

The State Of South Carolina
in the Supreme Court

Appeal from Laurens County
Court of Common Pleas

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APR 13 2015

S.C. Supreme Court

Frank R. Addy, Jr., Circuit Court Judge

P.C.R. Case No: 2014-CP-30-0228

Appellate Case No: 2015-000598

Dwight F. Sullivan

Petitioner

VS.

State of
South Carolina

Respondent

RULE 243(c) SCACR Explanation

I. Brief Procedural History

I, Dwight F. Sullivan, was indicted in Laurens County on the charges of two counts of murder, burglary in the first degree and possession of a weapon during the commission of a violent crime. I was convicted of all charges and sentenced to thirty (30) years for burglary first degree and life without parole for each of the murder convictions. The sentence for possession of a weapon during the commission of a violent crime was subsumed under S.C. Code ANN. §16-23-490(A).

I filed my first P.C.R. application on April 1, 2008. The application was denied. A notice of appeal was filed on my behalf and an appeal was perfected pursuant to Johnson v. State, 294 S.C. 310, 364 S.E. 2d 201 (1988). The appeal was dismissed.

8:13-876-TMC-JDA

I thereafter filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on April 4, 2013. On January 22, 2014, the Honorable Jacquelyn D. Austin issued a Report and Recommendation recommending that the State's motion for Summary Judgment be granted and my petition be denied. On March 13, 2014, the Honorable Timothy M. Cain issued an order adopting the Report and Recommendation and denied and dismissed my Federal Habeas Corpus Petition.

2013-CP-30-0380

I then filed my second application for P.C.R. on May 13, 2013. The following allegations were raised:

- 1.) Ineffective Assistance of Counsel
- 2.) Ineffective Assistance of Counsel pursuant to Lafley v. Cooper
 - (A.) Pleas offer was rejected on the advice of counsel and I went to trial and got sentence to life consecutive.

Respondent filed its Return and Motion to Dismiss on July 23, 2013. The Court then issued a Conditional order of Dismissal on August 16, 2013 denying and dismissing this action, while giving me twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. I responded to the Conditional Order of Dismissal. Then a Final Order of Dismissal was issued on October 3, 2013.

Now, in my current application for P.C.R., my allegations that I am being held in custody unlawfully are as follows:

- 1.) Ineffective Assistance of Counsel at sentencing phase
 - a.) Counsel failed to object to the Judge's opinion that I was guilty and express opinion of my guilt with bias and prejudice.

This application was dismissed with prejudice in a Final Order issued by the Honorable Frank R. Addy, Jr., filed January 8, 2015. After I received written Notice of ~~appeal dated March 16, 2015~~ entry of the Judge's order I filed a timely notice of appeal dated March 16, 2015. This court gave me twenty (20) days to explain, pursuant to Rule 243(c), SCACR, why this issue should not be dismissed, this "explanation" follows:

II ARGUMENT

I was tried by a Judge that showed he wasn't impartial. During the sentencing phase of my trial, the trial judge expressed that he did not believe the story that I told the jury and that he (the Judge) believed that I went over to my girlfriend's house and killed her and her paramour in cold blood.

The Judge's comment in this matter is contrary to the Judge's duties as stated in Canon 3, B(5) where it states that:

(5) A Judge shall perform judicial duties without bias or prejudice. A Judge shall not in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the Judge's direction and control to do so.

I was denied due process of law because I was denied fundamental fairness during my trial. The comment made by the trial judge indicates that my trial testimony was unbelievable. During my testimony the trial judge could have made a facial expression, hand gesture or just the judge's body language during this critical stage of my trial could have made a prejudicial impression on the jury to motivate them into voting the way they believed the trial judge wanted them to vote, which was guilty.

I believe that the trial Judge's conduct in this matter rose to a "structural error" and I was denied due process of law.

The United States Supreme Court has found that a structural error defects fundamentally undermines the reliability of fairness of the trial, and can never be deemed as a harmless error. See Arizona v. Fulminante 499 U.S. at 310 (1991). A structural error, as opposed to a trial error, involves fundamental framework allowing criminal trial to fairly assess guilt. Id at 310.

In this instant case, my guilt could not be assessed properly by the jury, they found me guilty because they believed that the trial Judge believed that I was guilty. There were a lot of circumstances in my case and it should have been ruled as a crime of passion. That is why I feel the judge gave me an excessive sentence. My trial counsel should have noticed this comment that the trial judge made as being prejudicial and objected. I am not a lawyer and I just discovered that the Judge's comment was bias and prejudicial. Upon inquiry of family and friends, I also discovered that the Judge made more unrelated and partial comments before the trial even started, which were submitted in a document titled "Objections to Conditional Order of Dismissal" dated October 25, 2014 with signed and notarized affidavits of each person hearing these comments.

Under Rule 501, SCACR, it states that A Judge must perform Judicial duties impartially and fairly. A Judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give parties or lawyers in the proceedings, jurors, the media and others an appearance of judicial bias. A Judge must be alert to avoid behavior that may be perceived as prejudicial.

Conclusion

In light of the foregoing, I was denied my right to be tried before an impartial Judge and my trial counsel was ineffective for not noticing this, therefore, this court should not dismiss this appeal.

This 9th Day of April

Respectfully submitted

Dwight Sullivan

Dwight F. Sullivan #309653

MCCI F-3-B-218

386 Redemption Way

McCormick, S.C. 29899

PRO-SE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LAURENS COUNTY
COURT OF COMMON PLEAS

FRANK R. ADDY, JR., CIRCUIT COURT JUDGE

PCR CASE No.: 2014-CP-30-0228
APPELLATE CASE No.: 2015-000598

DWIGHT F. SULLIVAN,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

THE ABOVE NAMED PETITIONER CERTIFY THAT ON THIS DAY HE HAS SERVED A COPY OF THE RULE 243(c) SCACR EXPLANATION ON THE RESPONDENT BY DELIVERING A COPY OF SAME TO THE McCORMICK CORRECTIONAL INSTITUTION MAIL ROOM, WITH SUFFICIENT POSTAGE PREPAID, AND ADDRESSED AS FOLLOWS:

ALAN M. WILSON
ATTORNEY GENERAL OF SOUTH CAROLINA
PO Box 11549
COLUMBIA, SC 29211-1549
ATTORNEY FOR RESPONDENT

THIS 9th DAY OF April, 2015

SWORN TO AND SUBSCRIBED BEFORE ME THIS

9th DAY OF April, 2015

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES D. Hudson

My Commission

expires

April 24, 2018

Dwight Sullivan
DWIGHT F. SULLIVAN #309653
McCI F-3 218-B
386 REDEMPTION WAY
McCORMICK, SC 29899
PETITIONER, PRO-SE

7,

DWIGHT F. SULLIVAN #309653

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McCORMICK, SOUTH CAROLINA 29899

APRIL 9th, 2015

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APR 13 2015

DANIEL E. SHEAROUSE, CLERK
S.C. SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SC 29211

S.C. Supreme Court

RE: DWIGHT F. SULLIVAN V. STATE OF SOUTH CAROLINA
APPELLATE CASE No. 2015-000598

DEAR CLERK:

ENCLOSED FOR FILING IS THE RULE 243(c) SCACR EXPLANATION, ALONG WITH THE CERTIFICATE OF SERVICE, IN REFERENCE TO THE ABOVE ENTITLED MATTER.

PLEASE RETURN TO ME A CLOCK-STAMPED COPY OF THE ENCLOSED DOCUMENTS AT YOUR EARLIEST CONVENIENCE.

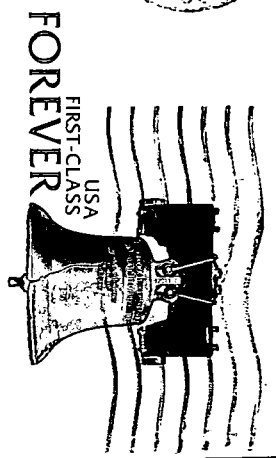
THANK YOU KINDLY FOR YOUR ASSISTANCE IN THIS VERY IMPORTANT MATTER.

CC: ATTORNEY GENERAL'S OFFICE
PERSONAL FILE

SINCERELY,



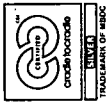
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Daniel E. Shearouse
Clerk of S.C. Supreme Court
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