

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

January 9, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State v. James B. Curry
Appellate Case No. 2014-002666

Dear Ms. Kitchings:

Enclosed is a motion related to the above case. Since this case is currently pending before the South Carolina Court of Appeals, no action will be taken on this motion by this Court and I am forwarding this motion to the Court of Appeals for its consideration.

Very truly yours,

CLERK

Enclosure

cc: Mr. James B. Curry, 00186737
Salley W. Elliott, Esquire

*Curry
Jenny*

Appellate Case # 2014-002666

The State of South Carolina
Respondent,

RECEIVED

JAN 08 2015

Vs.

Oral Argument **S.C. SUPREME COURT**
requested.
A.S.A.P

James B. Curry #186737
Appellant,

Motion to Dismiss order & grant New Trial.

Appellant, James B. Curry hereby moves the Supreme Court of South Carolina to Dismiss the order signed by Judge Brian M. Gibbons on December, 4th, 2014, and grant Appellant a new Trial on the grounds of abuse of discretion in that: the Order is - Captioned in the Court of Common Pleas which is in error Appellants Filings are all in the Court of General Sessions, and the hearing held on November, 5th, 2014, was held in General Sessions, argued against Solicitor Douglas A. Barfield, therefore the South Carolina Court of Appeals does not have Jurisdiction over the order because it is Captioned in the Court of Common Pleas, where the Supreme Court has that Jurisdiction.

December, 10th, 2014

CC:

Solicitor Barfield,
Sue K. Carpenter, C/C
South Carolina Court of Appeals.

"See attachments"

James B. Curry #186737
Lee C. I. Kershaw II 25
990 Wisacky Hwy.
Bishopville S.C. 29010
Pro-se.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 29, 2014

James B Curry, 00186737
Lee Correctional Inst.
1204 East Church St.
Bishopville SC 29010

Re: The State v. James B. Curry
Appellate Case No. 2014-002666

Dear Mr. Curry:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

The caption for this appeal should appear as follows:

The State, Respondent,

v.

James B. Curry, Appellant.

Please do not hesitate to contact this office if you have any questions or concerns regarding this appeal.

Very truly yours,

V. Clavin Allen, Deputy

CLERK

cc: Douglas A. Barfield, Jr., Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF General
Sessions

The State Petitioner)
VS)

Case No. 2007-05-02-529
0007-05-12-531
2007-05-12-532
ORDER TO TRANSPORT

James B. Curry Defendant)
#186737)

It appearing that James B. Curry #186737 is a Defendant/
Plaintiff in the above case, and is required to appear for a hearing
in a Civil Court, Probation Revocation, or General Sessions matter
before this court on the 5th day of November, 2014
at 10:00 (A.M./P.M.) and now is confined at Lee Correctional Institute
900 W. Main Hwy, Batesville, SC 29010

It is therefore ordered that the said James B. Curry #186737
be transported from Lee Correctional Institute, Kershaw 1125, 900 W. Main Hwy, Batesville, SC 29010
to the Chester County Courthouse at Chester County in the town of
Chester in the custody of the Department of Corrections to be present
in this court at 10:00 (A.M./P.M.) on the 5th day of November
2014.

*The hearing is to address
whether or not Mr. Curry is
entitled to a further hearing
on his new trial motion.*

[Signature]
JUDGE
6th JUDICIAL CIRCUIT

Chester, South Carolina
day of _____, 19 10/16/14

FILED
OCT 16 P. 12:23
CLERK OF COURT
CHESTER CO. S.C.

State of South Carolina
County of Chester.

In the Court of General Sessions
Sixth Judicial Circuit.

Indictment # 2007-GS-12-529-530-5

James B. Curry
defendant.

2014 JUL 31 A 11:30

FILED

Propose Motion For New

Vs.

based on after-discovered
evidence.

State of South Carolina

pursuant to Rule 29(B) of
South Carolina rules of Crimi
Procedure.

The defendant, James B. Curry moves For a New Trial based
after discovered evidence pursuant to rule 29(b) SCRCrimp on the
Following grounds...

- #1. That defendant was excusably ignorant of the evidence that exist
at the time of trial that could have been testified to through
the States witnesses Cora and Robert Wright, that would had
been material to defendants innocence in RE: to defendants
appearance on 6-4-07 the day of the alleged Crime.
- #2. That defendant was excusably ignorant of the evidence that
existed at the time of trial that would have proved 100% the
Police tampered with evidence that would have been material
to defendants innocence.

CC:

Chief Administrative Judge,
Solicitor Douglas A. Barfield,

Respectfully Submitted,

James B. Curry #186131
Lee C. J. Kershaw 1125
990 wisacky Hwy
Richmanville C

State of South Carolina
County of Chester.

In the Court of General Session
Sixth Judicial Circuit.

Indictments# 2007-GS-12-529-530-531-532.

James B. Curry
defendant,

CLERK OF COURT
FILED
AFFIDAVIT OF

2014 JUL 31

Affidavit of
Evidentiary Support.

Vs.

State of South Carolina

- (1) would probably change the results if a new trial is had
- (2) has been discovered since the trial.
- (3) could not have been discovered before trial.
- (4) is material to the issue of guilt or innocence.
- (5) is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299
854, 855 (1983)

A Motion For a new Trial based on after-discovered evidence encompasses claims based on the presentation of evidence - that existed at the time of trial, but of which the defendant was "excusably ignorant, the after-discovered evidence must reflect upon the defendant's innocence, Generally, a Motion For a new trial should be considered when new evidence is discovered after the completion of State P.C.R, defendant submits that his P.C.R application was denied on Dec, 19th²⁰¹³ by the Honorable Judge Clifton Newman, defendant discovered this evidence on July, 28th, 2014, which is not based on former Great Falls Police Chief Mike Revels arrest, but is based on defendant's defense at trial that he was set up by the Great Falls Police, defendant also submits that he did not know of the existence of such evidence at the time of trial and that I used diligence to discover such evidence. "Note" defendant reserves the right to argue any additional facts.

defendant also will use transcript in support of new evidence as exhibits. T.T. Page# 170 & 144

CC:

Chief Administrative Judge,
Solicitor Douglas A. Barfield

Respectfully Submitted,

James B. Curry #186137
Lee C. J. Kershaw 1125

~~the order should be captioned General Sessions~~



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

~~IN THE COURT OF COMMON PLEAS~~
SIXTH JUDICIAL CIRCUIT

State of South Carolina,)

v.)

2007-GS-12-529
2007-GS-12-530
2007-GS-12-531
2007-GS-12-532

James B. Curry,)

Defendant)

ORDER

2014 FEB -5 P 1:22
COURT OF COMMON PLEAS

This matter is before the Court on pro se Defendant's current motion for a new trial based on after-discovered evidence pursuant to 29(b), SCRCrimP. Defendant also believes that granting his motion for a new trial will serve the "interest of justice." After hearing the oral arguments, reviewing the documents submitted, and considering applicable law, the Court hereby denies Defendant's motion for a new trial. Before addressing the merits of Defendant's current motion, the Court needs to set forth underlying details.

PROCEDURAL HISTORY

This case has a long and convoluted procedural history stemming from the Defendant's voluminous filings with the court. Defendant was convicted in the Court of General Sessions for Chester County for the offenses of Burglary First Degree, Armed Robbery, Kidnapping, and Assault and Battery of a High and Aggravated Nature on February 14, 2008. He was sentenced to 25 years each for the Burglary, Robbery and Kidnapping and 10 years for the ABHAN, all to run concurrently by Judge Goldsmith. He initially appealed, but the case was dismissed by the Court of Appeals on July 17, 2008. Thereafter, he filed a motion for a New Trial based on after-discovered evidence. That motion was denied by Judge Goldsmith in February of 2009. The defendant then moved again for a New Trial based on after-discovered evidence on October 5,

2009. Judge King denied both the defendant's motion for a new trial on October 16, 2009 as well as his motion for reconsideration on November 30, 2009.

The Defendant has also filed several applications for Post-Conviction Relief (PCR). The first PCR application was filed May 14, 2010. In that application, the defendant alleged he was being held in custody unlawfully for the following reasons:

1. Invalid waiver of trial counsel.
2. 5th, 6th, 14th amendment violation.
3. Juror misconduct discovered after trial.
4. Due process violations.
5. Violation of Sixth Amendment right to counsel.

The Respondent made its Return on or about December 16, 2010 and an evidentiary hearing was held on February 23, 2011. Judge Kinard denied the application because the application failed to establish any constitutional violations or deprivations.

~~A second PCR application was filed March 28, 2012. The Defendant alleged he was being held in custody unlawfully for the following reasons:~~

1. ~~Newly discovered evidence~~

Respondent made its Return and Motion to Dismiss on or about September 26, 2012.

~~Judge Goldsmith dismissed the application with prejudice on October 1, 2012.~~

The Defendant has also filed five lawsuits as follows: (1) Curry v. Guilfoyle and Chester News & Reporter, 2008-CP-12-0523; (2) Curry v. Watkins, 2008-CP-12-0649; (3) Curry v. Barfield, 2009-CP-12-0044; (4) Curry v. Revels & Town of Great Falls, 2009-CP-12-0225; and (5) Curry v. Revels & Town of Great Falls, 2009-CP-12-0836. All five of these cases were dismissed. In his order of dismissal, Judge King admonished the Defendant against filing "frivolous, non-legitimate lawsuits." Judge King cited S.C. Code Ann. §24-27-200 as well as Furtick v. S.C. Dept. of Corrections, stating [i]f a court finds a prisoner has: (1) submitted a



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malicious or frivolous claim, or one that is intended solely to harass the party filed against; (2) testified falsely or otherwise presented false evidence or information to the court; (3) unreasonably expanded or delayed a proceeding; or (4) abused the discovery process; then the "prisoner shall forfeit all or part of his earned work, education, or good conduct credits in an amount to be determined" by the Department of Corrections. Furtick v. S.C. Dept. of Corrections, 374 S.C. 334, 649 S.E. 2d 35 (S.C. 2007). This order clearly served notice on the Defendant that any future frivolous, repetitious, or unfounded lawsuits, or continued unreasonable demands on the Clerk of Court could result in a forfeiture of all or part of his earned work, education, or good conduct credits as provided by Furtick. Furthermore, the Defendant could be held in contempt pursuant to S.C. Code Ann. §24-27-300 if the court finds that the Defendant intentionally violated the terms Judge King's order, punishable by up to one year to be served consecutively to Defendant's previously imposed underlying sentence.

CURRENT NEW TRIAL MOTION

Defendant seeks a new trial again based on what he describes as "after-discovered evidence" pursuant to Rule 29(b) of the SC Rules of Criminal Procedure. This is the Defendant's fourth time requesting a new trial on after-discovered evidence, not including his successive PCR applications or his other dismissed lawsuits. ~~He alleges that a portion of the transcript demonstrates that a witness for the State was lying and that the Solicitor colluded with the witness to present false testimony.~~ After a lengthy presentation in Court, the Court finds there is absolutely no merit to Defendant's contentions. Defendant had the opportunity to cross-examine this state witness at his trial to point out credibility issues as well as had the ability to call witnesses in his defense. This is not what Rule 29(b) envisions as after-discovered evidence. This is a credibility determination for the trial jury, which, after considering and weighing all of



the evidence, convicted the Defendant. Defendant's "buyer's remorse" of representing himself in his trial and apparently not preparing his defense very well is not after-discovered evidence entitling him to a new trial. As such, Defendant's motion is denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court finds that Defendant has had more than his fair share of "bites at the apple" so to speak. The Defendant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest of finality of judgments requires that this litigation must eventually come to an end.

Since Judge King's order, the Defendant has continued to inundate the Chester County Clerk's office with voluminous letters, motions, filings and other demands. It seems that the threat of forfeiture of good behavior credits and even possible jail-time has done very little to dissuade Defendant from harassing the clerk's office. The criminal docket is backed up with cases involving defendants with legitimate claims. There is no room for someone who has exhausted the available remedies, yet continues to bombard the court with unnecessary work. At some point, it has to come to an end. This order proposes such a conclusion.

Based upon the repetitive and frivolous nature of Defendant's motions, and in reliance on In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the Court directs the Chester County Clerk of Court to not accept any future correspondence from the Defendant unless he pays the normal filing fee. Additionally, this Court finds that the Defendant is required to provide a properly notarized affidavit certifying that the Defendant believes in good faith that the matter raised is not frivolous.

This Court also finds that if the Defendant submits a motion that is accompanied with a notarized affidavit and a filing fee, the Clerk's office is directed to submit the motion to the Chief

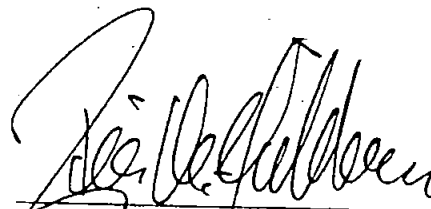
Administrative Judge for General Sessions. If the Administrative Judge finds that the motion is proper, it would then be submitted for filing. However, if the Administrative Judge finds the documents frivolous, Defendant may be held in contempt pursuant to S.C. Code Ann. §24-27-300. This order shall also be served on the Attorney General's office, who is authorized pursuant to S.C. Code Ann. §24-27-200 to investigate and prosecute the Defendant for possible contempt of court for any future frivolous filings.

This order is intended to fully resolve any and all pending motions and requests the Defendant has made to resolve everything at this level. ~~For the extent, this order does not specifically address a matter previously brought up by the Defendant, that matter is hereby DENIED to give the Court of Appeals authority to review, if the Defendant appeals.~~

THEREFORE, this Court hereby DENIES the Defendant's current motion for a new trial, and finally concludes this litigation.

IT IS SO ORDERED.

December 4, 2014



Brian M. Gibbons
Resident Circuit Judge
Sixth Judicial Circuit

2014 DEC -5 PM 1:22

James B. Curry #186737
Lee C. I. Kershaw 1185
990 Wisconsin Hwy.
Bishopville, S.C. 29010

"Agency Mail"

Mr. Daniel F. Shearouse,
The Supreme Court of South Carolina
Clerk's Office,
P.O. Box 11330
Columbia, S.C. 29211

LEGAL MAIL ONLY

RECEIVED

JAN 08 2015

Dear, Mr. Shearouse

S.C. SUPREME COURT

I have sent this motion to be filed with the Supreme Court, please "note" that I have served the motion moving the ^{S.C.} Court of Appeals to Dismiss the Order Signed by Judge Gibbons on December 4th 2014, this error can not be rectified, therefore I request a new Trial be granted. A.S.H.P

P.S.

I'm not asking the Court to exonerate me. Just a new Trial, I will admit that I have been diligently working on this case, if I have not been wrongfully convicted what's the State ~~afraid~~ afraid of by giving me a new Trial, ~~thus~~ "thus" if I'm found Guilty again I'll get more time right. So let's rock n roll...

Grant a new Trial on the grounds of abuse of discretion. the fair thing to do.