

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief
William P. Keesley, Circuit Court Judge

S.C. Supreme Court

Case No. 2006-CP-40-0754
Appellate Case No. 2012-212996

Matthew Jamison,.....Respondent,

vs.

State of South Carolina,.....Petitioner.

Petition for Rehearing

On October 22, 2014, this Court issued an opinion reversing the granting of a new trial by the lower court. Jamison v. State, Op. No. 27454 (S.C. Sup. Ct. filed October 22, 2014) (Shearouse Adv. Sh. No. 42 at 12). Pursuant to Rule 221, SCACR, Respondent respectfully petitions this Court for rehearing.

In the Brief of Petitioner, the issue on appeal is set forth as follows: “Because a guilty plea is a waiver of defenses, the Court of Appeals erred by not reversing the PCR Court’s Order granting relief when the Order was based upon an error of law.” Interestingly, the majority opinion states: “The narrow issue before this Court is whether and to what extent an otherwise valid guilty plea may be vacated in PCR proceedings on the basis of newly discovered evidence.” Petitioner submits that this narrow issue was created by this Court and was not the issue before the Court of Appeals, which properly upheld the decision of the lower court.

It appears the majority was aware of the issue actually raised by Petitioner, as the majority held: “We must reject the State’s claim that the waiver of trial and admission of guilty encompassed in a guilty plea necessarily preclude post-conviction relief in all cases.” Nevertheless, the majority chose to then embark down a road of retroactively applying a new rule to Respondent. In so doing, the majority chose to abandon the standard of review and the recent holding in McCoy v. State, 401 S.C. 363, 368, 737 S.E.2d 623, 625 n.1 (2013).

At the outset of the majority opinion, the standard of review is set forth as follows:

“This Court give deference to the PCR judge’s findings of fact, and ‘will uphold the findings of the PCR court when there is any evidence of probative value to support them.’” Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013) (quoting Miller v. State, 379 S.C. 108, 115, 665 S.E.2d 596, 599 (2008).

“However, we review questions of law de novo and ‘will reverse the decision of the PCR court when it is controlled by an error of law.’” Id. (quoting Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)).

Without directly finding that the a question of law existed or that the lower court committed an error of law by applying the rule in place at the time of the PCR hearing, the majority errantly undertook a *de novo* review as if the lower court had committed an error of law. Consequently, it must be inferred that the majority found that the lower court committed an error of law thus justifying the *de novo* review due to the lower court’s failure to apply the new rule first pronounced in the majority opinion. Respondent submits that the *de novo* review is in error and under the any evidence standard of review, utilized by the Court of Appeals and dissent, relief must be upheld.

Consequently, Respondent submits that that the lower court cannot commit an error of law for failing to apply a rule that was not in existence at the time the case was before the lower court. If the majority’s inferred finding that the lower court committed an error of law is to be upheld, circuit court judges must now be clairvoyant as to all potential changes in the law made

by the appellate courts and the legislature, to ensure that the circuit court judges do not commit reversible errors of law.

In promulgating the admittedly new rule and applying it to the instant case, the majority simply ignored the key issue of retroactivity. In Teague v. Lane, 489 U.S. 288, 300, 109 S. Ct. 1060, 1070 (1989), the Supreme Court of the United States reasoned: “Retroactivity is properly treated as a threshold question, for, once a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated.” Here, the application of the new rule retroactively to Respondent completely offends the concept of “evenhanded justice.” The evidentiary hearing in this matter was held on June 27, 2008. Therefore, to avoid glaring disparity in the handling of Respondent’s case, Respondent submits that all cases decided from his hearing date forward must also be subject of this Court’s retroactive application of the outcome altering new rule. Respondent understands that to do so would be akin to opening Pandora’s Box. Therefore, to avoid the obvious disparate treatment of only applying the new rule to Respondent’s case and in the interest of “even handed justice,” Respondent urges this Court to address the threshold matter of retroactivity and find that the new rule must only be applied prospectively.

Nevertheless, if this Court stands by the decision to only apply the new rule retroactively to Respondent, then Respondent submits that this Court should remand the matter to the lower court for a hearing under the new two prong rule since the lower court applied the existing five prong rule and made a well-reasoned finding, which this Court has not set aside or found to be in error. As the majority noted, the determination under the new rule will not be formulaic but it is context driven. As has long been recognized by the deference given to the lower court, Respondent submits that such a context driven analysis is best vested in the lower court.

As mentioned above and previously argued to this Court, the lower court made well-reasoned findings that the evidence was material. See App. p. 258- 262. Additionally, the lower court repeatedly made findings regarding fundamental fairness that appear to be directly in line with the majority's undefined "interest of justice" requirement. Specifically, the lower court held that relief must be granted as the "issue is one of fundamental fairness" and that "fairness dictates a new trial." App. p. 260. The lower court also explained: "When a corroborating witness then comes forward and strongly supports the Applicant's position that he was acting in self-defense, it seems fundamentally unfair not to allow that information to be presented to a jury." App. p. 260-1.

It also appears that the lower court's fundamental fairness finding is directly in line with the precedent relied upon by the majority. Interestingly, in People v. Schneider, 25 P.3d 755, 762 (Colo. 2001), the court adopted a modified standard for guilty plea cases that "maintains the appropriate balance between finality and **fundamental fairness**." (emphasis added). Also, upon review of In re Reese, 192 P.3d 949, 958 (Wash. Ct. App. 2008), the court held: Nothing in the record before us shows that the withdrawal of Reese's guilty plea is necessary to correct a manifest injustice." Since the majority has failed to define the "interest of justice" requirement, it can be assumed from the reliance upon Schneider and Reese that the term "interest of justice" is akin to fundamental fairness.

In the Petitioner's Brief before this Court, the lower court's finding of fundamental fairness is noted and defined as a valid "ground for relief when it is 'shocking to the universal sense of justice.' Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)." Petitioner's Brief p. 16. Despite the Petitioner's urging to do so, this Court did not find that the lower court erred in finding that the newly discovered evidence presented an issue of fundamental fairness that

Additionally, throughout the entire appellate process, Respondent has argued the matter under the existing five prong rule. Since Respondent has never had the opportunity to present or argue the case under the new two prong rule, at a minimum, Respondent would ask for a rehearing to address the case under the new two prong rule.

Turning to the new two prong rule, Respondent submits that the rule will serve to eliminate newly discovered evidence claims stemming from guilty pleas and eventually eliminate Post Conviction Relief stemming from guilty pleas, as the Petitioner so desires. Respondent is not convinced, at it appears that the majority is, that this will not happen. Additionally, this new rule appears to abandon the recent decision in McCoy v. State, 401 S.C. 363, 368, 737 S.E.2d 623, 625 n.1 (2013), which is duly noted by the dissent. As was argued at the oral argument before this Court, the lower court made ample findings that the evidence at issue was material and met the long standing five factor rule.

Even under the new two prong rule, Respondent submits that he should have been granted a new trial by the lower court and such relief should have been upheld by the appellate court exercising the any evidence standard of review. Obviously, the lower court was not aware of the majority's new two prong rule when the case was in the lower court. Nevertheless, Respondent submits that the majority has overlooked the actual findings of the lower court that satisfy both of the two prongs. It appears this Court does not question that the evidence was newly discovered or fails to meet the first prong of the new rule. Therefore, Respondent will move onto the second prong: "the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea be vacated."

required a new trial. As fundamental fairness is correctly defined by Petitioner, Respondent would submit that it exceeds the undefined “interest of justice” requirement and is directly in line with the precedent relied upon by the majority. Therefore, the lower court, who was in the proper position to examine the credibility of the witnesses and evaluate the testimony and evidence, made findings that satisfied the majority’s new test without having to be clairvoyant.

Finally, the majority appears to revert back to the relevant and controlling statute, which does not preclude newly discovered evidence in guilty plea cases, by holding that “the weight and the quality of Bellamy’s testimony as ‘evidence of material facts, not previously presented or heard’ is severely undermined because it pertains not to a theory of self-defense but to one of transferred self-defense.” Respondent submits that the majority has failed to recognize that the matters of transferred intent and transferred self-defense were briefed in the Court of Appeals and not raised in the Briefs before this Court. Therefore, Respondent requests that this Court review the arguments set forth in the Brief of Respondent filed in the Court of Appeals. App. pp. 376-380. As has been argued by Respondent but not acknowledged by this Court, the victim in this matter has been mischaracterized as an innocent bystander or third party, which Respondent has argued is factually similar to State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009). In Respondent’s Brief filed in the Court of Appeals, the following was explained:

Similarly to Wharton, this Court need not address the issue of transferred intent since the record shows that victim has been mischaracterized as an innocent third party. At the evidentiary hearing, the Respondent explained that he and members of his family had been threatened, assaulted and shot at by “Jig” and his boys. Am. App. 116. He further explained that on the night in question he was at a party after a concert when “all of them come together” and he was afraid since they had previously beaten and shot at him. Am. App. 118. When asked by the State, the Respondent indicated that the victim was a member of the group in question and was with them when they approached him that night. Am. App. 131.

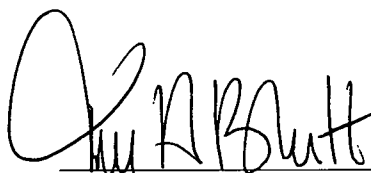
When Bellamy took the stand, he explained that he knew the members of the gang at issue and they were dangerous individuals. Am. App. pp. 141, 145. Bellamy

acknowledged that he was present during the previous assault on the victim and his family and he knew that the gang was going to get the Respondent on the night in question. Am. App. p. 145. He explained that the victim was with the seven to eight individuals as they approached the Respondent. Am. App. 158, 162. Bellamy further explained that Jig was the leader of the group but the victim was in the group and had been drinking with the group that night. Am. App. pp. 160-2, 169. Bellamy made it clear that he knew that at least Jig had a gun and the Respondent had no choice but to defend himself. Am. App. pp. 146, 148, 162. When asked by the court if the victim ran into the cross-fire, Bellamy explained that **the victim was with “Jig”** and when shots were fired “Jig” used him as human shield. Am. App. p. 162.

App. pp. 378-9 (emphasis added). Respondent would urge this Court not to overlook the actions of Jig, in using the victim as a human shield, which resulted in the victim losing his life in the place of Jig. Importantly, Jig’s selfish actions do not implicate the unsettled issues of transferred intent or transferred self-defense, as Respondent was firing in self-defense at the group aggressively approaching him and pinning him against his vehicle. Respondent submits that his state of mind entitled him to react as he did in self-defense towards Jig and the victim who were both in the group approaching Respondent aggressively that night. Similar to this Court’s finding in State v. Dickey, 394 S.C. 491, 501, 716 S.E.2d 97, 102, Respondent submits that Bellamy’s testimony corroborated Respondent’s belief that “he was in imminent danger of losing his life or sustaining serious bodily injury, and that a reasonable person of ordinary firmness would have entertained the same belief.” Respondent would ask this Court to re-examine the testimony of Bellamy and Respondent and revisit the finding that the materiality of Bellamy’s testimony is undermined by the unsettled doctrine of transferred intent and transferred self-defense.

Therefore, for the foregoing reasons, Respondent would respectfully ask this Court to grant the Petition for Rehearing and rehear the case.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

This 4 day of November, 2014.

THE STATE OF SOUTH CAROLINA
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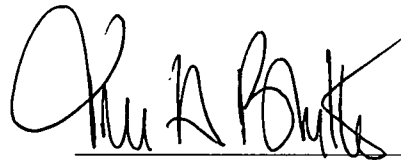
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CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Respondent, hereby certify that I placed in the mail this 4th day of November 2014, a copy of the Petition for Rehearing, to Brian T. Petrano of the Attorney General's Office, at:

Office of the Attorney General
ATT: Brian T. Petrano, Ast. AG
PO Box 11549
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Attorney for Respondent

November 4, 2014



LAW OFFICE OF TRICIA A. BLANCHETTE

November 4, 2014
VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

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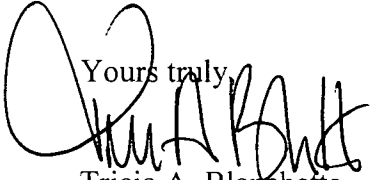
S.C. Supreme Court

RE: Matthew Jamison v. State, Appellate Case No: 2012-212996

Dear Sir:

For filing, attached please find an original and six copies of a Petition for Rehearing and the Certificate of Service in the above referenced case.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Brian T. Petrano, Assistant Attorney General
Matthew Jamison