

THE SOUTH CAROLINA COURT OF APPEALS

Robert James Miller, Jr. :

Appellant :

Appellate Case No. 2014-001964

v. :

Robert M. Stevenson, III :

Respondent :

Initial Brief and  
designation of matter

1) Jurisdiction :

A. Name of Court from which review is sought :

Fairfield County Court of Common Pleas

B. Date of Order for which review is sought :

September 4, 2014

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**SC Court of Appeals**

2) Timeliness of notice of appeal :

Notice of appeal was placed in the institution's internal mailing system for mailing to the Court on September 8, 2014.

3) Issues for review :

I.

ISSUE 1. Appellant was not given a full and fair opportunity to present his claims. The Court dismissed the Habeas Corpus action without a hearing or service on the respondent.

The Court deprived appellant of his Constitutional rights and did not provide appellant a reasonable

- opportunity to have his federal claims heard.
- Hoffman v. Arave, 236 F.3d 523, 531 (9th Cir. 2001) "[I]f a State procedural rule frustrates the exercise of a federal right, that rule is inadequate..."
- Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63 (1973) (holding that defendant is entitled to a hearing to determine whether or not his guilty plea was voluntary even though he had declared in open court that his plea was given voluntarily and knowingly); See also Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 514 (1962).
- 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 on an agreement by a prosecutor that he will make no sentencing recommendations, such promises must be fulfilled).
- Johnson v. Beto, 466 F.2d 478, 479-80 (5th Cir. 1972) (holding that... defendant is entitled to resentencing or withdrawal of his guilty plea).
- Roy v. Lampert, (9th Cir. 2006) 465 F.3d 964 (evidentiary hearing proper where sufficient allegations that claims were diligently pursued and extraordinary circumstances existed).
- Appellant is able to demonstrate a sufficient probability that [the Court's] failure to review his federal claim will result in a fundamental miscarriage of Justice."  
(reaffirmed after the passage of AEDPA in Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591 (2000)).

- The requirement of due diligence does not depend on whether the efforts were successful, but on whether "the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in State Court." Michael Wayne Williams v. Taylor, 529 U.S. 420, 435, 120 S.Ct. 1479, 1490 (2000).

- \* If the State or the State Court prevented the development of facts in your case, you will receive a mandatory hearing. See Townsend v. Sain, 372 U.S. 293, 313 (1963); Keeney v. Tamayo-Reyes, 504 U.S. 1, 11 (1992) "fundamental miscarriage of Justice would result from the failure to hold a hearing." See also,

- \* Rhoden v. Rowland, 10 F.3d 1457, 1460 (9th Cir. 1993) (remanding for an evidentiary hearing because petitioner took all steps possible...).

- \* Johnson v. Beto, 466 F.2d 478, 479-80 (5th Cir. 1972) (holding that if a prosecutor says he will make a sentencing recommendation in exchange for a guilty plea, but then actually recommends a harsher sentence in court, the plea bargain has been broken and defendant is entitled to resentencing or withdrawal of his guilty plea).

- Juan H. v. Allen, 408 F.3d 1262, 1276 (9th Cir. 2005) (finding that evidence was insufficient to establish defendant's guilt beyond a reasonable doubt); United States v. Desena, 260 F.3d 150, 154-56 (2d Cir. 2001) (reversing a conviction where no evidence linked the defendant...)

- The lower court's error had a "Substantial and Injurious" effect.
- \* Even if the error's were harmless, I would still be entitled to relief
- \* because the error's were per se prejudicial violations that
- \* affected my substantial rights.

## II.

ISSUE 2. Appellant was denied Due Process and Equal protection of law, repeatedly.

- Grayley 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...
- Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97 (1963)  
"the suppression by the prosecution of evidence favorable to an accused upon request violates due process..."
- United States v. Garza, 435 F.3d 73, 75-76 (1st Cir. 2006)  
...destruction of evidence is a violation of due process... See also United States v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82 (1985); Kyles v. Whitley, 514 U.S. 419, 435, 115 S.Ct. 1555, 1567 (1995)
- \* If a court holds a trial without jurisdiction, it violates the Due Process Clause of the 5th and 14th Amendments. Lowery v. Estelle, 696 F.2d 333, 336-38 (5th Cir. 1983); Butler v. King, 781 F.2d 486, 490 (5th Cir. 1986); Sunal v. Large, 332 U.S. 174, 178-79 (1947).
- Requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), (S.C. App. 1998) 332 S.C. 551, 505 S.E.2d 598.
- \* Bracy v. Gramley, 520 U.S. 899, 908-09 (1997) (finding that it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry if petitioner's allegations when fully developed may demonstrate that the petitioner is entitled to relief).
- Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 1833 (1999)  
stating that there is a "limited class of fundamental

Constitutional errors that... are so intrinsically harmful as to require automatic reversal (i.e. 'affect substantial rights') without regard to their effect on the outcome."

### III. ISSUE 3. The State Court applied federal law in an objectively Unreasonable manner.

- Williams v. Taylor, 529 U.S. 362, 406 (2000) "A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." See also Ramdass v. Angelone, 530 U.S. 156, 165-66 (2000); Lockyer v. Andrade, 538 U.S. 63, 73 (2003)
- Wiggins v. Smith, 539 U.S. 510, 528 (2003) finding that a "clear factual error" in a state court's analysis "highlight[ed] the unreasonableness" of the court's decision. See also Rampilla v. Beard, 545 U.S. 374, 389 (2005); Boss v. Pierce, 263 F.3d 734, 742 (7th Cir. 2001).
- The State Court decision would have been different if the Court had properly considered and applied all of the relevant facts. A failure to find facts is actually an unreasonable determination of facts. See Taylor v. Maddox, 366 F.3d 992, 1000-01 (9th Cir. 2004) (finding that a state court's determination of facts is unreasonable if no finding was made and the Court "should have made a finding of fact but neglected to do so"). Nunes v. Mueller, 350 F.3d 1045, 1055 (9th Cir. 2003) (finding

that the state courts' "factual" findings were unreasonable when the Court made the findings without holding an evidentiary hearing); Mask v. McGinnis, 233 F.3d 132, 140 (2d Cir. 2000) (refusing to give the state court's "factual findings" a presumption of correctness because they were not factual findings but only conclusions).

- The lower court ignored legally relevant facts that it needed to consider in order to reach the correct result.
- The fact finding procedure the court used was inadequate. See Caliendo v. Warden of Cal. Men's Colony, 365 F.3d 691, 698 (9th Cir. 2004) and Nunes v. Mueller, 350 F.3d 1045, 1055 (9th Cir. 2003).
- The lower court's determination of facts was unreasonable and not at all supported by the record.
- \* The state has provided no corrective procedures at all to redress the fourth amendment violations. Capellan v. Riley, 975 F.2d 67, 70 (2d Cir. 1992). I was clearly denied my "full and fair opportunity" to litigate my claims.
- \* My restitution order is contrary to clearly established Federal law: I was NEVER arrested, indicted or convicted for the offense in which restitution was ordered !!!  
 "restitution to be tied to the loss caused by the offense of conviction." Hughey v. United States, 495 U.S. 411, 418 (1990) (citing 18 U.S.C. § 3580(a) (1982 ed.)). That is, restitution may not be imposed for losses caused by any other crime or any other defendant.
- \* State court remedies are "unavailable" and "ineffective".

- Simmons v. Blodgett, 910 F. Supp. 1519, 1524 (W.D. Wash. 1996)  
"Because petitioner's ability to prove his claim continues to diminish rapidly over time, and is at risk of being lost, Justice requires that his habeas petition be heard expeditiously."

IV. ISSUE 4. Appellant was denied his constitutional right to Counsel on his direct appeal. See

- Douglas v. California, 372 U.S. 353, 356-58, 83 S.Ct. 814, 816-17.
- Halbert v. Michigan, 545 U.S. 605, 125 S.Ct. 2582, 2583.
- Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836.
- Swenson v. Bosler, 386 U.S. 258, 259, 87 S.Ct. 996-97.
- Mason v. Hanks, 97 F.3d 887, 902 (7th Cir. 1996).
- Roe v. Flores-Ortega, 528 U.S. 470, 484, 120 S.Ct. 1029, 1038.
- Also Alston v. Garrison, 720 F.2d 812, 816 (4th Cir. 1983)  
(holding that "the content of an appeal is heavily controlled by Counsel, and where ... the defendant's trial lawyer also prosecuted the appeal, it is obvious that ineffective assistance of Counsel is not likely to be raised at trial or to appear among the assignments of Constitutional error" on appeal).

4) Relief requested:

Vacation of Conviction, Sentence, and illegal restitution Order and Orders disposing of appellants personal property and grant any additional relief this Court deems Just, proper and equitable.

Executed at Columbia, South Carolina  
on March 9, 2015

Robert James Miller, Jr.  
Robert James Miller, Jr.

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V.

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Respondent :

CERTIFICATE  
OF SERVICE

I certify that I have served the Appellants "Initial Brief and Designation of Matter" on the Attorney's for the Respondent by depositing a copy in the U.S. Mail, postage prepaid on March 9, 2015 addressed to:

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