STATE OF SOUTH CAROLINA

In The Supreme Court

ON CERTIORARI TO THE COURT OF COMMON PLEAS

APPEAL FROM Spartanburg County
HONORABLE J. Derham Cole
SEVENTH Judicial Circuit Court
Judge

THE STATE

RESPONDENT

VS.

BENNIE J. RISER Jr.

PETITIONER

PETITION FOR WRIT OF CERTIORARI

BENNIE JAMES RISER
McCormick Corr.
F-3 A RM 270
386 Redemption Way
McCormick S.C.
29899

Legal Authorities

Strickland v. Washington, 286 S.C. 441, 334 S.E. 2d 813 (1985), 466 U.S. 668 (1985).
Butler v. State (S.C. 441, 334 S.E. 2d 813 (1985)
Cherry v. State, 300 S.C. at 119, 385 S.E. 2d at 625
Hill v. State (S.C. 2002) 350 S.C. 465, 567 S.E. 2d 847
Turner v. Tate, 58 F. 3d 924, 931-32 (4th Cir. 1995)

STATEMENT OF facts

This Matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 2, 2011, but recieved by the Respondent on July 11, 2012. Respondent made it's Return and Motion to Dismiss on or about May 30, 2013, requesting that the Application be Summarily dismissed. After this, the court issued a Conditional order of Dismissal dated August 20, 2013, provisionally denying and dismissing this action, while giving the applicant twenty (20) days from the date of service of said order in which to show why the dismissal should not become final. The Court Attached an Affidavit of Service dated October 17, 2013, serving the above-mentioned Conditional order of Dismissal on the Applicant.

Now In a document captioned "Actual Evidence/Return and Motion to Grant P.C.R." Filed on September 20, 2013, Applicant request's that they grant him an Evidentiary hearing on his claims. Applicant alleges that his application is not successive or barred by the Statute of limitations because his claim of Actual Innocence by newly discovered evidence. However the court claims their is no Evidence to support his claim other than assertions that he pled guilty based upon ineffective assistance of counsel inadequate investigation and Evidence. Now in a document captioned "Motion to Grant Post-Conviction relief hearing" filed November 12, 2013, the applicant continues to Attack the work of his plea counsel and argues that Counsel lied to him regarding the DNA Evidence linking Applicant to the crime, and has illegal documents from Rule 5 material and P.C.R. transcript to prove his allegations. Applicant also raises additional

ISSUES of 'INEFFECTIVE assistance of COUNSEL and 'INEFFECTIVE ASSISTANCE of prior P.C.R. COUNSEL because he didn't fully challenge the DNA EVIDENCE, and because of that, the applicant requests that all evidence related to DNA in his case be retested.

But the Court claims to have reviewed all pleadings, and claims that they find no sufficient reason has been made to stop the conditional order of Dismissal from becoming final. And the Court still insists that the application is successive and barred by the statute of limitations, NOVEMBER 20, 2014, the applicant's P.C.R. was denied and dismissed with prejudice.

At some juncture Judicial Review must stop with only the very rarest of exceptions when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. (SEE, e.g., after discovered evidence, infra.)

ARGUMENT

A. Ineffective Assistance of Counsel

During the Defendant's plea trial pg. 29 lines 22-24. The only Evidence introduced by the prosecutor pertaining to DNA was dried semen determined on Black Windbreaker in the front of the car. There was no Chemical Analysis done to the Windbreaker to determine the semens origin. During P.C.R. pg. 66 lines 7-8, Petitioner told the court's that trial Counsel told him they found his DNA on something. pg. 71 lines 3-18, the Petitioner stated counsel never did his own independant investigation dealing with DNA, Just went solely off what previous Counsel (Micheal D. Morin) had passed on to him. On a motion done by previous Counsel (Micheal D. Morin), for Motion to Compel Discovery, this was what was said.

"Comes now the Defendant, Bennie Riser, by and through his attorney Micheal D. Morin and Moves this Honorable Court to Compel the State of South Carolina to produce copies of and provide a time and place for the inspection of documents, test and analyses of DNA to be used in this case. As of the date of this filing the state of south Carolina has failed or refused to provide these documents which are essential for the defendant and his attorney to prepare a proper defense. The Defendant believes he is entitled to this information under the fourteenth AMENDMENT to the United States Constitution, the Constitution of the State of South Carolina Article 1 Section 3 and pursuant to South Carolina Rule of Criminal Procedure 5(a)(1)(C) and (D).

The Most Common, and Most general claim, is ineffective Assistance of Counsel. The Applicant must prove that "Counsel's Conduct so Undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a Just result". Strickland v. Washington, 286 S.C. 447, 334 S.E.2d 813 (1985).

Trial Counsel (James E. Hatcher) Never took the time to do his own investigation into petitioners case, and by doing so, the petitioner was led to believe that Evidence Existed, that Never did, and by this Conduct, it undermined the proper functioning of the adversarial process, and didnt produce a Just Result. Strickland v. Washington, 286 S.C. 441, 334 S.E. 2d 813 (1985) does Apply in this Case; and Butler v. State (S.C. 1985) 286 S.C. 441, 334 S.E. 2d 813.

The petitioner thought Counsel had him in his best interest. At P.C.R. pg. 68 lines 10-25 and pg. 69 line 23 The Defendant told P.C.R. Counsel that trial Counsel (James Hatcher) Never Spoke of no Kind of Defense in regards to DNA Evidence. If the petitioner had known about all this falsified information gave to him by trial Counsel, he would have insisted on going to trial. Even though the State claimed to have found Evidence linking petitioner to one of the victims, trial Counsel Should have argued that their was no Evidence linking him the petitioner to the other two victims. First the applicant must prove that counsels performance was dificient. His performance is measured by its "reasonableness under proffessional norms. By not doing his own independant investigation, this was no proffessional to the norm, because if he had, he would have seen Evidence that was favorable to the petitioner. Cherry, 300 S.C. at 117, 385 S.E. 2d at 625.

Counsel did not investigate alot of Critical Evidence or Defense when preparing for trial. Pg. 71 lines 7-14 trial Counsel told Petitioner that his DNA was found on a girls panties, and showed a picture of panties; and Everything Else he Spoke on regarding to DNA was the same repeated words; they have your DNA; pg. 66 lines 9-11 and said if I didnt take the plea, that I was going to trial March 10, pg. 70 lines lines 20-25 and petitioner maintained throughout these discussions that he was not guilty; and again, this shows that Counsel didnt have petitioner in his best Interest. First, the Petitioner must show that Counsel made Errors so

serious that he or she was not functioning as the counsel guaranteed by the Sixth AMENDMENT. Pg. 80 lines 18-21 of P.C.R. trial Counsel stated he had alot of things at his fingertips that he was reading and not necessarily out on the streets investigating himself. Second, the petitioner must show that Counsel's Errors were so serious as to deprive the petitioner of a fair trial who's result is reliable. Hill v. State (S.C. 2002) 350 S.C. 465, 567 S.E. 2d 847 Criminal law 1519(3). Pg. 86 lines 1-4 trial Counsel was advising petitioner and telling him he had no possible DEFENSE. Didn't discuss no opportunity for a suppression hearing in regards to any EVIDENCE. INEFFECTIVE ASSISTANCE of Counsel does and should Apply to this Case.

B. Actual innocence by newly Discovered EVIDENCE, AND REQUEST that All EVIDENCE Regarding DNA be RETESTED for the following Reasons.

Trial Counsel had made several misleading accusations against petitioner dealing with DNA. The petitioner was never showed any serology, toxicology, or any other type of reports linking him to the crimes. In petitioners Motion to Grant post-conviction Relief Hearing, he Explains how the State as well as trial Counsel has been using improper false and Misleading EVIDENCE. The claim must be Based on reliable EVIDENCE not presented at trial. Turner v. Jabe, 58 F. 3d 924, 931-32 (4th cir. 1995) Once again, doing the plea trial Hearing the only EVIDENCE mentioned by the prosecutor was dried semen determined on Black windbreaker in the front of the car, but there was no chemical Analysis done to the windbreaker to determine the semens origin. As well as P.C.R. pg. 88 lines 17-18 Counsel (James Hatcher) states again that they recovered defendants

DNA from one of the victims, and during the States order of Dismissal of P.C.R. the State claimed a warrant, a jacket with DNA EVIDENCE connecting him to the crime was discovered. Results from the DNA profile developed from Item 1.7 and 1.9 is a mixture of VANDESSA McDOWELL and at least two other individuals, and nothing connecting the petitioner to any CSC charges.

Because their is no physical Evidence connecting the petitioner to these crimes dealing with DNA EVIDENCE, and because the State and petitioners attorney (James Hatcher) introduced false and Misleading Evidence to the courts, all Evidence should be retested, and petitioners claim of Ineffective assistance of Counsel, inadequate investigation and Evidence under the actual innocence by newly discovered Evidence should be Granted.

Conclusion

By Reason of the Foregoing argument, petitioner's Writ of Certiorari should be granted in order to Allow full briefing on the Issue.

Respectfully Submitted
Bennie Rises
Bennie Rises
#218912

Sworn to Before Me this
09 day of February, 2015
[signature]
Notary Public for South Carolina
My commission Expires: 12/16/2019

My Commission Expires December 16, 2019