

Marshall Ray Miller
#249557
Lieber Correctional Institution SB-56
Post Office Box 205
Ridgeville, South Carolina 29472-0205

RECEIVED

NOV 10 2014

S.C. SUPREME COURT

November 3, 2014

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

NOV 10 2014

Re: *Marshall Ray Miller v. State*
Appellate Case No. 2013-001076

S.C. SUPREME COURT

Dear Mr. Dudek:

It seems there is a misunderstanding concerning the responsibility of Appellate Defense, pursuant to the Court's May 12, 2014 Order, and the materials requested to be placed in the Appendix.

I am enclosing a copy of my previous correspondence to you in order to refresh your memory.

First, your October 21, 2014 correspondence to Mr. Shearouse implies that I requested Appellate Defense to file the Appendix, Supplemental Appendix, and Petition for Writ of Certiorari of my own volition. Unless I am mistaken, the Court's October 21, 2014 Order indicates that our association encompasses and places those responsibilities upon Appellate Defense. I did not "assume" a designation of that responsibility.

Second, my previous correspondence indicated an error in the Supplemental Appendix, specifically the first page (Supp. App. 20) of the January 6, 2006 Protection Order. Before the PCR Court, in the matter of discovery, the State asserted that I was afforded the opportunity to review the materials at the institution. I submitted you a copy of the cover page of my copy of the Protection Order upon which the Classification Manager at Lieber Correctional Institution made a personal notation to me that I would not be granted access to the materials. That specific cover page is relevant to show *I did not have access*. When I received the updated Supplemental Appendix from you with the October 21, 2014 correspondence, I noted that you did not change the pages but utilized the former page, which does not support my burden of proof in PCR.

MILLER, Marshall Ray
Appellate Case No. 2013---1076
November 3, 2014
PAGE TWO

Third, as to the CD of the October 10, 2007 oral argument before the Supreme Court, you will note that the CDs, their movement between the attorneys, and the PCR Court stating that he reviewed the materials, render the materials relevant for inclusion in the Appendix. Without the transcript, and my language may not be verbatim, but I believe the Court was concerned that there was no record to support the issue then before the Court regarding the circumstances of the plea bargain. The PCR forum is where that record is built and the Court's earlier consideration, albeit in a different context of the plea issue, is relevant.

Fourth, I acknowledge that the May 15, 2003 transcript of the Bond Hearing may not exist. However, if it does exist, it was requested as part of the discovery and is relevant specifically to that issue.

Finally, the plea agreement allegedly in the possession of Kim Varner is also part of the discovery issue and is relevant. The primary focus of the discovery issue is that I have never been able to ascertain constitutional violations without having access to the information. This is simply a Fifth Amendment violation.

As usual, your assistance is sincerely appreciated.

Sincerely,

Marshall R. Miller

Marshal Ray Miller

Cc: The Honorable Daniel E. Shearouse

Marshall Ray Miller
#249557
Lieber Correctional Institution SB-56
Post Office Box 205
Ridgeville, South Carolina 29472-0205

RECEIVED

August 7, 2014

NOV 10 2014

S.C. SUPREME COURT

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: *Marshall Ray Miller v. State*
Appellate Case No. 2013-001076

Dear Mr. Dudek:

This is in regards to your July 14, 2014 correspondence and receipt of the PCR transcript. Below is a list of the remaining documents that I believe are necessary for the determination of this case. I have broken them into two categories, those that I have in my possession and am sending a copy enclosed with this correspondence, and those that I require you to obtain:

Documents I am enclosing for inclusion:

1. Extradition documents regarding the jurisdiction argument containing state and federal sentencing;
2. Rule 59(e) Motion stamped by Mr. Compton's office but not submitted for consideration;
3. November 3, 2006 Motion to Rescind Sealed Order; and
4. Letter from Appellate Defense to me regarding Judge Saunders' understanding of the protection order in question and when the order will be lifted. This letter appears to be in response, as it mentions, item number 3, above.

Documents I am requesting for inclusion:

1. May 15, 2003 Bond Hearing transcript (this was the third bond hearing with plea discussions);
2. The 2003 Protection Order (1st/original protection order) regarding discovery by Judge Saunders;
3. Written plea agreement by Jennifer Evans; and
4. Transcript of October 10, 2007 oral arguments before the South Carolina Supreme Court.

Thank you for your assistance in this matter.

Sincerely,

Marshall R. Miller

Marshall Ray Miller

Marshall Ray Miller
#249557
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Post Office Box 205
Ridgeville, South Carolina 29472-0205

October 6, 2014

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: *Marshall Ray Miller v. State*
Appellate Case No. 2013-001076

Dear Mr. Dudek:

I am in receipt of your September 26, 2014 correspondence regarding material requested to be included in the Supplemental Appendix.

First, please notify me as soon as you hear from Kim Varner regarding the written plea agreement.

Second, the purpose of the May 15, 2003 bond hearing transcript is that is the proceeding in which Ms. Evans originally changed her position regarding the plea offer and substantiates that Kim Varner was cognizant at that time and should have diligently pursued the written agreement issue at that time. This of course corresponds with Question #7 this petition will present. Is this transcript obtainable by your office?

Third, you stated that there is no transcript of the audio CD of the October 10, 2007 oral arguments before the Supreme Court and questioned whether or not that CD was properly before the PCR Court. Per your correspondence instructions, I am informing you that the appellate CDs were properly before the PCR Court (See Appendix pages 2008 – 2009 and 2014) and are entirely relevant to the same Question #7, above.

Fourth, the Supplemental Appendix does contain a copy of the January 6, 2006 Protective Order by Judge Saunders (Supp. App. 14 – 16). However, I was also requesting a copy of the **original** Protective Order from 2003, which you did not address in your September 26, 2014 correspondence. Please notify me concerning this document as well.

MILLER, Marshall Ray
Appellate Case No. 2013---1076
October 6, 2014
PAGE TWO

Finally, you stated I should petition the Court asking for the inclusion of the documents you question. I believe this would be a futile effort where the Court's May 12, 2014 Order granting me leave to proceed *pro se* and associate the Commission of Appellate Defense "...for the limited purpose of *obtaining and paying for any necessary transcript(s) and records* and providing copies..."

As usual, your assistance has been invaluable.

Sincerely,

Marshall R. Miller

Marshal Ray Miller

Cc: The Honorable Daniel E. Shearouse
Ashley A. McMahan, Esquire

Marshall Ray Miller
#249557
Lieber Correctional Institution SB-56
Post Office Box 205
Ridgeville, South Carolina 29472-0205

October 9, 2014

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: *Marshall Ray Miller v. State*
Appellate Case No. 2013-001076

Dear Mr. Dudek:

I am writing in regards to the Supplemental Appendix you sent me in the September 26, 2014 correspondence. Two days ago, I sent you correspondence regarding omissions from the Supplemental Appendix, the need for those documents, and who was responsible for obtaining and providing the documents. This correspondence addresses a separate matter regarding the Supplemental Appendix.

On August 7, 2014, I sent you correspondence (attached) that requested documents to be included in the Appendix. Enclosed with that correspondence were documents I requested to be included based on their relevance to issues raised. On the 2006 Protection Order that arrived at Lieber with the Grand Jury materials was a handwritten note by Martha Gilmore, the Classification Manager at Lieber, stating, "*There is nothing I can do or should do in this matter*". The relevance is obvious to the issue. The State asserted and Judge McIntosh (PCR) relied upon the assertion, that I had access to those materials at the institution. I think it is imperative for *that copy* of the January 6, 2006 Protection Order to be included in the Supplemental Appendix (enclosed).

As usual, your assistance has been invaluable.

Sincerely,

Marshall R. Miller

Marshall Ray Miller

ENCLOSURES – as noted

Cc: The Honorable Daniel E. Shearouse (without enclosures)
Ashley A. McMahan, Esquire (without enclosures)

A TRUE COPY

Attest: James R. Parks, Clerk

By: Margaret J. Seely
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
STATE OF SOUTH CAROLINA)
VS.)
MARSHALL MILLER,)
DEFENDANT.)

IN THE COURT OF
GENERAL SESSIONS FOR THE
EIGHTH JUDICIAL CIRCUIT

CASE NO. 2002-GS-47-32

PROTECTIVE ORDER

FILED
JAN 9 2006
LISA C. DUNBAR,
CLERK, STATE GRAND JURY

This matter having been brought to the attention of the Court upon motion of the Attorney General and the Court having been fully advised of this matter, pursuant to South Carolina Code Ann. Sections 14-7-1700 and 14-7-1720, including the fact that Defendant Marshall Miller was found guilty on Count I of Indictment Number 2002-GS-47-32, trafficking in methamphetamine (conspiracy) -- and the fact that the Defendant has appealed his conviction to the South Carolina Court of Appeals.

IT IS HEREBY ORDERED that the Attorney General is protected if, as part of the appeal, he discloses the State Grand Jury discovery materials in the investigation entitled "Crankdown" to Robert M. Dudek of the South Carolina Office of Appellate Defense. This protection is being authorized pursuant to South Carolina

P. 3
Please address all concerns about this matter with your attorney. There is nothing ~~that~~ can do or should do in this matter. Thank you. M. Wilson

Marshall Ray Miller
#249557
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Post Office Box 205
Ridgeville, South Carolina 29472-0205

October 14, 2014

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

Re: *Marshall Ray Miller v. State*
Appellate Case No. 2013-001076

Dear Mr. Dudek:

Please find enclosed the *pro se* Petition for Writ of Certiorari in the above-referenced case for copying, binding and filing. Please forward me a complete copy of all that is filed with the Court by your office in this matter.

You will please note that I have still not received the information the subject of my October 9, 2014 correspondence. Specifically note that Supplemental Appendix references were left blank ("Supp. App. _____") in the following instances:

Issue V Page 20 Copy of the January 6, 2006 Protection Order bearing Ms. Gilmore's handwritten notation; and

Issue VI Page 26 May 15, 2003 Bond Hearing Transcript

If it is necessary to submit a supplement or other document to correct this information when obtained, please inform me of the correct process.

As usual, your assistance has been invaluable.

Sincerely,

Marshall L. Miller

Marshall Ray Miller

Cc: The Honorable Daniel E. Shearouse (without enclosure)