

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

2014-CP-10-305

Sidney Fields # 254392

Appellant.

V.

The State Of South Carolina

Respondent.

INITIAL BRIEF OF APPELLANT

Sidney Fields # 254392

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Columbia, S.C. 29210

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN FAILING TO OBEY A LAW OF THE CASE ORDER TO CONDUCT A HABEAS CORPUS PROCEEDING IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHTS?

2. IS APPELLANT ENTITLED TO ABSOLUTE RELEASE UNDER DUE PROCESS WHEN THE CIRCUIT COURT REPEATEDLY REFUSED TO OBEY A LAW OF THE CASE ORDER THAT ALLOWED APPELLANT TO PERFECT A CONDITIONAL RELEASE?

STATEMENT OF CASE

On November 16, 1998 appellant plead guilty, and was sentenced to life imprisonment for Murder, and 30 years for Armed Robbery. TRANS p.177 p.127

1st (PCR) Application

On May 13, 2000 a hearing was convened before the Judge R. Markley Dennis Jr. Appellant testified that prior to plea, counsel advised him on an early release Statute. S.C. Code Ann. §24-3-210. When in fact the provisions under the Statute was not cognizable under his sentencing Statute. S.C. Code Ann. §16-3-20. This sentencing Statute prohibits any and all early release programs. TRANS p.127 p.128 p.129 p.130

Appellant further testified that had it not been for counsel's advice, he would not have plead guilty. Both Statutes was entered into evidence twice. Once before the hearing commenced, and a second time right before appellant testified. At the close of the hearing, Judge Dennis denied the application.

Upon receiving a copy of the proposed Order, and a copy of the transcript of the (PCR) proceeding, appellant discovered that not only was the transcript not certified by a court reporter, appellant's specific allegation about counsel's advice being contrary to Statute law was completely omitted from the transcript.

Appellant informed (PCR) counsel (via) several letters that there was no testimony to substantiate the evidence presented, nor was there testimony to substantiate the main allegation of his ineffectiveness of counsel ground. TRANS p.107 p.108 / TRANS p.122 p.123 p.124

(PCR) counsel informed appellant that he received his letters about the transcript, and further informed appellant that he referred the matter to the appellate defense office to be corrected at the appellate level. LETTER p.138

Appellate Review Of 1st (PCR) Application

On October 11, 2002 the S.C. Supreme Court affirmed the 1st (PCR) denial. And eventhough appellant informed appellate counsel about the defective transcript on appellate review, appellate counsel informed appellant that he had no more State court appeals in this matter, and made reference to appellant that Federal review under 28 U.S.C. §2254 is an option. Because of appellate counsel's advice, appellant initiated his 1st Federal review under §2254

1st Petition For Writ Of Mandamus In Circuit Court

After an unsuccessful Federal review, on June 24, 2004 appellant submitted a petition for writ of mandamus in circuit court (Charleston). But was denied to proceed in forma pauperis. On March 29, 2005 appellant re-submitted the mandamus with the required \$150.00 filing fee. On March 24, 2006 the writ was dismissed for failure to prosecute.

On April 4, 2006 appellant submitted a 59(e) motion alleging that the mandamus was dismissed prematurely because transportation provisions was not made to transport appellant to the hearing. This motion was dismissed also.

2nd (PCR) Application

On May 6, 2006 appellant submitted a 2nd (PCR) application pursuant to S.C. Code Ann. §17-27-90. Appellant alleged that because of (PCR) counsel's performance, the ground in the original (PCR) was inadequately raised, thus a sufficient record for appellate review was never procured.

Appellant also argued that appellate counsel's advice in the original appellate review caused appellant to pursue his 1st Federal review prematurely. Thus causing appellant to submit the 2nd (PCR) application in a belated manner. Without a hearing, the 2nd (PCR) court concluded that the appellant did not show a sufficient reason and dismissed the application accordingly. TRANS p.127

Appellate Review Of 2nd (PCR) Application

On March 21, 2007 the S.C. Supreme Court denied appellant's explanation to proceed with an appeal. On May 23, 2007 the court denied appellant's motion to reconsider the denial of the explanation.

On June 28, 2007 appellant pursued a 2nd Federal review under U.S.C. §2244 in the U.S. Court Of Appeals (4th cir), asking the court to allow him to proceed in the district court on a successive Federal Habeas Corpus petition. The court of appeals denied this request.

Petition For Writ Of Habeas Corpus In Circuit Court

On August 31, 2007 appellant submitted a petition for Habeas Corpus in circuit court (Charleston), in which he alleged that he was denied due process because (PCR) counsel's performance in the original (PCR) proceeding deprived him of a sufficient record for appellate review. TRANS p.123 p.124

Appellant also alleged that eventhough he has no constitutional right to counsel on collateral review, he has a fundamental fairness right under due process to a sufficient (PCR) record. And in this case, no record was ever developed to substantiate appellant's main allegation stemming from the original (PCR) proceeding. PETITION p.29-42 / TRANS p.107 p.108 / TRANS p.122 p.123 p.124

After a Conditional Order was issued by Judge Roger M. Young ORDER p.3-8, appellant opposed the Conditional Order, which was vacated by Judge Young. ORDER p.9 Judge Young subsequently issued an Order transferring the Habeas pleading to the civil roster as a petition for Habeas Corpus, with a hearing Ordered to be set in accordance. ORDER p.10

The respondent submitted a motion to reconsider asking Judge Young to vacate his Habeas Order, and place the pleading on the (PCR) docket in order to move the court for a (PCR) dismissal. MOTION p.43-45 Judge Young denied the respondent's motion. ORDER p.11 And no appeal was taken by the respondent.

PETITION p.67 / MOTION p.88 / MOTION p.95 / TRANS p.124 p.132 p.134

A hearing on this matter was convened before Judge R. Markley Dennis. TRANS p.104-115 However, Judge Dennis conducted the proceedings under the (PCR) docket TRANS p.106 p.112 / TRANS p.125 The respondent in turned construed the Habeas pleading before Judge Dennis as appellant's 3rd (PCR) application, and moved the court for a (PCR) dismissal. TRANS p.106 Judge Dennis granted the respondent's motion; TRANS p.113 Thus denying the application accordingly. ORDER p.12-18

The circuit court subsequently allowed appellant to proceed pro-se ORDER p.19, in which appellant submitted a pro-se motion asking Judge Dennis to reconsider his Order alleging that a succeeding Judge cannot review, reverse or modify the holding of another Judge. MOTION p.46-54 / TRANS p.134 Judge Dennis denied the motion to reconsider. ORDER p.20

Appellate Review Of 3rd (PCR) Application

Appellant filed a pro-se notice of appeal and a pro-se explanation in which the S.C. Supreme Court granted the explanation and allow the appeal to proceed. The Supreme Court appointed the office of the appellate defense to represent appellant.

On June 24, 2009 appellate counsel submitted a "Johnson Petition" and asked to withdraw. Appellate counsel excluded from the appeal and the appendix 1). Judge Young's Habeas Order 2). The respondent's motion asking Judge Young to reconsider his Habeas Order 3). Judge Young's Order denying the respondent's motion 4). Circuit court's Order allowing appellant to proceed pro-se in circuit court

Not only did counsel exclude the foregoing, appellate counsel misrepresented the facts in her "Johnson Petition" by stating that it was counsel representing appellant who filed the notice of appeal, not appellant himself.

Appellate counsel made it appear as if appellant was represented by counsel when appellant submitted his motion to reconsider before Judge Dennis. When in fact, counsel was already relieved when appellant submitted his motion. To facilitate this error, appellate counsel excluded from the appendix the circuit court's Order relieving counsel and allowing appellant to proceed pro-se. Appellate counsel deliberately made appellant's motion to reconsider appear "Hybrid" before the appellate court. Foster, v. State 329 SE2d at 907 /TRANS p.135

On July 7, 2009 appellant submitted his pro-se response to the "Johnson Petition" and pursuant to Rule 243 (1) SCACR, the Supreme Court transferred the appeal to the S.C. Court Of Appeals. On November 5, 2010 the S.C. Court Of Appeals denied appellant's petition for certiorari. ORDER p.21

Federal Review

On January 19, 2011 appellant sought Federal review to the U.S. Supreme Court. On March 25, 2011 the court denied the petition for certiorari.

S.C. Supreme Court's Original Jurisdiction

On May 20, 2011 appellant submitted a petition for writ of Habeas Corpus to the S.C. Supreme Court. On June 22, 2011 the court denied the petition. On August 9, 2011 appellant submitted a petition for writ of mandamus to the S.C. Court of Appeals. On August 18, 2011 the S.C. Supreme Court which took the case denied the petition.

2nd Mandamus In Circuit Court

On October 4, 2011 appellant submitted his 2nd mandamus in circuit court to compel the court to conduct a court Ordered Habeas proceeding. On May 8, 2013 Judge J.C. Nicholson denied the petition pursuant to Rule 5(d) SCRCR because the service of process was not perfected. ORDER p.22 On August 16, 2013 appellant's 59(e) motion was denied. ORDER p.23

3rd Mandamus in circuit court

3rd Mandamus in circuit court

Predicated on the denial of Judge Nicholson's previous Order, On January 14, 2014 appellant filed a subsequent mandamus alleging the same issue as in the previous mandamus petition. PETITION p.55-77

The respondent subsequently filed a motion to dismiss MOTION p.78-84, in which appellant responded to. RESPONSE p.85-92 On May 23, 2014 a hearing was held before Judge Nicholson. TRANS p.116-137 At the hearing, Judge Nicholson conceded to the respondent that since they failed to appeal Judge Young's Habeas Order, the Order is the law of the case. TRANS [REDACTED] p.134 But concluded at the hearing that Habeas Corpus is for immediate release and therefore not appropriate relief for appellant. TRANS p.134 Judge Nicholson denied the mandamus at the hearing. TRANS p.136

On June 11, 2014 Judge Nicholson issued an order in accordance, and on June 23, 2014 appellant submitted a motion to reconsider MOTION p.93-103, in which appellant put the circuit court on notice that upon the denial of his motion, he will seek absolute release from custody in appellate court. MOTION p.102

On September 10, 2014 Judge Nicholson denied appellant's motion to reconsider. ORDER p.28 Appellant received notice of the denial on September 18, 2014, and on September 24, appellant served the notice of appeal on the respondent.

Appellant's initial brief challenging Judge Nicholson's Order now follows:

I

ARGUMENT

WHEN THE COURT ISSUED THE ORDER TO TRANSFER THE PLEADING TO THE CIVIL ROSTER AS A PETITION FOR HABEAS CORPUS THAT BECAME THE LAW OF THE CASE, THE COURT DEPRIVED APPELLANT OF DUE PROCESS GUARANTEED TO HIM BY ARTICLE I §5 OF THE S.C. CONST. AND THE 14TH AMEND OF THE UNITED STATES CONST, BY CONSTRUING AND DISMISSING THE HABEAS PLEADING AS A SUCCESSIVE (PCR) APPLICATION WHEN IT DID NOT HAVE SUBJECT MATTER JURISDICTION TO DO SO.

1.Law Of The Case / Rule 60 S.C. Circuit Court Rules Of Practice

When Judge Young issued the Order transferring the pleading to the civil roster as a petition for Habeas Corpus, with a hearing to be set in accordance ORDER p.10, the respondent filed a motion to reconsider asking Judge Young to vacate his Order and place the pleading on the (PCR) docket in order to move the court for a (PCR) dismissal. MOTION p.43-45 Judge Young denied the respondent's motion. ORDER p.11 And no appeal was taken by the respondent. PETITION p.67 / MOTION p.88 / MOTION p.95 / TRANS p.124 p.132 p.134

At the hearing before Judge Dennis TRANS p.104-115, Judge Dennis construed the proceedings under the (PCR) docket. TRANS p.106 p.112 / TRANS p.125 The respondent then moved the court for a (PCR) dismissal. TRANS p.106 Judge Dennis granted the respondent's motion TRANS p.113, thus denying the application accordingly ORDER p.12-18

Appellant argues that since the respondent failed to appeal Judge Young's denial of their motion to reconsider TRANS p.124 p.132 p.134, Judge Young's Order right or wrong became the law of the case. Lindsay v. Lindsay 328 S.C. 329, 491 SE2d 583,588 (1997) / PETITION p.64-67 / MOTION p.86-88 / MOTION p.95-96 / TRANS p.124 p.134

And when the respondent moved the court for a (PCR) dismissal with Judge Dennis granting their motion, this violated Rule 60 of the S.C. Circuit Rules Of Practice which states: If any application for an Order is made to any Judge, and such application is refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other Judge. And if upon such application any Order be made, it shall be revoked. Rule 60 S.C. Circuit Court Rules Of Practice / PETITION p.66 / MOTION p.87 / MOTION p.95 / TRANS p.131 p.132

The court's jurisdiction was further lost because the respondent gave no notice of motion to Judge Dennis before the hearing. Due process says no notice, no Jurisdiction. No Jurisdiction, no Order. Murdock v. Murdock 338 S.C. 322, 526 SE2d 241,248 (1999) / PETITION p.76 / MOTION p.91 / MOTION p.95 / TRANS p.132 p.134

This clearly shows the validity of Judge Young's Habeas Order and the invalidity of Judge Dennis's Order. Therefore Judge Nicholson's Order on this issue is not supported by the evidence. White v. State 263 S.C. 110, 208 SE2d 35,38-39 (1974)

2.Elements To Establish Mandamus

When Judge Young issued the Order transferring the pleading to the civil roster as a petition for Habeas Corpus that became the law of the case, the court had a LEGAL DUTY to conduct a Habeas proceeding in accordance to the Order, whether the Order was right or wrong. Lindsay at 588

The court's duty is MINISTERIAL IN NATURE because Rule 52(a) SCRPC states that it is the court who must fact find and state it's conclusion of law by weighing testimony and evidence given before it and make a ruling thereon. Rule 52(a) SCRPC

Appellant had a SPECIFIC RIGHT FOR WHICH DISCHARGE OF DUTY IS NECESSARY because the court was bound by the law of the case doctrine to conduct a Habeas Corpus proceeding, thus giving plaintiff the right to have a hearing in accordance. Robert Harmon And Bore Inc. v. Jenkins 282 S.C. 189, 318 SE2d 371,375 (1984)

And under due process, once the Habeas Order became the law of the case, appellant was given a "liberty interest" in the proceedings. Walters v. Grossheim 990 F.2d 381,384 (8th cir 1993) / PETITION p.74-75 / MOTION p.91-92 / MOTION p.96

THERE IS NO OTHER LEGAL REMEDY because only a writ of mandamus can compel the circuit court to conduct a Habeas Corpus proceeding in accordance with the law of the case doctrine. And only a writ of mandamus can overturn or revoke Judge Dennis's Order in accordance to rule 60 S.C. circuit court rules of practice.

Furthermore, Statute law §15-35-180 states that a Judgment requiring a person or public official to perform an act must by law obey it, and there obedience thereto enforced. Failure to do so can be punished by the court's for contempt. S.C. Code Ann. §15-35-180 / PETITION p.71-72 / MOTION p.96

This Statute waves the State's sovereign immunity and gives appellant the consent to force the State to make good on an order it's own court created. This is why the State is the defendant in the mandamus pleading.

3.Ruling Outside Of Complaint

It is well settled that a decision on a motion to dismiss for failure to state claim must be based solely upon allegations set forth on the face of the complaint. Barns v. Gardner 328 S.C. 608, 493 SE2d 356,359 (1997)

The complaint in the instant was before the circuit court by way of mandamus, in which appellant argued to involk the mandamus to enforce the a law of the case Order that decreed that a Habeas Corpus proceeding be conducted.

Appellant argues that Judge Nicholson went outside the face of the complaint by making a fact finding and conclusion of law stating that since Habeas Corpus is for immediate release, appellant could not receive relief in a Habeas Corpus proceeding. citing Bowers v. State 241 S.C. 282, 127 SE2d 881,882 (1962) / Order p.²⁷ / TRANS p.134

The primary purpose of a writ of mandamus is to force an established right and a corresponding imperative duty created or imposed by law. City Of Rock Hill v. Thompson 349 S.C. 197, 563 SE2d 101,102 (2002)

This matter is before the court to enforce a court Order that decreed a Habeas Corpus proceeding be conducted, not for the court to exercise it's discretion to decide whether appellant could or could not receive Habeas relief. Not only did Judge Nicholson conclusion in his order went outside the nature and purpose of appellant's mandamus pleading, this issue in Judge Nicholson's Order was not averred by the respondent in their motion to dismiss.

The reason why this issue was not averred by the respondent because the respondent argued this very same issue before Judge Young in their motion asking Judge Young to reconsider his Habeas Order. MOTION p.43-45 Judge Young denied the respondent's motion to reconsider. ORDER p.11

4. Habeas Corpus Relief In Circuit Court

Judge Nicholson stated in his Order that Habeas relief is not appropriate being that grant of relief would not entitle appellant to be released from prison. Therefore, Habeas corpus is not available to him. citing Bowers v. State 241 S.C. 282, 127 SE2d 881 (1962) / ORDER p.27 / TRANS p.134

In Grant v. Macdougall 244 S.C. 387, 137 SE2d 270 (1964), a Habeas Corpus proceeding was conducted in circuit court. The court concluded that since Grant pleaded guilty without the benefit of counsel, he was entitled to have his sentence vacated, but was not entitled to immediate release from confinement. Grant appealed the circuit court's decision alleging that he was entitled to immediate release, not the vacating of his sentence. The Supreme Court affirmed the circuit court's decision. see also Blandshaw v. State 249 S.C.42, 152 SE2d 349 (1967) / Slack v. State 311 S.C. 415, 429 SE2d 801 (1993) / Pitt v. Macdougall 245 S.C. 98, 138 SE2d 840 (1964)

In Baskins v. Moore 362 F.Supp 181,190-91 (D.S.C. 1973), the Federal district court has ruled that just because a petitioner is challenging his plea conviction (via) Habeas Corpus does not mean he is seeking immediate release from custody. A petition for Habeas Corpus can also be used to seek the reversal of his conviction (change his plea).

Because if a petitioner is successful in the reversal of his conviction, have a trial and is acquitted, then the sole purpose of the Habeas Corpus has been accomplished (released from confinement). Baskins at 190-91

Therefore, Habeas relief is not limited to immediate release from custody, but also to effectuate an eventual release. Preiser v. Rodriguez 411 U.S. 475,487 (1973)

And since the Habeas Statute gives the courts power to fashion appropriate relief other than immediate release Paxton v. Rowe 369 U.S. 54,66 (1966), the reconstruction of appellant's original (PCR) record is within the core of Habeas Corpus, because the re-established testimony can help procure a reversal of a conviction, then a trial and a possible acquittal (release from confinement). Preiser at 487

These being examples showing that a petition to writ of Habeas Corpus can be pleaded in circuit court to gain relief other than immediate release from prison. Therefore, Judge Nicholson's conclusion on this issue is not factual and is not supported by the evidence nor by the law. White v. State 263 S.C. 110, 208 SE2d 35,38-39 (1974) / PETITION p.68-71 / MOTION p.98-99

And since the underlying facts in Bowers v. State is inconsistent with the underlying facts of appellant's case, Judge Nicholson's impartation of this case into his conclusion of law was inappropriate. ORDER p.27

5. Order Contains Facts Misleading / Not Supported By The Evidence

Judge Nicholson's Order failed to mention that the respondent filed a motion to reconsider asking Judge Young to vacate his Habeas Order and place the pleading on the (PCR) docket in order to move the court for a (PCR) dismissal. MOTION p.43-45 / TRANS p.118 p.119 p.124

Judge Nicholson's Order failed to mention that after Judge Young denied the respondent's motion to reconsider ORDER p.11 / TRANS p.131 p.132, no appeal was taken by the respondent. PETITION p.67 / MOTION p.88 / MOTION p.95 / TRANS p.124 p.132 p.134 Thus said, Judge Young's Habeas Order right or wrong became the law of the case. PETITION p.64-67 / MOTION p.86-88 / MOTION p.95-96 / TRANS p.124 p.134

Even at the mandamus hearing before Judge Nicholson, the respondent was quick to enter into evidence Judge Young's Habeas Order, but did not enter into evidence their motion to reconsider the Habeas Order, nor Judge Young's Order denying their motion. TRANS p.133

Judge Nicholson's Order failed to mention that the respondent violated the law of the case doctrine and Rule 60 Of the S.C. Circuit Court Rules Of Practice by moving the court before Judge Dennis for a (PCR) dismissal. PETITION p.66 / MOTION p.87 / MOTION p.95 / TRANS p.131 p.132

This violation should have been mentioned in the Order being that it was Judge Nicholson himself at the hearing who conceded to the respondent that they did commit this violation. TRANS p.134

Also at the mandamus hearing, appellant informed Judge Nicholson that the error committed on appeal was 10 times more egregious than the errors committed in the lower court. Judge Nicholson responded by telling appellant "I'm not going into that, that's their problem not mine." TRANS p.135

However Judge Nicholson was quick to conclude in his Order that appellate counsel properly submitted a "Johnson Petition" to the S.C. Supreme Court, and the S.C. Court Of Appeals properly denied appellant's petition for certiorari. ORDER p.21 / ORDER p.26-27

But in all actuality, appellate counsel excluded from the appendix and the appeal 3 State court Judgments and the respondent's motion to reconsider challenging the Habeas Order. This is a clear violation of appellate court Rule 243 which states that the appendix shall contain the entire record of the lower court. Rule 243 (f)(1) SCACR (see statement of the case).

Also at the hearing, Judge Nicholson confirmed on the record that appellant filed a "Response" to the respondent's motion to dismiss TRANS p.119, but made no mention of appellant's "Response" in his Order. ORDER p.24

Finally, Judge Nicholson's Order alluded to the fact that the Order is based on the granting of the respondent's motion to dismiss. ORDER p.27. However, the Order is inundated with fact finding issues that was never averred by the respondent in their motion to dismiss.

The foregoing clearly shows that the underlying facts in Judge Nicholson's Order is not only misleading, it is not supported by the evidence nor by law. White v. State 263 S.C. 110, 208 SE2d 35,38-39 (1974) Judge Nicholson used his Order to maquerde the procedural and Statutory violations committed against appellant that occurred on every level of the Judicial spectrum. TRANS p.131 p.132 p.136

II

ARGUMENT

WHEN THE CIRCUIT COURT REFUSED TO OBEY A LAW OF THE CASE ORDER THAT ALLOWED APPELLANT TO PERFECT A CONDITIONAL RELEASE UNDER HABEAS CORPUS LAW, DUE PROCESS WARRANTS ABSOLUTE RELEASE BECAUSE THE CIRCUIT COURT WAS GIVEN NUMEROUS OPPORTUNITIES BY APPELLANT TO OBEY THIS ORDER BUT REFUSED TO DO SO.

1. State Habeas Law And Jurisprudence

The S.C. Constitution states that each of the Justices of the Supreme Court, and the Judges of the Court of Appeals along with every circuit court judge in the State has EQUAL POWER at chambers to issue writs of Habeas Corpus. S.C. Const. Art V §20 / S.C. Code Ann. §17-17-30

Therefore since Judge Young has the power to grant a writ of Habeas Corpus, he clearly has the power and the authority to order the circuit court to conduct a Habeas proceeding. Brown v. Evatt 322 S.C. 189, 470 SE2d 848,850 (1976) / Rule 65(f)(1) SCRPC In the instant case, appellant was simply seeking by way of mandamus to compel the circuit court to conduct a Habeas proceeding granted to him by court Order and by law. TRANS p.118 p.119

This issue is before this court because the circuit court repeatedly disobeyed an Order that was issued according to, pertaining to, and under Habeas Law. S.C. Code Ann. §17-17-10 to 200 Judge Young's Order became incorporated under Habeas law the moment the Order became the law of the case, not at the moment the court conducts the actual Habeas proceedings. MOTION p.102.

The circuit court assumes that by exercising it's discretion by refusing to conduct a Habeas proceeding that no Habeas law has yet been violated, but in all actuality, because the Order was the law of the case at the time the court refused to conduct the Habeas proceedings, the court's refusal was in clear violation of Habeas law. PETITION p.66 / MOTION p.102 / TRANS p.134

The respondent's own words proves this assertion. The respondent asked Judge Young in their motion to reconsider to vacate his Habeas Order and place the pleading on the (PCR) docket. MOTION p.45 / TRANS p.118 p.119 p.124

If the respondent asked that the pleading be placed on the (PCR) docket then the pleading was not on the (PCR) docket at the time of the respondent's request to do so. This clearly proves that the pleading was on the civil roster as a petition for Habeas Corpus at the time of the respondent's request. TRANS p.134

Furthermore, after Judge Young subsequently denied the respondent's motion to reconsider ORDER p.11, no appeal was taken by the respondent. PETITION p.67 / MOTION p.88 / MOTION p.95 / TRANS p.124 p.132 p.134

Therefore, Judge Young's Order right or wrong became the law of the case. Lindsay v. Lindsay 238 S.C. 329, 491 SE2d 583,588 (1997) / PETITION p.64-67 / MOTION p.86-88 / MOTION p.95-96 / TRANS p.124 p.134

The law of the case doctrine clearly stipulates that once a court decides upon a rule of law, that decision should govern the same issues in subsequent stages of the same case. Columbus-American Disc. Group v. Atlantic Mutual Inc. 203 F3d 291,304 (4th cir 1983) / Arizona v. California 460 U.S. at 618-19, 103 Sct at 1391 (1983)

Furthermore, by refusing to conduct the Habeas proceedings, the court was also in violation of appellant's due process rights because the moment the Order became the law of the case, appellant was given a "liberty interest" in the proceedings. Walters v. Grossheim 990 F2d 381,384 (8th cir 1993) In other words, because the Order was the law of the case, appellant had a "liberty interest" for it to be a Habeas Corpus proceeding that's predicated under the Habeas Corpus laws of the State. Id at 384

Therefore, when the circuit court refused to conduct a Habeas proceeding, the circuit court deprived appellant of his "liberty" without due process of law. Walters v. Grossheim at 384 And whether or not the circuit court was in agreement with the Order does not diminish appellant's "liberty interest" or make appellant's "liberty interest" less clear. Sloan v. Herman 983 F2d 107,110 (8th cir 1993). PETITION p.74-76 / MOTION p.91-92 / MOTION p.96

The record clearly shows that due process gives the circuit court no room to exercise it's discretion on this Habeas matter. If the Order is the law of the case, and was issued according to, pertaining to, and under Habeas law, the Order must be obeyed. S.C. Code Ann §15-35-180 / TRANS p.134

2. Absolute / Conditional Release

It is well settled in the State of South Carolina that the only remedy which can be granted in Habeas Corpus is release from custody whether absolute or conditional. Brown v. Evatt 322 S.C. 189, 470 SE2d 848,850 (1976)

However, court's only grant absolute release when warranted. see Grant v. Macdougall 244 S.C. 387 137 SE2d 270 (1964) Normally upon the grant of a Habeas, the writ is conditional. That is the court delays a prisoners release from custody for a reasonable amount of time to give the court an opportunity to correct the Constitutional defects that make the prisoner's current custody unlawful. Foster v. Lockhart 9 F.3d 722,727 (8th cir 1993)

If the court fails to correct the defect within the given amount of time, the prisoner is released. Although the writ does not preclude the prisoner from being re-arrested and re-prosecuted, nevertheless the prisoner is released from custody. (Absolute Release) Foster at 727-28

In the beginning, appellant in the instant case was only seeking to perfect a conditional release (opportunity to change his plea). This was facilitated by a circuit court Order that granted appellant a Habeas proceeding. ORDER p.10 And since the Order is the law of the case, appellant has a "liberty interest" to perfect a conditional release under the Habeas Corpus laws of the State. S.C. Code Ann. §17-17-10 to 200 / Walters v. Grossheim 990 F.2d at 384

Therefore, when the court refused to obey the Order allowing appellant to perfect a conditional release, the court deprived appellant of his "liberty" without due process of law. Walters at 384

And since the only remedy available other than conditional release is absolute release Brown v. Evatt 322 S.C. 189, 470 SE2d 848,850 (1976), absolute release is now warranted in this matter because the circuit court repeatedly refused to allow appellant to perfect a conditional release mandated by a law of the case Order.

In Grant v. Macdougall 244 S.C. 387, 137 SE2d 270 (1964), the circuit court granted a conditional release to Grant in a Habeas Corpus proceeding. Grant appealed the circuit court's decision and argued before the S.C. Supreme Court that he was entitled to be absolutely released from custody. The Supreme court affirmed the circuit court's decision.

The "Key" question in Grant's case is what was Grant entitled to. Grant wanted absolute release from custody without first giving the circuit court the opportunity to correct the Constitutional defect that made his custody unlawful. In granting conditional release to Grant, the circuit court offered to set aside his plea and sentence, fix bail and remand Grant to the court of General Sessions for further proceeding. Thus the court offered Grant a conditional release because that's what he was entitled to. Grant at 272

Had the circuit court Ordered Grant to be conditionally released but refused to obey the Order, then Grant would have been entitled to be absolutely released from confinement. Foster at 727-28

In the instant case, the record clearly shows that the circuit court repeatedly and deliberately refuse to obey the Order allowing appellant to perfect a conditional release. And since the court's refusal to obey this Order is just as egregious as a court's refusal to obey a conditional release Order, this all the more warrants an absolute release in appellant's favor.
Motion p.102

III

CONCLUSION

Appellant asserts that since the facts alleged entitles him to the relief he seeks, the circuit court's grant of the respondent's motion to dismiss is improper. Bergstrom v. Palmetto Health Alliance 573 SE2d 805,811 (2002)

As a general rule, the only question that may be considered on application for writ of Habeas Corpus after conviction of an offence, is whether petitioner was convicted by a court having Jurisdiction of his person and of the offence. Blandshaw v. State 249 S.C. 42, 140 SE2d at 786 (1965) / Bowers v. State 241 S.C. 282, 127 SE2d at 881 (1962)

In the instant case, because appellant plea was involuntarily and unintelligently entered, which was predicated on counsel's ineffective advice, the court did not have Jurisdiction over appellant nor the offence he committed. TRANS p.129

Appellant initiated a Habeas Corpus in circuit court to reconstruct the record because no record was ever developed to substantiate the evidence presented, nor was there a record developed to substantiate the main allegation of appellant's ineffectiveness of counsel ground in his original (PCR) proceeding 15 years ago. TRANS p.107 p.108 p.122 p.123 p.124

From the original (PCR) proceeding to the present, appellant has constantly encountered numerous procedural errors committed against him in an effort to thwart relief. This is the reason why appellant has been pleading this matter for 15 years. TRANS p.131 p.132 p.136

In frustration, appellant told Judge Nicholson at the hearing that "What's the use in going to law School if you are going to violate Rule 60 S.C. Circuit Court Rules Of Practice". TRANS p.131 Appellant also told Judge Nicholson, "You cannot treat a State court Order like it's a piece of wet toilet paper, then throw it in the trash like it's nothing because you don't agree with it". TRANS p.132

However, despite appellant's pleas before the mandamus court, Judge Nicholson told appellant that he would never get a reconstruction of his (PCR) record. TRANS p.131 Appellant asserts that Judge Nicholson's assessment represents the overall opinion of how the circuit court regards appellant's case.

The circuit court continues to construe the fact that since Habeas Corpus is only for immediate release, Habeas Corpus is inappropriate for appellant. ORDER p.27 / TRANS p.133 p.134 However, appellant has clearly shown that the Habeas Corpus is not limited to immediate release but also can give conditional release. see Grant v. Macdougall 244 S.C. 387, 137 SE2d 270 (1964) / Baskins v. Moore 362 F.Supp at 190-91 (D.S.C. 1973)

And since the circuit court was given numerous opportunities to enforce the Habeas Order (including by way of mandamus before Judge Nicholson), appellant should not be required to endure such Judicial scrutiny yet another time. Gardner v. Pitchess 731 F.2d 637, 640 (9th cir 1984)

Because if the circuit court on 2 separate occasions showed no respect for a State court Judgment that is the law of the case ORDER p.10 / TRANS p.132, the court certainly won't have respect for appellant's constitutional, Statutory and procedural rights.

In closing, appellant finally asserts that Judge Young's Habeas Order simply gave him an opportunity to perfect a conditional release, not an absolute release. However, since the circuit court deliberately and repeatedly violated procedural laws just to deprive appellant of this court Ordered opportunity to perfect a conditional release, then the only alternative is absolute release. Foster v. Lockhart 9 F.3d 727-28 (1997)

To re-emphasize the power and validity of an Order that becomes the law of the case, a Federal district Judge vacated his own Order after it became the law of the case. And when the plaintiff appealed the Judge's decision to vacate, the U.S. Court Of Appeals (4th cir) on it's own motion involked "The All Writs Act" U.S.C. §1651 (Mandamus) compelling the district court to reinstate the vacated Order. Three J. Farms Inc. v. Alton Box Board Co. 609 F.2d 112 (4th cir 1979) MOTION p.103

In the instant case, Judge Nicholson did concede to the respondent that appellant is entitled to be treated properly under the system. TRANS p.134 In which the respondent was in total agreement with Judge Nicholson. TRANS p.134 However, this assessment by Judge Nicholson is in stark contrast to his handling and ruling of this case.

Wherefore, appellant Sidney Fields now pray that this Honorable court vacate the circuit court's Order denying appellant's writ of mandamus, and grant absolute release to appellant in accordance to the averments of this initial brief. Or in the alternative, vacate the mandamus dismissal and remand to the circuit court to conduct a Habeas corpus proceeding, as mandated by a law of the case Order. Or on it's own motion, grant any other equitable relief the court deems proper for this matter.

Respectfully Submitted,

Date October 20, 2014

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

2014-CP-10-305

The STATE Of South Carolina

RESPONDENT.

V.

SIDNEY FIELDS # 254392

APPELLANT.

PROOF OF SERVICE

Appellant certify that he has served (one) copy of his INITIAL BRIEF on the Office Of The Attorney General (attorney for respondent) P.O. Box 11549 Columbia, S.C. 29211 by depositing one copy in the United States mail postage prepaid to the address above.

Date October 20, 2014

Sidney Fields

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