit _____)

Prior to this date the "Department's" Policy (GA 1.03) governs the material accessible to the inmate population. This failure to make accessible this information has created a breakdown in allowing an applicant to have Notice of such information that would be the factual predicate for the new claim. The Applicant has discovered the following cases due to such update which could not have been discovered before such up-date.

Council v. Catoe 597 S.E.2d. 782

Graham v. State 661 S.E.2d. 337

Ferguson v. State 677 S.E.2d. 600

Attorney General's Opinion 1991 SC Opp Att Gen 118, 1991 SC Opp Att Gen No. 91-46, 1991 WL 474776 (SCAG)

State v. Nicholson 623 S.E.2d. 100

In Re Redmond 678 S.E. 2d 409

Martinez v. Ryan 132 S.Ct 1309

The herein mentioned cases has exposed the Applicant to the ability to come back before the PCR Court due to such unique circumstances that are evident by the record. Specifically, Dr. Martin while testifying before the Court indicated that The Applicant was at moment in time suffering from and exhibiting signs of Paranoria at the time of the hearing due in part to

medication reasons. (ROA Pg. 721 Lines 2-4, Lines 12-19). As a point of clarity the Applicant was not able to testify at his first PCR Hearing and considering SCRCP 71.1 a,b,c,d,e, The Applicant had the burden of prove to establish his entitlement to relief by a preponderance of the evidence.

I.

Had The Applicant been able to testify, he would have testified as follows:

Trial Counsel was ineffective for not objecting before the jury being sworn that the (§ 16-3-810) Indictments failed to:

a. Indictment added the word (a) into the language in the heading of the Indictment. Specifically (Engaging [a] Child for Sexual Performance) thereby individualizing the offense.

b. Failed to investigate and discover

i Discover the (1991 Attorney General's Opinion) which sets out the Attorney General's opinion as to what this criminal statute means.

ii Failed to obtain from the Legislative Printing Office the (R 267) Bill that was passed in (1984) that brought about S.C Code Ann. § 16-3-810. In that it states in the subject matter "relating to Child Pornography

iii Failed to raise objecting to the Burden Shifting nature of

this § 16-3-810 Offense. it effectively allows the State to convict a criminal Defendant of Criminal Sexual Conduct Second Degree without having to allege or establish the Sexual Battery Element as defined by § 16-3-651.

iv Failed to ask for a directed verdict, where the evidence elicited at trial and conceded at the PCR hearing, that No one actualy seen this act, whether that constitues an audience (ROA. Py. 770 Lns 9-14) Counsel Redmond essentially admitted that he "Might be wrong in his interpretation of the Relatively new untested State Statute.

v Failed to ask for a directed verdict, when Counsel Redmond had to admit he might be wrony in his interpretation of this statute. (ROA Py 770 lns 9-14)

c. The Indictment failed to put the Applicant on Notice as to the § 16-3-653 offense, The Indictment failed to provide Due Process when it did not include in the body the language of or reference to S.C. Code Ann. § 16-3-810.

Lastly, the SCRCP 12 (b) Motion is improper in the 2013-CP-21-874 action because it it totally based on newly discovered evidence upon a update in the Prison Law Library that could not have been discovered before such up-date. Also, even thought it is the parties in this litigation it is <u>not</u>

the same issue. therefore a dismissal under SCRCP 12 (b) is improper.

CONCLUSION

Based on the foregoing, the Applicant prays that this Court rule that the 2009-CP-21-780 was Final , Issue a Final Order on the 2009-CP-21-3147 Application, Dismiss the States SCRCP 12 (b) Motion on the 2013-CP-21-874 Action, Rule that the issues in the 2013 action are newly discovered and require the Attorney General to Appoint Counsel and schedule a hearing.

RESPECTFULLY SUBMITTING,

JIMMY D. MEGGS JR.

This 15 Day of December, 2013.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	TWELFTH JUDICIAL CIRCUIT
)	
Jimmy D. Meyys Jr.,)	
SCDC # 277400,)	HON. MICHAEL NETTLES,
Petitioner,)	CHIEF ADMINISTRATIVE JUDGE
vs.)	
)	2009-CP-21-780
State of South Carolina,)	2009-CP-21-3147
)	Case No. 2013-CP-21-0874
Respondent.)	CERTIFICATE OF SERVICE
)	

I Jimmy D. Meyys Jr, do certify that I have served a copy of my SCRCP 59 (e) on Respondent's Counsel of Record South Carolina Attorney General, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211 by depositing the same in the United States Mail Postage prepaid and addressed as mentioned herein, on this.

This 1st Day of December, 2013.

Jimmy D. Meyys Jr., # 277400
Evans C.I. F2-B-234 (Kiawah)
610 Hwy 9 West
Bennettsville, SC 29512