

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

THE SUPREME COURT OF SOUTH CAROLINA

Case No. 2013 - CP - 41 - 0010

Montavis Gains, SCDC# 323168 )

Petitioner )

v. )

State of South Carolina, )

Respondent )

Motion to Consolidate Pursuant to  
Rule 214 S.C.A.C.R.

**RECEIVED**

SEP 24 2014

**S.C. SUPREME COURT**

You will take notice that the petitioner, Montavis Gains, pursuant to rule 214 of the South Carolina Appellate Court Rules of Procedure, moves before this court by way of a motion to consolidate both briefs presently pending before the Supreme Court of South Carolina.

The petitioner moves for the court to consolidate both briefs because:

(1) This case involves the same issues in the first PCR appeal order presently pending where the same questions are involved, but in a different case. However, the filing of a motion to consolidate shall suffice to cover both cases.

(2) Deputy Chief, appellate defender Wanda H. Carter, esquire, is representing the petitioner on case No. 2012 - 21- 2227 in the Supreme Court of South Carolina.

(3) Saluda county Chief of police sent petitioner the incident report on December 6, 2012, and petitioner filed his second PCR application on January 16, 2013, within one (1) year after the date of actual discovery...or after the date when the facts could have been ascertained by the exercise of reasonable diligence. This should not be ruled as successive because it is within the one (1) year statute of limitation for newly discovered evidence. To juxtaposedly argue, the government failed to disclose information material to impeach the state witness. The petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record.

(4) The Honorable Thomas A. Russo signed the final order of dismissal on September, 8 2014.

(5) Petitioner appealed case No. 2013 - CP - 41 - 0010 to the Supreme Court of South Carolina, and states specific reason why the second application for PCR should not have been ruled as successive and barred by the one (1) year statute of limitation in petitioner's pro se brief, showing there is an arguable basis for asserting that the determination by the lower court was improper.

#### ARGUMENT

Petitioner argues that this was one of the primary grounds in the first PCR application. To wit, the prosecutor failed to turn over evidence of the agreement between the state of South Carolina and Rhoads, in which Rhoads was to receive favorable treatment in exchange for his testimony against petitioner.

The petitioner added in the effect that this evidence (incident report) was not disclosed in the first PCR matter, that counsel asked for inside of rule 5 interrogatories. The information that was subsequently retrieved by the petitioner has a reasonable probability that the outcome of the first PCR matter would have been quite favorably entertained by the PCR judge given Judge Griffith's reason for dismissal. Furthermore, Judge Griffith clearly states in his denial that the petitioner lacked evidence to support a deal existed between the state and Mr. Rhoads. (see PCR history) Finding this evidence puts the entire case in a different light according to Judge Griffith's comments. Certainly, the states non-disclosure undermines the confidence in the verdict at trial.

Technically, this original ground was raised in the first application for PCR. It was denied because petitioner could not prove that such a deal existed between the state and Mr. Rhoads, and there wasn't anything in writing before the court to confirm Mr. Rhoads testimony saying that a deal did indeed exist. The jury, and Judge Griffith were entitled to know of this information as part of the first PCR matter.

At the PCR hearing Rhoads testified that he had a deal with the state, but the petitioner, nor his counsel at the time, have a statement that was synonymous with the Saluda police incident report that the petitioner acquired later, that was in opposition of the prosecutors office, averting that Rhoads did not have a deal with the state in exchange for his testimony against the petitioner. During the trial the respondent witness vehemently denied the existence of a deal. In fact, Rhoads testified that he had a sweetheart deal in place with the police whom are the constituent of the prosecuting office. See petitioner's exhibit (H) PCR transcript page 15 line 17-25 attached to motion.

The prosecuting attorney has a duty to learn of any favorable evidence known to the other government agents, including the police, if those agents are involved in the investigation. *Kyles v. Whitly*, 514 U.S. at 437. In this present case officer Turner was involved with the investigation in this matter. See petitioner's exhibit (A) incident report attached to motion. Additionally, petitioner's reliance on *Boone v. Paderick*, 541 F. 2d 447 4th cir. 1976. The petitioner submits the Paderick court granted the argument petitioner makes before this court, where, in petitioner's trial for armed robbery, assault and battery with intent to kill, and criminal conspiracy, accomplice had received a promise of leniency in exchange for testifying at petitioner's trial, accomplice's testimony denying that he had received any promise of leniency. Furthermore, where fact that accomplice who testified against petitioner had received a promise of leniency was not disclosed to petitioner, such a failure to disclose material evidence tending to exculpate petitioner was not neutralized by the fact that it had been police officers and not prosecutor who had made promise of leniency. The failure of police to reveal such material evidence was equally harmful to petitioner. Recognizing that withholding of exculpatory evidence by police is imputed to the prosecution, and the taint on the trial is no less if they, rather than the state's attorney, were guilty of the non-disclosure the Paderick court further analyzed and determined. The government's case depended almost entirely on this witnesses testimony, and his credibility as a witness was an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know it. *Id.* at 155.92 S.ct at 766.

Furthermore, the knowledge was imputed to Mr. Maye and Mr. Frank Young (solicitors) when officer Turner had spoken to the prosecuting attorneys on behalf of Mr. Rhoads for leniency, in exchange for his testimony. Mr. Maye and Mr. Young adamantly denies ever having a deal with Mr. Rhoads, and that the arresting officer was well aware of their policy, and that no deal was ever promised. The prosecution knowingly used perjured testimony to obtain a conviction. Despite the obvious, that, Mr. Rhoads received a four (4) year sentence, Mr. Maye (assistant solicitor) testimony denies having made a deal through police officers, or Mr. Rhoads, and Mr. Young (prosecuting attorney), said that it would be in writing if he had. As a matter of fact, an incident report was filed by an officer Turner that states that he'd spoken to the solicitor's office on Mr. Rhoads behalf for a lighter sentence in exchange for subjects testimony.

Due process requires that an agreement made with a government witness for testimony in exchange for favorable treatment in the criminal justice system should be disclosed as impeachment evidence, and if granted will suffice the "fundamental fairness" exception recognized by the United States Supreme Court.

A new trial is required if false testimony at petitioner's trial could in any reasonable likelihood have affected judgement of jury.

CONCLUSION

Based on the foregoing argument, petitioner request that the court grant the motion to consolidate both briefs that are presently pending before the Supreme Court of South Carolina, and for such other and further relief as the court deems just and proper.

Respectfully Submitted,

Date: 9-18-2014

Montavis Gains  
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Sworn before me this 18 day  
of September, 2014.

JC Frankler  
Notary Public for South Carolina

My commission expires 12-16-2019