

(W)
R. James Miller, Jr. # 316047
Manning Correctional Institution
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FEB 24 2015

SC Court of Appeals

February 22, 2015

The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Appellate Case No. 2014-001964

Dear Clerk of Court,

Please take note that my Name, Address, and
Tribute number has changed. The correct
information is listed above. Please update
your records accordingly.

Also, please find the attached (3 separate envelopes)
documents relevant to my case which were previously
filed but which were presented to the General Session
Judge. Thank you for your time and assistance.

Respectfully,
R. James Miller

THE SOUTH CAROLINA COURT OF APPEALS

~~IN THE DISTRICT COURT OF THE DISTRICT OF~~
~~FOR THE DISTRICT OF SOUTH CAROLINA~~

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SC Court of Appeals

Robert James Miller, Jr.,
Petitioner

v.

Robert M. Stevenson, III
Warden, Broad River
Correctional Institution,
Respondent

C/A No.: ~~14-488-TRA-644~~

Appellate case No.:

2014-001964

Petitioner's Declaration in Support
of Petition for Writ of Habeas Corpus

1) Petitioner has reason to believe that someone may have altered official documents in petitioner's criminal case — the arrest warrants associated with this action in which petitioner pled guilty. If not intentional, then someone has made a very big mistake.

Petitioner has been provided a copy of his "Rap Sheet" dated November 18, 2010, addressed to Investigator Jeff Talbert of the Fairfield County Sheriff's Office. Talbert being the officer that issued all the warrants in petitioner's case. Petitioner was arrested and served on November 3, 2010 but no longer has possession of the

original warrants, only copies that have been provided by the state. According to the "Rap sheet", petitioner was arrested on 11/03/2010 and charged with warrant numbers M400779, M400780, M400781 and others (Exhibit's 20 and 21). These warrants are, or at least were, for Financial Transaction Card Forgery, SC Code § 16-14-40 (E)

This Code reads as follows:

§ 16-14-40 (e) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned **NOT MORE THAN FIVE YEARS**, or both.

Petitioner pled guilty to these three warrant numbers and received **10 YEARS ON EACH COUNT**.

Petitioner believes that Investigator Talbert may have altered, edited and reissued the warrants **AFTER** petitioners arrest. New warrants were issued using the same warrant numbers (Exhibit's 22, 23 and 24) but charging the petitioner with a different crime, one that carries twice as much time - Financial Identity Fraud § 16-13-510 SC Code. The "New" warrants were used in place of the "old" ones when petitioner was indicted (Exhibits 25, 26, and 27).

This would certainly explain why the petitioner

and his wife remained at the detention center for several days without a bond hearing. Upon information and belief, it was Talbert who requested the delay and intentionally postponed the hearing that would have otherwise been held before the regularly scheduled Magistrate Judge. Investigator Talbert arranged a "Special" bond hearing in front of the Summary Court Chief Judge, and per his request, petitioner was denied bond.

Petitioner's wife, being similarly situated and having identical charges, was released on a personal recognizance (PR) bond. Investigator Talbert is personally responsible for the violation of the petitioner's rights under the Eighth Amendment to the U.S. Constitution.

Additionally, as you can see, the arrest warrants were not received or time stamped by the Clerk of court until November 8, 2010, five days after they were supposedly served.

In the event that information was incorrectly entered on petitioner's Rap Sheet, it still poses a problem where the State law is not clear and seems to contradict itself by stating two very different things. Both can not be correct. For instance, on the arrest

warrants (EXhibit's 22-24) the complete

"Description of offense" reads:

* FinanTC/Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfully.

The Key word is: FinanTC

The South Carolina Code of Laws defines FinanTC as meaning Financial Transaction Card. This being the exact same prefix on all of petitioner's warrants with the exception of grand larceny (see Exhibit's 21, 28 and 29).

Therefore, according to the Financial Transaction Card Crime Act, § 16-14-100 S.C. Code, the maximum possible penalty under this section would be "... fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both."

Petitioner believes his sentence of ten (10) years on each count is in violation of the law.

It now becomes more obvious as to why Investigator Talbert would have switched the warrants in the first place. However, in the event that there was some type of unintentional mix up, then the arrest warrants are clearly defective and

* Also appears on Sentencing Sheets.

contain language that is misleading, unclear and confusing.

Simply put, if the warrants were switched, then they are illegal. If they were not switched after being served, they are still illegal because Financial Transaction Card offenses fall under Section §16-14-100, Code of Laws of South Carolina, as amended.

Petitioner wishes to point out that his defective, involuntary, and coerced guilty plea to the above mentioned Financial Identity Fraud (3 counts) was NOT part of a Plea Bargain. Please refer to page # 4 of the attached Affidavit of Defendant for Guilty Plea - "Plea negotiations" (Exhibit # 33), Sentencing Sheets (previously submitted) indicating that plea is "without negotiations or recommendation", and the previously submitted Exhibit # 1 (Lines 1-11) in which Solicitor Maxwell responds to the Judge's question: "Solicitor, have there been any plea negotiations?"

Maxwell withdrew the plea bargain after having petitioner unlawfully detained on March 30, 2012. The remaining charges were Nolle Prossed because the petitioner is in fact, innocent.

Therefore, the state should not be threatening the petitioner by stating he will have to face all the original charges and will get more time if he is successful in having his conviction overturned.

Solicitor Maxwell knowingly and maliciously charged the petitioner based on information provided by Investigator Talbert which both knew to be false. Maxwell even acknowledged on the record that the petitioner was not in Fairfield County, "...and I'm not sure exactly how he did it...", the alleged victim "was away in Alaska," "The Sheriff's department was able to determine not where every transaction occurred but transactions occurred throughout the eastern seaboard...", "Mr. Miller... was living in Myrtle Beach... where they were located at that period of time...", and "he liquidates the stocks in this company up in New York..." (Exhibit's 30, 31, 32). d

(Exh. Q)

There is not one single piece of evidence to support a claim that any crime was ever committed by the petitioner in Fairfield County. Solicitor Maxwell carefully avoided making any statement that a crime had been committed in Fairfield County because he knew (and admits) it didn't. of course, he had to cover his tracks for having had disposed of the petitioners illegally seized cash and property.

Petitioner believes that the General Sessions Court lacked Jurisdiction to accept the plea because the State failed to prove that any crime was ever committed. The only real crime ever



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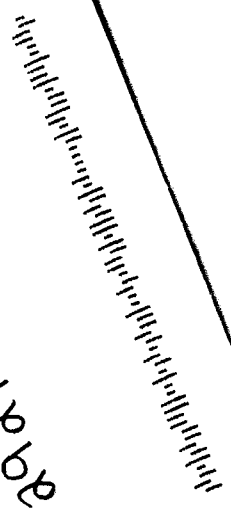


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Jenny Abbott, Kings Clerk
The South Carolina Court of Appeals
Columbia, SC 29211



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sec court of appeals

committed in Fairfield County was the false imprisonment, malicious prosecution, and the deprivation of property and constitutional rights of the petitioner by Solicitor Maxwell and the Fairfield County Sheriff's office.

Any evidence to any crime having occurred in Fairfield County was intentionally withheld because this information would have exonerated the petitioner (ie. ATM surveillance photo's of a co-defendant and two of Investigator Talbert's relatives withdrawing cash). Please see Exhibit's # 34, 35 and 36. Upon information and belief, Investigator Talbert may have destroyed other relevant photo's.

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- 3) Petitioner's guilty plea was unconstitutional because he pled guilty unvoluntarily and is entitled to a hearing. Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63; Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 514 (1962) (holding that petitioner was entitled to a hearing on the issue of... Unkept promises...). See also Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 499 (1971) (holding that when pleas rest on an implied promise or an agreement by a prosecutor that he will make no sentencing

SC Court of Appeals

recommendations, such promises must be fulfilled).
Petitioner's plea was "WITHOUT NEGOTIATIONS OR
RECOMMENDATION" (Please see Sentencing sheets,
previously submitted, signed by the Solicitor,
myself and the public defender). Petitioner pled
guilty with an understanding that the Solicitor
would be barred from volunteering any information
detrimental to the petitioner, would refrain from
making any sentencing recommendation and
would not oppose any request for leniency.

Solicitor Maxwell stated at the plea and on the
record that:

"It's the States position that he's
pleading straight-up today and we think he
deserves a lot of time" (Exhibit #1 - plea
transcript, page 15, lines 9-11) and "This is a
straight-up plea, the State is asking for a ten
to 15 year sentence" (Exhibit #12 - plea transcript,
page 3, lines 11-12).

This also raises a question as to the competency
of the petitioners public defender for failing to
object or effectively represent me.

- 4) During the plea, Assistant Solicitor Maxwell
commented on my post-arrest silence in
violation of my Fifth Amendment right against

Self-incrimination, by stating "I don't know if Mr. Miller ever gave an exact statement admitting to everything to the investigators but I think he has made statements admitting to some type of responsibility before. Of course, he is pleading guilty today but I don't think there was ever any full confession, full statement taken by the investigators" (Exhibit # 31, plea transcript - page 24, lines 14-19).

See Gravley v. Mills, 87 F.3d 779 (6th Cir. 1996) (holding that a prosecutor violated due process by repeatedly making references to petitioner's post-arrest silence; also finding that defendant had ineffective assistance of counsel because counsel had not objected to prosecutor's comments at trial).

Also, Alston v. Garrison, 720 F.2d 812, 815-16 (4th Cir. 1983) (holding defendant was denied effective assistance of counsel where counsel failed to object to evidence that defendant exercised right to remain silent).

It is improper for the Solicitor, or any attorney for the State, to comment on or to make any reference in his argument to the fact that the accused failed to testify as a witness in his own behalf. State v. Robinson, 238 SC 140, 119 SE2d 671 (1961).

5) Petitioner's public defender failed to challenge the validity of a search warrant that contained obvious errors.

The search warrant was defective, violates State Law and the plaintiff's Fourth Amendment Right that guarantees "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures... no warrants shall issue, but upon probable cause... and particularly describing the... persons or things to be seized."

Most noticeably, "Attachment B" of the search warrant (Exhibit C, page 6) does not match the other documents. It is not initialed by the Judge (like ALL the other pages) and the type and font is different, indicating it was added after-the-fact or switched.

* Description in Warrant

"Warrant must describe objects with particularity. - An affidavit for a warrant to search for property held in fraud upon revenue of the United States, which is substantially in the language of the statute authorizing such search warrant, but which does not particularly describe the person or things to be seized, does not conform to the requirements of this Amendment. A warrant issued thereon and following its language is VOID."
Woods v. United States, 279 F 706 (1922).

Effect of insufficient affidavit —

Where the affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect, leaves the determination of probable cause to the judgment and discretion of the police officer rather than the issuing officer; therefore, the affidavit is totally insufficient and a warrant issued thereupon is a nullity.

State v. Hill, 245 SC 76, 138 SE2d 829 (1964).

Petitioner was arrested at Storage unit and consented to a search in which nothing was found. Investigator's Bill Dove and Jeff Westfall took the petitioner to the detention center and kept the keys to the Storage unit. Then Westfall, already having had searched the unit and knowing what was in it, obtained a search warrant to re-inspect the unit.

Petitioner's counsel failed to challenge the UnConstitutional search and seizure.

- 6) Under the Sixth Amendment to the Constitution of the United States and the laws of the

State of South Carolina, the petitioner had a right to counsel during criminal proceedings. Adequate counsel was not provided. Petitioner was deprived of a fundamentally fair trial with a "reliable result." There is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different.

Petitioner's attorney failed to interview important witnesses, failed to investigate or gather evidence — such as ATM photos — and failed to request documents. Counsel failed to hire forensic accountant which the Honorable Judge Brooks Goldsmith approved. Petitioner was denied expert assistance in violation of the Fourteenth Amendment.

As a result of the Solicitor's false information, and ambiguous statements, the Judge erroneously ordered petitioner to pay \$30,000. restitution (and a \$6,000. collection fee !!) for an offense in which the petitioner WAS NOT even charged and the State admitted they did not have any Jurisdiction over. Petitioner's counsel never objected.

Counsel failed to challenge unconstitutional Search and Seizure.

Failed to challenge Jurisdiction issues.

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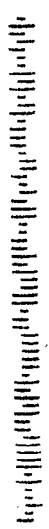
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Failed to raise a claim of insufficient evidence to support a conviction.

Did not object when Solicitor broke the agreement to NOT make a sentence recommendation.

Did not object when Solicitor inappropriately commented on my post-arrest silence.

Petitioner's public defender misled him into making a disadvantageous choice by indicating that any risk of suffering the maximum penalty could be avoided by pleading guilty. Petitioner received the maximum possible sentence.

Petitioner reasonably believed that the Judge would grant a lenient sentence if he followed his attorneys advice to avoid a trial and plead guilty. Petitioner was coerced into pleading guilty with the expectation that he would receive a sentence ranging from probation to "No more than four years" per his attorneys "Educated Guess" and statement that "He is not a hanging Judge."

Petitioner was denied a fair trial by the gross incompetence of his attorney and there is reasonable probability that, but for counsel's errors, he would not have pled guilty, would have insisted on going to trial and the outcome would have been different. Very different.

7) It is also worth mentioning that the Judge, or any Judge, should not have accepted the guilty plea when there was so much uncertainty as to whether or not a crime had occurred, the jurisdiction of the alleged offenses and especially the amount of money in question. The Solicitor failed miserably at presenting the State's case and neglected to offer any useful information. And of course, petitioner's counsel failed to object.

In reviewing the plea transcript, it becomes obvious by Solicitor Maxwell's ambiguous statements, comments and answers that he is intentionally attempting to divert the Judge's attention and manipulate the court and conceal the real facts. He only pretends to be unfamiliar with the case and knowingly takes advantage of and exploits every opportunity to present the Judge with erroneous and misleading information to confuse him. Apparently, this tactic works.

To begin with, on page 3 of the transcript - lines 6-9, Maxwell states "I think eight other charges", then he goes on to say that they "will be dismissed per his guilty plea." This would not be correct because there was no plea agreement.

And also...

Page 19, lines 20-23:

"I believe at some point they may have gotten married, they were in a relationship of some sort and I think they have a child... they were best of my knowledge..."

Page 20, (Exhibit #30)

line 3, "I believe goes to Alaska"

line 5, "I'm not sure exactly how he did it"

line 13, "I think \$15."

Page 21,

line 3, "...I believe in October..."

line 6, "...Mr. Miller or his girlfriend or wife..."

Page 22, (Exhibit Q)

line 8, "I think it's a JURISDICTIONAL issue..."

line 9, "I think it's something important..."

lines 10-13, "I believe... New York... I believe...
New York."

line 16, "The only thing I guess..."

line 22, "I guess made whole..."

Page 23,

lines 10-11 "were able to go on the record before Judge Goldsmith I believe that signed an order that E-trade -- basically told..."

lines 13-14 "... I think maybe at the same time..."
line 24 "... I think that was the account..."

Page 24, (Exhibit # 31)

line 8, "Mr. Miller I think is originally..."

line 14, "I don't know if Mr. Miller ever..."

lines 15-16 "... but I think he has..."

line 18 "... but I don't think there was..."

line 25 "I think she's charged with..."

Page 25, (Exhibit M)

line 4, "... we believe that was bought..."

lines 7-8, "it's a 2002 Saturn, I believe."

line 10, "I think we first may have to work that out"

line 12, "... I believe..."

lines 15-16, "I think that's all I have."

Well, I think that if my attorney properly represented me, I might have received a fair trial and I believe that, to the best of my knowledge but I don't know for sure, the Judge may have dismissed the case because I don't believe the court had jurisdiction and I think that my conviction and sentence might be illegal but I don't know because we

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may have to work that out. Basically, I guess
the Solicitor may have confused everyone, but
I don't think that I ever thought that I believed
my attorney would not adequately represent me.

I guess I was wrong.

I think that's all I have too.

For the reasons set forth in this Declaration
and the grounds presented in the Petition for
Writ of Habeas Corpus, petitioner is entitled
to the requested relief.

VERIFICATION

I have read the foregoing Declaration and hereby
verify that the matters alleged therein are true,
except as to matters alleged on information and
belief, and, as to those, I believe them to be true.
I certify under penalty of perjury that the foregoing
is true and correct.

Executed at Columbia, South Carolina on
April 2, 2014

Robert James Miller Jr

Robert James Miller, Jr.

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105
IN THE UNITED STATES DISTRICT COURT
for the District of South Carolina

Robert James Miller, Jr.,
Petitioner,

v.

Warden, Broad River
Correctional Institution,
Respondent.

C/A No.: 1:14-483-JFA-SVH

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CERTIFICATE OF SERVICE

I certify that I have served the Petitioner's Declaration in Support of Petition for Writ of Habeas Corpus (with exhibit's), Petitioner's Motion for Appointment of Counsel and Petitioner's Declaration in Support of Motion (with exhibit's) on the Respondents by depositing a copy in the U.S. Mail, postage prepaid, on April 2, 2014 addressed to:

Robert James Miller, Jr.

R. James Miller, Jr. # 316047
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