

The South Carolina Court of Appeals

Jenny Abbott Kitchings
Clerk of Court

V. CLARE ALLEN

Deputy Clerk

P.O. Box 11629
Columbia, S.C.

29211

March 02, 2015

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MAR 05 2015

SC Court of Appeals

RE: ROBERT LEE FOSTER VS. THE STATE
Appellate Case No. 2015-000289
Appellate Case No. 2012-212996

The S.C. Uniform Post-Conviction Procedure Act (PCR Act) allow an Applicant to file an Application for relief if the Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence. S.C. Code Ann. § 17-27-45 (C) (2014) allowing applications to be filed within one year of the date of actual discovery of the facts or from the date when the facts could have been ascertained by the exercise of reasonable diligence.

II.

A petition filed pursuant to Johnson vs. State, is the Post-Conviction relief equivalent of a Direct Appeal filed pursuant to Anders vs. California. RNIA, Johnson, 294 S.C. at 310, 364 S.E. 2d at 201

The Court recently held that under the Anders procedure, an Appellate Court is required to review the entire record, including the complete trial transcript, for preserved issues with potential merit. McHam vs. State, 404 S.C. 465, 475 746 S.E.2d 41, 46 (2013). (Citation omitted) Thus, this court concluded the merit of an unpreserved claim were not considered by the Court of Appeals on Directed Appeal pursuant to Anders. Id. at 475, 746 S.E.2d at 47 (noting issues raised on direct appeals and found to be unpreserved may be the subject of a subsequent PCR claim). Jamison vs. State, 2012-21996 (2014). Newly Discovered Evidence

III

Traditionally in South Carolina to obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching, McCoy vs. State, 401 S.C. 343 368 N.1, 737 S.E.2d 623, 625 N.1 (2013) (quoting Clark vs. State, 315 S.C. 385, 387-88, 434 S.E.2d 266, 267 (1993))

MARCH 02, 2015

Robert Lee Foster
Applicant Pro Se

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RE: ROBERT LEE FOSTER vs. THE STATE
APPELLATE CASE NO. 2015-000289
APPELLATE CASE NO. - 2012-212996

DEAR MRS. KITCHING,

I AM RESPONDING TO YOUR CORRESPONDENCE DATE Feb 19, 2015, IN WHICH THIS COURT HAS CLEARLY MISCONSTRUCTED WHAT I'M APPEALING. (SCACR) (PCRA) Rule 203 (d) (1) (B) (vi).

I AM ARGUING THAT I HAVE NOT RECEIVED A FULL AND FAIR OPPORTUNITY IN MY FIRST PCR HEARING... AS COUNSEL JOHN R. HOLLAND WAS FIRED BY CAMPBELL & SHABET, L.L.C. LAW FIRM AFTER LEARNING THAT COUNSEL CONSPIRED TO HELP THE STATE, JUNE 15, 2012.

I, LATER FILED A SECOND PCR APPLICATION ON JULY 11, 2012... UNDER THE POST-CONVICTION RELIEF ACT, RULE 203 (d) (1) (B) (vi), SCACR. CITE Wainwright vs. Sykes, 433 U.S. 72, 84-85, 90-91, 97 S.Ct. 2497, 53 L.Ed. 2d 594 (1977). HIS FIRST POST CONVICTION COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE ANY CLAIMS IN THE FIRST NOTICE OF POST-CONVICTION RELIEF AND IN FAILING TO NOTIFY MARTINEZ OF

HER ACTIONS. SEE II. AT 84-85, 97 S.C.T. 2497.

I, ALSO ARGUED THAT MY WRIT OF CERTIORARI WAS MOST BECAUSE PCR COUNSEL DIDN'T FILE A EXPENSE ORDER "OR" PROPOSE ORDER OR RULE 59 (E) AND 52 (A), UNDER S.C. CODE ANN. § 17-3-50 (B) AND (C). CITE MARLAR VS. STATE, 373 S.C. 275, 644 S.E. 2D 769 (2007).

APPELLATE COUNSEL FILED A MERIT ISSUES WITHOUT THE PCR TRANSCRIPT OR THE PROPOSE ORDER OR MOTION RULE 59 (E) AND 52 (A) TO PRESERVED APPLICANT ISSUE FOR APPELLATE COURT REVIEW. APPELLATE COUNSEL FILED A JOHNSON PETITION TO BE LEAVE AS COUNSEL AS ORDER WAS GRANTED AND LATER WRIT OF CERTIORARI DENIED WITHOUT BEING REVIEWED BY THE COURT. S.C. SUPREME COURT SUBMITTED TRANSFER ORDER UNDER SCAR 243 (1) TO THE COURT OF APPEALS ON JULY 29, 2013.

CITE: KYLES VS. WHITLEY, 115 S.C.T. 1555, 1560 (1995) RE VIEW, WE FOLLOW THE ESTABLISHED RULE THAT THE STATE'S OBLIGATION UNDER BRADY VS. MARYLAND, 373 U.S. 83 (1963) TO DISCLOSE EVIDENCE FAVORABLE TO THE DEFENSE TURNS ON THE CUMULATIVE EFFECT OF ALL SUCH EVIDENCE SUPPRESSED BY THE GOVERNMENT, AND WE HOLD THAT THE PROSECUTOR'S REMAIN RESPONSIBLE FOR GAUGING THAT EFFECT REGARDLESS OF ANY FAILURE BY THE POLICE TO BRING FAVORABLE EVIDENCE TO THE PROSECUTOR'S ATTENTION. BE CAUSE THE NET EFFECT OF THE EVIDENCE WITHHELD BY THE STATE IN THIS CASE RAISE A REASONABLE PROBABILITY THAT ITS DISCLOSURE WOULD HAVE PRODUCED A DIFFERENT RESULT. KYLES ENTITLED TO A NEW TRIAL: (1) PREVIOUSLY UNDISCLOSED EVIDENCE REVEALED THAT THE PROSECUTION INSTEAD

duced TRIAL TESTIMONY THAT IT KNEW OR SHOULD HAVE KNOWN WAS PREJURED AND THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY, OR (2) FAVORABLE EVIDENCE IS ... SUPPRESSED BY THE GOVERNMENT AND THERE IS A REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT; AS TO LATTER THEORY SHOWING OF MATERIALITY DOES NOT REQUIRE DEMONSTRATION BY A PROPOUNDER THAT DISCLOSURE OF THE SUPPRESSED EVIDENCE WOULD HAVE RESULTED ULTIMATELY IN THE DEFENDANT'S ACQUITTAL OR THAT AFTER DISCOUNTING THE INCULPATORY EVIDENCE THERE WOULD NOT HAVE BEEN ENOUGH LEFT TO CONVICTED AND ONLY REQUIRES SHOWING THAT EVIDENTIARY SUPPRESSION UNDERMINES CONFIDENCE IN THE OUTCOME OF THE TRIAL." (CITATION OMITTED).

APPLICANT ARGUED THAT THE POLICE DEPARTMENT (S) HAS WITHHELD 14 PAGE (S) OF LEGAL DOCUMENT (S) IN THEIR POSSESSION; AND THE GENERAL COUNSEL OF SCDC. . . . A BRADY VIOLATION HAS OCCURED WHEN THE POLICE WITHHELD EXCULPATORY EVIDENCE FROM THE PROSECUTOR, DEFENSE AND JURY'S.

APPLICANT FILED HIS STATE HABEAS CORPUS PETITION AFTER THE COURT DENIED APPLICANT WRIT OF CERTIORARI. APPLICANT FILED THIS PETITION UNDER SCARK RULE 65 (f) (1) IN THE COURT OF COMMON PLEA, AND LATER LEARN JUDGE COLE'S POSSESS PETITION FROM BEING PROCESS BY THE CLERK OF COURT, I, LATER RECEIVED AN ORDER FROM JUDGE KELLY'S WHO DENIED

HABEAS PETITION AND HER REASON WAS SHE WILL NOT ALLOW MY FORMA PAUPERIS TO BE PROGRESS.

The South Carolina Court of Appeals

Jenny Abbott Kitching
Clerk

V. CLAIRE ALLEN
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Proof of Service

March 02, 2015

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Appellate Case No. 2012-212996

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COURT OF APPEALS

Applicant here by provide the Court of Appeals with a proof of service to be served on all's parties through the United States postage service on the following date March 02, 2015. Applicant has comply with the Court of Appeal, under the South Carolina Appellate Court rules (SCACR) by responding within the ten (10) days.

March 02, 2015

Bishopville, S.C.

Robert Lee Foster

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ROBERT LEE FASTER # 194085
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