The State of South Carolina
In The Supreme Court

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S.C. SUPREME COURT

Appeal from Darlington County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Case No. 2013-CP-16 00571

Darrell Hunter #260730 ..... Appellant,
vs.
State of South Carolina ..... Respondent(s).

Explanation Pursuant to S.C.A.C.R. 227(c)

Appellant will now lay statutes, Citation of Law and procedural history, provide Sufficient facts to Support this pleading pursuant to S.C.A.C.R. 227(c)

Statement of Facts

It is undisputed that on Oct. 16, 1998, the day of the incident. Appellant and Fletcher had several fist fights throughout the day, starting at 9:00 am until the final Altercation at 6:00pm.

Prior to the last Altercation happening, Fletcher (victim) was in Adrian's Liquor Store Arguering with Rexland Willoughby And Fred Baker (State witnesses) about a matter that Concerned Darnell (Appellant), in which I had Nothing to do with, Their Conversations Caused Fletcher to come to where I was by the car And start "pistol whipping" me for no Reason of my Own. I was outside the store talking to Leo Williamson And Amber Cafaro (Co-defendant). Leo Williamson (A State witness) that witness the last altercation.

As Darnell was talking to Leo, Fletcher grabbed Darnell around the neck And started beating him with pistol, Darnell fell on the ground to try to stop the Assault, when he couldn't Amber jumped out the car Screaming for Fletcher to stop And did, once Amber seen Darnell was Alive And OK, she jumped back in the car, Darnell got in the car on the drivers side trying to gain his composure. (Tr. p. 411 L. 10-16)

While Darnell was sitting in the car Leo was calming him down And once Darnell was calmed down Leo Asked for a Ride in the Country while Fletcher was Already (100) one-hundred yards from the pistol whipping Incident. (Tr. p. 658 L. 7-15)

Calvin Alford (Fletcher Brother) was telling

His brother to leave And go home And Fletcher did that's why he was one hundred (100) yards Away. (Tr. p. 627 L. 22- Tr. p. 628 L. 7)

While All of this was transpiring Darnell was still sitting in the car, Seven (7) minutes had elapsed from the initial "pistol whipping" Fletcher Administered to Darnell until Darnell being Calmed down And Leo Asking for A Ride In the Country.

Once Darnell was "Calmed down" And Allowed Leo to get in the backseat to take him in the Country. Darnell got back In the car, Starts the car up, backs the car out of the parking lot And proceeded to the country. In Route to the Country to take Leo, Darnell seen Fletcher two-hundred (200) yards away in A field. Darnell drove up behind him And hit him with the car, which threw Fletcher into A tree, thereby Causing the fracture of Fletcher's Ribs. When Darnell left Fletcher on the ground he was Alive. The Ambulance was Called And came to the Scene on what they Call A "Code 12," which Means, no lights And Sirens while in route. (Tr. p. 516 L. 4-5). That Act Alone Shows that the incident [was not] Serious.

Fletcher Died from his Ribs puncturing his lungs And he drown from his blood in Lungs. With that being Said Fletcher [was Alive] when EMS Arrived. Leo Murrell (EMS worker) testified that

the procedure for transporting a patience [is] to be [strapped down] with Restraints across the legs, Stomach [and] Chest. (Keep in mind that Fletcher ribs are already fractured) The Strap across the chest was the primary cause of the Ribs puncturing Fletcher lungs, which in turn caused Fletchers death. And to add insult to injury, Leo Murrell testified that he weighs 225 lbs And he used All his weight to Apply on Fletcher's Chest to stop his Combativeness, further imbedding the already cracked ribs into Fletcher's Lungs. (Tr. p. 344 L. 6 - Tr. p. 352 L. 5)

Procedural History

This history Arises from the death of Fletcher Alford. Appellant was indicted At the January 1999 term of the Darlington County Grand Jury for Murder, Reckless Homicide, And driving under Suspension (DUS) third offense, He was Represented by Robert L. Kilgo, Esquire.

After the State called the Case to trial, Appellant was found guilty of Voluntary Manslaughter, A Charge he objected to. [FN1] ON August 28, 1999, Appellant was sentenced by the Honorable James E. Lockemy to twenty-four (24) years

FN1. Directed verdicts were granted on Reckless Homicide and DUS charges

Imprisonment.

An Appeal was filed and perfected, which was affirmed. State v. Hunter, OP. No. 01-UP-139 (S.Ct. App. filed March, 22, 2001). A writ was filed which was also denied on Jan. 10, 2002. Next Appellant filed his first PCR Application on April 18, 2002 with a [Specific Issue] which needed Addressed "Trial Counsel was ineffective for failing to Argue there was 'no Evidence for the Essential Element "Heat of Passion" for Voluntary Manslaughter. Respondent(s) made it's Return on Feb. 5, 2003, An evidentiary hearing into the matter Convened on May 17, 2005. Appellant was represented by Henry M. Anderson, Esquire.

Honorable Michael Baxley denied the PCR on July 20, 2005 [without] A finding of All issues Pursuant to 17-27-80, Specifically, "Trial Counsel was ineffective for failing to Argue there was 'No Evidence for the Essential Element "Heat of Passion" for Voluntary Manslaughter,' due to the fact there was a [cooling period] established which negated the Voluntary Charge and option. (See Exhibit A+B attached)

Appellant had Numerous Written Correspondences Concerning the order of dismissal [and] the filing of a Rule 59(e) Motion for Appellant. (See Exhibits E, F, C, D, and G Attached) So there was "no Reason" As to why Counsel did not file the Rule

59(e) motion As Requested by Appellant. [FN2]

Appellant Appealed the dismissal order, Appellate Counsel filed a ~~Johnson~~ Brief to the Supreme Court on June 5, 2006. ON June 6, 2006 Appellant filed A prose brief Alledging Numerous issues, Specifically, "Did the PCR judge erred when he Failed to grant PCR Relief on ineffective Assistance of Counsel when trial Counsel Failed to make A Motion "Specifically" Stating that there was "No Evidence" of "Heat of passion" AN Essential Element that Must be proved for A Conviction of Voluntary Manslaughter."

ON August 22, 2006, the Supreme Court transferred the pending Appeal to the S.C. Court of Appeals, on Oct. 5, 2007 the S.C. Court of Appeals denied the petition and Sent the remittitur Oct. 23, 2007.

Hence May 9, 2013 Appellant filed this PCR which was filed May 16, 2013. Respondents made a timely Return and motion to dismiss on or About December 30, 2013 Requesting the Application be Summarily dismissed as Successive, untimely and failing to State A Claim upon which Relief Could be granted (See Final order of dismissal filed May 16, 2013 (Attached) [FN3]

FN2 Marlar v. South Carolina, 653 S.E.2d 266, 267 (S.C. 2007)
Bostick v. Stevenson, 589 F. 3d 160 (4th Cir. 2009)

Appellant filed A Rule 59(e) motion on February 4, 2014 to Alter AND Amend the order of Dismissal, that was filed by the Courts on Feb. 12, 2014 at 12:04 pm (In which the Court has yet to provide A disposition for)

Appellant Counsel recieved A copy of the order on April 1, 2014 (three (3) months Later) Counsel filed A timely Response (Arguing A frivolous Issue) April 21, 2014 In which was denied May 1, 2014 [But] Appellant [did not] Recieve until September 26, 2014 (See Exhibit H Attached) Appellant used Due Diligence to Recieve the order In A timely Manner, Resulting to using All available Avenues, Such As writing A Letter to the clerk of Court Inquiring about the disposition (See Exhibit I Attached) filing A "Ex Parte Motion" (See Exhibit J Attached) AND writing the attorney of Record in which the lawyer Stated, "He didn't Recieve it yet, (See Exhibit K Attached)

Appellant wrote the 4th Circuit Judge once Again September 17, 2014, Asking about the disposition of the Rule 59(e) motion And Conditional order that were filed in the Case AND Appellant recieved the disposition on September 26, 2014 (See Exhibit H Attached)

This Appeal follows:

[FN3] See Appellant PCR Application for rebuttal

EXPLANATION #I.

The P.C.R. Judges Determination that Appellant's Application for Post Conviction Relief be dismissed As untimely, Successive AND failing to State A Claim upon which Relief CAN be granted WAS improper...

Appellant Avers that the Application should not be dismissed As Successive under Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980) S.C. Code § 17-27-90, for the fact Appellant Relies ON A "New Rule of Constitutional Law." IN Martinez v. Ryan, 132 S.Ct. 1309 (2012), the United States Supreme Court "ANNounced" that Post Conviction Relief (PCR) Applicants [have] A Constitutional Right to Effective Assistance of Counsel on (PCR) Collateral Attack. This New Rule of Constitutional LAW [is] made Retroactive Pursuant to Teague v. Lane, 489 U.S. 288, 308 (1988), Hence, Appellant's CASE is distinguished from Land v. State, (Supra)

Ineffective Assistance of PCR Counsel under Martinez v. Ryan (Supra) creates a genuine issue of material fact, that points to A "Sufficient Reason" As to why the New Ground could not have been properly raised in Previous Applications, FN4 Hence, Appellants PCR Application [is Not] Successive In the Context of S.C. Code. Ann. §17-27-90

FN4 Appellant "Specifically" Relies on Ineffective PCR Counsel's failure to file A timely Rule 59(e) to have issues adjudicated that were RAised AND Not Considered in the order of dismissal.

Explanation #2

Appellant further avers his application should not be dismissed as untimely under S. C. Code Ann § 17-27-45(A). Appellant Rely on "United States Supreme Court New Rule of Constitutional Law to Support his timely filed Ineffective Assistance of (PCR) Counsel claims. Appellant Incorporates the same Argument In Explanation 2 of this Memorandum. In Martinez, the Supreme Court [now gives] PCR Applicants A Sixth Amendment Right to PCR Counsel, "where issues of (IAC) sole avenue is on Post-Conviction Relief. Hence, pursuant to the Martinez Analysis, PCR Counsel "[can] be held Ineffective."

Appellant filed his Ineffective Assistance of PCR Counsel claims within "one year" of this New Rule of Constitutional Law. Therefore, Appellant's case is distinguished from that of Peloquin v. State, 321 S.C. 468, 470, 469 S.E. 2d 606, 607 (1996) which proves Appellant's PCR Application was timely filed.

Explanation #3

Appellant avers that the PCR Judges order stating Appellant failed to state a claim [was also] improper, due to the fact that, under the fundamental fairness and Miscarriage of justice exception, Appellant has been

deprived] of his "one bite" "of the Apple" on his first PCR. Appellant Asserted in his first PCR Application that he was being held in Custody in Violation of the United States Constitution, (IAC) on Several grounds [but] PCR Counsel failed to Effectively perform his duties And file A Rule 59(e) Motion to have All issues Adjudicated In his first PCR, to-wit "Specifically" Asked to. (See Exhibits C, D, E, F and G ATTACHED)

The Respondent(s) has "misinterpreted" And "misconstrued" Appellant's Claim. Appellant [does NOT] Claim that Martinez gives him the Ability to file A "Successive" PCR Application, but to the Contrary, that Martinez, "Now" gives PCR Applicants A Constitutional Right to Effective Assistance of Counsel in Collateral Proceedings, And that "if" "Counsel in the [first] Collateral Proceedings Rendered ineffectiveness, [he] can be held ineffective Pursuant to the Martinez Analysis. Strickland V. Washington, 104 S.Ct. 2052, Bed Rock Principles [Must] Apply (1) Applicant must show that Counsel's performance deficient And (2) the Applicant must show that the deficient performance prejudiced the Applicant.

In the likelihood the Retroactive Effect of

Martinez, "New Constitutional Law Abrogate Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (Holding there is No Constitutional Right to Effective Assistance of Counsel on Collateral Review.)

The U.S. Supreme Court held in "Martinez", that In the event Counsel in Collateral proceedings Rendered Ineffective Assistance, then it may provide cause for a procedural default, The U.S. Supreme court [must] Recognizes Applicants have that Constitutional Right to Counsel. (see Martinez v. Ryan), (Supra). Coleman v. Thompson, 501 U.S. 722 (1991) In Coleman, Appellate Counsel Could be held to provide Cause for a Procedural default, (Martinez) holds that Coleman is distinguished due to the fact that Coleman, [did Not] relate to Counsel on Collateral Review, [but] that of Counsel on "Appellate Review." Martinez v. Ryan, (Supra)

The Respondent(s) Asserted Kelly v. State, order No. 2013-06-20-01 (S.C. Sup. Ct. order dated June 20, 2013) As it's Supporting Case Law... Appellant Avers that Kelly, is totally distinguished from that of his Case due to the fact that, In Kelly, he [Argued] to the Supreme Court that the Supreme Court decision In Martinez, gave him cause to file A Successive

PCR Application. Here, in Appellant's Case, Appellant is Asserting that Martinez decision [Now] gives PCR Applicants the Constitutional Right to PCR Counsel And "If" that Counsel provided Deficient performance, Applicant's CAN bring A [Belated] PCR pursuant to Austin v. State, 409 S.E.2d 395, (1991) [And] Martinez v. Ryan, (Supra) to protect Applicant's "One bite at the Apple," pursuant to Odom v. State, 523 S.E.2d 753 (1999); Gamble v. State, 379 S.E. 2d 118 (1989)

It's clear that Appellant's PCR Counsel deficient performance of Not filing a Rule 59(e) motion prejudiced Appellant, where his issues that had merit, the federal Habeas Courts Refused to Entertain those issues for the fact that the issues were Not Adjudicated on State level AS Mandated.

Hence, pursuant to Austin v. State, (Supra) [And] Martinez v. Ryans, (Supra), Appellant[is entitled] to AN Evidentary hearing to determined:

(1) Whether the U.S. Supreme Court in Martinez gives PCR Applicants A Constitutional Right to Effective Assistance of PCR Counsel In [first] Collateral proceedings where Issues of (IAC) is the first stage of Review!

(2) And if the U.S. Supreme Court AND Constitution Recognizes Effective Assistance of Counsel on [first] Collateral Proceedings, whether Appellant's PCR Counsel provided him with deficient performance when he failed to file A Rule 59(e) motion when "Specifically" Asked to have All Issues Adjudicated, Pursuant to 17-27-80 And;

(3) whether Martinez, Abrogated Pennsylvania v. Finley, (Supra) and Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392 (1991) FN5

Hence, pursuant to Celotex Corp v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, genuine issues of material facts exist And Appellants Application [should not] be dismissed.

Failure to hold An Evidentiary hearing will Result in A Complete fundamental Miscarriage of Justice.

Conclusion

Appellant prays this Court Remand this case to the lower Court for An Evidentiary hearing on All the Reasons Listed IN Explanation 1-3 and those In the PCR Application.

S/ Darnell Hunter #360730
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FN5 Case v. State, 277 S.C. 474, 289 S.E.2d 413)

In The State of South Carolina
In The Supreme Court

Darrell Hunter #260730)
Appellant) Case No: 2013-CP-16-00571
)
vs.)
)
The State of South Carolina) Certificate of Service
)
Respondent(s)

Appellant, Hereby, certifies that he has mailed the foregoing Explanation pursuant to Rule 227(c) S.C.A.C.R. to All parties Listed Below, postage pre-paid, through U.S. Mail, as follows:

(1) Hon. Daniel E. Shearouse, Clerk
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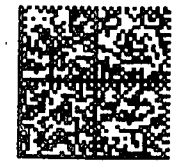

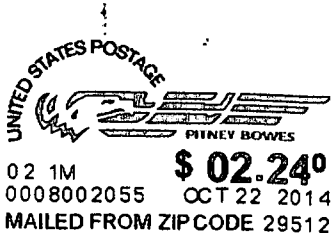

OCT 22 2014

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