

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

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COMMON PLEAS COURT

JAN 05 2015

R. Keith Kelly, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2010-CP-42-0054

2014-002695

Mark A. Carrisal, 276860,, Appellant,

v.

State of South Carolina, Respondent.

RULE 243 BASIS FOR APPEAL

Pursuant to Rule 243 the Applicant submits the following as a basis for appeal where the circuit court found the Applicant's PCR action successive or

untimely.

The Applicant's criminal defense at trial turned on the fact that the residence at which he was arrested (and drugs located) was not his residence and that the person that had control of the residence was an individual named Juan Rodriguez. Rodriguez was the son-in-law of the property owner who testified that the residence was rented to or occupied by the Applicant, and not her son-in-law. The State's case turned on a showing that Rodriguez did not control or have any significant connection to that property. Rodriguez, according to Jennifer Cortez the State's key witness, did not live at that residence. R. 72-73.

That the State's case rested largely on the theory of constructive possession of the drugs by the Applicant. R. 190. Constructive possession was charged to jury. 201. The State's argument to the jury was that the Applicant "was renting the trailer. He was the only person that would be authorized to be in it." R. 186, l. 6-7.

This offense occurred on March 5, 2001. The Applicant's trial was held on July 18, 2001. The Applicant filed a post conviction relief action on July 9, 2003 and had a hearing on May 19, 2005. The Applicant's initial post conviction relief action was dismissed on July 25, 2005.

The State's duty to disclose exculpatory evidence is a continuing duty under

Rule 6, SCRCrimP. as well as Brady v. Maryland. Therefore, the State had the duty to disclose evidence which could have held exculpatory value or which could reasonably be expected to lead to exculpatory evidence through to the filing of the present post conviction relief action. Additionally, the failure of the State to disclose evidence prior to the end of the Applicant's initial post conviction relief action acted to prevent the Applicant an opportunity to raise issues which he could otherwise have raised in that initial post conviction relief action. That the information which the Applicant discovered subsequent to his initial PCR was only discovered through coincidence, and extra ordinary efforts, such that it could not have been reasonably discovered by the Applicant prior to the end of the first PCR.

Subsequent to the completion of the Applicant's initial PCR it was discovered that Juan Rodriguez was a drug dealer. Applicant discovered that Rodriguez had been arrested for drug trafficking only weeks after the Applicant's conviction. Evidence was also discovered that would connect Rodriguez to the residence in question, which the State had claimed was the Applicant's residence. Prior to the end of the Applicant's initial post conviction relief action, the State was aware of facts that would have had potentially exculpatory value, or in the least, would have been beneficial to the Applicant's defense in the case.

Information was believed to be available to the State that Juan Rodriguez and his cousin not only were conducting drug deals for kilo amounts of cocaine, but were also using electronic counter measures to detect police wires and transmissions. They also used automatic weapons and radios to avoid police detection and capture. All of which would indicate that Juan Rodriguez had been in the drug trade for a sufficiently long enough period of time to reach a reasonably high level of operation. This information, had it been known at the time of the Applicant's criminal trial, would have aided in the defense. Had it been disclosed by the State, or otherwise available prior to the end of the Applicant's initial PCR, it would have aided in the Applicant's initial application for post conviction relief.

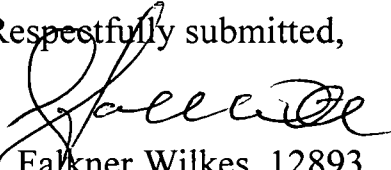
The facts surrounding the illegal activities of Rodriguez were known to the State prior to the conclusion of the Applicant's initial PCR. Applicant alleged that the information should have been disclosed by the State to allow the Applicant to use such information in his initial PCR. The State knew and yet failed to make a disclosure of the information regarding Rodriguez despite a continuing duty to do so.

It is the Applicant's contention that had the State disclosed information about the illegal activities of Rodriguez, further investigation would have revealed that Rodriguez did in fact have a provable connection to the residence in question

which was relevant to the Applicant's criminal case. In particular the information was particularly important as to the issue of constructive possession, and therefore, the ultimate issue of guilt. As a result, the Applicant believes that the State failed to disclose discoverable information and that the failure to do so results in a basis for a second PCR case.

Based on the foregoing, the Applicant submits that the dismissal of the Applicant's second PCR as successive or untimely is in error. Applicant's case is therefore appealable to this Court.

Respectfully submitted,



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CERTIFICATE

I certify that on January 2, 2015, I served the Appellant's Rule 243 Basis for Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

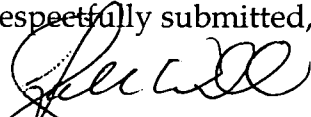
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