

Kevin C. Casey, #349715
Perry C.I. Q-1-B 214
430 Oaklawn Road
Pelzer, S.C. 29669

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S.C. SUPREME COURT November 10, 2014

South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

2014-002444

I, Kevin C. Casey, hereby certify that on this day I have served a copy of "Applicant's Objection To The Honorable Roger L. Couch (PCR Judge) Ruling/Order To Dismiss PCR Counsel And Failure To Appoint New PCR Counsel" upon the following Parties: 1)

Now comes Applicant objecting to the Honorable Roger L. Couch presiding PCR Judge's Ruling/Order To Dismiss PCR Counsel and Failure to appoint new PCR counsel pursuant to the South Carolina Post-Conviction Relief Act; The South Carolina Constitution, Article I §3 (Due Process of Law); The United States Constitution Fourteenth Amendment (Due Process Clause); and Case v. Nebraska, 381 U.S. 346 (1965) and it's progeny.

FACTS

Applicant was involved in a DUI homicide (10/15/11) where in two (2) individuals were killed while riding on the back of a motor cycle on Highway 417 in Spartanburg County; Said motor cycle was being driven by another individual (Jason M. Simmons) who was operating the bike without proper lights on the back or front of the bike.

Mr. Simmons had also been drinking and was injured himself during this unfortunate accident. Applicant did plead guilty on (2/14/12) under the pretense of receiving a ten year sentence as his lawyer told him he would get. Applicant even was asked to sign some sentencing sheets two weeks before he plead guilty that represented he would get ten years. The same sentencing sheets were then written over and the time he received was different from what he was told.

Unknown to Applicant at his guilty plea, the Solicitor committed knowing acts of misconduct. As Applicant was in court to plead guilty, the Solicitor was explaining the facts of their case to the court and stated "Jason Matthew Simmons" was the driver of the motor cycle where the two people were struck and killed. The Judge stopped the Solicitor and asked for clarification on who actually was driving the bike. The Solicitor stopped the plea and went and talked with Mr. Simmons, who was sitting in the courtroom. After this Mr. Simmons said he was a passenger, the Solicitor presented to the court Mr. Simmons was the passenger. See guilty plea transcript page 22, lines 12-16. In spite of various reports in the solicitor's possession that clearly stated and proved Mr. Simmons was the driver of the motor cycle, the Solicitor not only allowed Mr. Simmons to commit perjury, but assisted him with it by telling the court as a officer of the court, Mr. Simmons was not the driver and then went on with the guilty plea. See Riddle v. Ozmint, Op. No. 26153, heard February 1, 2006, filed May 22, 2006 (369 S.C. 39, 631 S.E.2d 70 (S.C. 2006)); Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785 (1967); and Mooney v. Holohan, 294 U.S. 103, 112 (1935) (Per Curiam). See exhibits ____.

So after guilty plea counsel tricks Applicant into believing he will get ten years if he pleads guilty and even has him sign some sentencing sheets to this affect weeks before the plea and then the sentencing sheets are altered to fit the time the Judge actually gave Applicant. The Solicitor then knowingly commits acts of prosecutorial misconduct. Applicant then files a PCR application trying to assert his guilty plea was not entered voluntarily, knowingly and intelligently and he was denied due process of law. See sentencing sheet, exhibit ____.

The Court then appoints attorney Leah B. Moody (12/20/12) who just utterly refuses to help Applicant by ways of the following:

- 1). Ascertain Mr. Simmons "Toxiology Report."
- 2). Refuses to subpoena any witnesses Applicant requested her to.

such as interviewing Donald Moore, who was the second witness on the accident scene and actually spoke with Mr. Simmons shortly after this accident while Mr. Simmons was lying in the field hurt and was asked what happened, and Mr. Jason M. Simmons stated spontaneously to Mr. Moore that he (Jason M. Simmons) was driving the bike and the car hit us. Mr. Donald Moore has even given a affidavit to this affect and is willing to testify about it. See affidavit, exhibit ___.

Then there is Applicant's two other witnesses. Teresa Pickens and Casandra Casey, who heard Applicant's plea counsel, Mr. Richard Warder tell Applicant if he plead guilty he would receive ten years. PCR counsel, Ms. Moody refused to subpoena these witnesses also. Ms. Moody even refused to amend Applicant's PCR applicant with any kind of claims (S.C.R.CIV. 71.1 (d)). Ms. Moody refused to communicate with Applicant about his PCR claims and she became upset once Applicant filed a motion (7/7/14) to have her removed as his PCR counsel. Applicant went to a PCR hearing on September 17, 2014, his motion to relieve counsel was addressed by the Honorable Roger L. Couch, who granted the motion, but told Applicant he would have to represent himself now. Said Judge never made any findings as to why Applicant would be forced to represent himself in such a serious situation as this. Honorable Couch also instructed Ms. Moody to help Applicant subpoena the witnesses he wanted. Ms. Moody wrote Applicant and told him she would tell him how to subpoena witnesses but not assist him with it and then ended her with "you now represent yourself."

Attorney Leah B. Moody has not met her obligation in this PCR matter and no doubt she has turned in a voucher for work she has not done and her unethical attitude in this matter should not go unchecked, as she is a member of the South Carolina Bar and also took a oath of office to uphold the constitution, which she has not done in this matter. And why the PCR Judge would force Applicant to attempt to represent himself in this matter is beyond Applicant.

With Applicant having proof of the things his motion mentions, it would seem he will be denied due process of law if he is not appointed PCR counsel to investigate such claims and assist Applicant with the presentation of those claims. It would be in the interest of justice to appoint new PCR counsel and investigate the herein allegations.

CONCLUSION

For the foregoing reasons this motion should be granted.

Dated: 11-12-14

s/ Kevin C Casey
Kevin C. Casey

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kevin C. Casey,
Applicant.

C/A NO: 2012-CP-42-4389

v.

The State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Kevin C. Casey, hereby certify that on this day I have served a "Applicant's Objection To The Honorable Roger L. Couch (PCR Judge) Ruling/Order To Dismiss PCR Counsel and Failure To Appoint New PCR Counsel" upon the following Parties: One (1) original and one (1) copy to The Spartanburg County Clerk of Court, M. Hope Blackley/ P.O. Box 3483/ Spartanburg, S.C. 29304; one (1) copy to The South Carolina Attorney General's Office/ P.O. Box 11549/ Columbia, S.C. 29211; and one (1) copy to The South Carolina Supreme Court, Daniel Shearouse, Clerk/ P.O. Box 11330/ Columbia, S.C. 29211; by and through Perry Correctional Institution's Legal Mail System.

SUBSCRIBED AND SWORN TO before me

This 12 day of November, 2014

Kevin C Casey
Kevin C. Casey

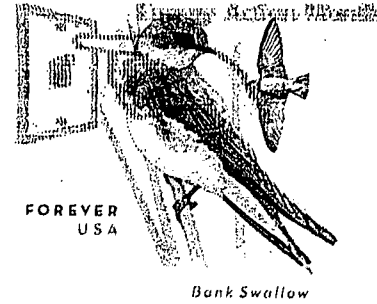
Notary: Tamara Crowell

Expire: My Commission Expires
September 25, 2023

Kevin C. Casey #349715
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