

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
John C. Hayes, III, Cir. Ct. Judge

Case No. # 2015-00023

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SC SUPREME COURT

Tyrone Beaty

Petitioner

vs

State of South Carolina

Respondent

PETITIONER'S PRO-SE BRIEF

Appellate Defender
for Petitioner
Robert M. Pachala

Tyrone Beaty #191955
McCormick Corr. Inst.
Unit 1 - -
386 Redemption Way
McCormick, SC 29899

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QUESTION PRESENTED

Whether the PCR Court erred in ruling Petitioner did not prove prosecutorial misconduct when the prosecutor knowingly used perjured testimony, and had a deal with co-defendant Corey Smalls.

STATEMENT

For the record of this brief, the Petitioner agrees with his Appellate Defender's statement upon his Johnson petition for writ of certiorari

ARGUMENT

The PCR court erred in ruling Petitioner did not prove prosecutorial misconduct, when the prosecutor knowing used perjured testimony and had a deal with co-defendant Corey Smalls. During PCR hearing Petitioner testified that the prosecutor knowing used perjured testimony SEE: App 683 L19 - L21. Thus, by the State's calling co-defendant Corey Smalls to testify against Petitioner where Mr. Smalls had a deal with the State - to testify that Petitioner was the triggerman in Miles Gray's murder SEE:

App.p 680 L18 - p 681 - L9.

Cory Smalls corroborated Petitioner's testimony, when Smalls testified, that the solicitor coerced him into lying on Petitioner to get a deal. And he looked forward to having this deal but they lied to him. But now he felt bad about this lie and wanted to clear the water. Because of the fact it was on his conscience, that he sent Petitioner to prison for 34 years over something he did not do SEE:

App.p 689 L15 - p 691 - L12. Also see APP.P

697 L3 - L11.

Mr. Smalls testified that he never

told his attorney that the solicitor coerced him into testifying because the solicitor and his attorney was working together SEE:

App 697 L 15 - L 25.

that he was coerced - manipulated SEE:

App 694 L 19 - L 23; Also see App p 689 L 15 -

p 691 - L 12; App 697 - L 3 - L 11.

MR. Smalls testified that he sent two letters Petitioner's mama recanting his testimony against Petitioner. (1) SEE: App. 686 L 2 - L 15. Here, MR. Smalls denied

(1) The order of dismissal is in error on page 5 of 7 /

App 726 when it states that Smalls testified he sent two letters to the State wanting to recant his testimony.

writing a letter to the solicitor who prosecuted Petitioner, claiming Petitioner threatened him. When shown what purported was the letter Mr. Smalls said it was not his handwriting and it was not notarized. Mr. Smalls testified that he has all of his letters notarized SEE: App. p 701 L1 - p 702 - L1.

Here, the state still tried to offer this letter into evidence but the PCR Judge ruled the letter inadmissible, as it had not been authenticated and in fact been denied by Smalls to be his work product.

Heather von Herrman testified that she was the solicitor that prosecuted the murder case against Petitioner and his three co-

defendants, one of whom was Corey Smalls.

Although she denied ever offering Mr. Smalls any deal, she admitted that Mr. Smalls and his atty; Mr. Hazard came to her, willing to enter into that plea agreement. But she did not know what the discussion was between Mr. Hazard and Mr. Smalls. SEE: App. p 703 L 17 - p 705 - L 2. But in her mind there was no doubt that the story Mr. Smalls had told at trial was what had taken place. It was backed up by other witnesses. It was backed up by the forensic evidence as well.

But Petitioner's atty; Mr. Scott Bellamy

testified that there was no forensic evidence directly linking Petitioner to the scene SEE: App.p 712 L 21 - p 713 - L 4, and that was part of defence p 713 L 4 - L 6. Also see p 713 L 25 - p 714 - L 7

And there was a significant delay, almost five years from the arrest of trial. The case just kind of sat there. W.S. von Herrmann cut him a deal. I say cut a deal "his codefendants turned on him, gave statements implicating him. Some of the initial statements were that he didn't have anything to do with it SEE: App.p 713 L 12 - L 24."

Mr. Bellamy also testified that Petitioner was adamant that he was not the one that shot him SEE: App.p 714 L 21 - L 22

Here, Solicitor testified that what she told Mr. Smalls, is the same thing that she tell every defendant who ever entered into a proffer agreement that this - If you cooperate and testify consistent with the statement(s) that you have given us then we will make the judge aware of your level of cooperation
SEE: App. p 708 L 1 - L 13.

Here, Mr. Smalls not only testified against Petitioner, Mr. Smalls was also a witness in another trial that this solicitor had. She was the same solicitor at Mr. Small plea
SEE: App. p 708 L 19 - L 23.

Here Mr. Smalls' testimony was credible throughout Petitioner's R.R. that Petitioner

was not the trigger man, that he had a deal with the solicitor, and that he understood the consequence of recanting his testimony. Because he want to get saved - cleaning out his closet - trying to get rid of skeletons.
SEE: App. p 694 L 24 - p 695 - L 17.

Petitioner argues that Mr. Smalls testimony shows that the prosecutor knowingly used perjured testimony, and there was in fact a deal in exchange for his testimony against Petitioner as the trial record and PCR record reflect - a proffer agreement for Mr. Smalls was in fact allowed to plea to armed robbery and was sentenced

to 19 years SEE: App.p 690 L10 - L12.
rather than murder SEE: App.p 708 L
22 - p 709 - L3. Here, this proffer
agreement surely constituted a deal.

The Petitioner argues that Mr. Smalls
false testimony affected the outcome of
his trial SEE: App.p 699 L18 - L23. Also
see Gibson v State 5145 E2d 320. Here,
the solicitor deliberately deceived the
court and jurors by presentation of Mr.
Smalls known false testimony. Moreover,
Petitioner argue that the solicitor allowed
Mr. Smalls testimony to go uncorrected
SEE: Washington v State 4785 E2d 833
which has denied Petitioner due process
SEE: Davis v Alaska 945 Ct. 1105. Chambers v

Mississippi 40 U.S. 284; Crane & Kentucky 416 U.S. 693, and
per the 14th Amend. to the S.C. and U.S.

Const. (S). Here, the solicitor deliberately
compromised the integrity of the fact
finding and truth seeking process by
offering Mr. Smalls a deal in exchange
for his testimony against Petitioner.

And further this testimony by the
prosecutor was knowing perjured testimony.

CONCLUSION

Based on the foregoing arguments, counsel's
motion to relieve as Petitioner's counsel,
should be denied. Thereby, counsel should
be ordered to fully brief his issues(s), and
Petitioner's arguments upon his pro-se brief.
Further, Petitioner is entitled to new trial
where the PCR court erred in ruling Petitioner
did not prove prosecutorial misconduct, based
on the above arguments.

Date 5-21-2015

Respectfully submitted
/s/ Tyrone Beatty

(13)

AFFIDAVIT OF SERVICE

I Tyrone BEATY hereby certify that I have served my pro-se brief upon the below Hon. Sup. Ct. Clerk. By placing the above said into the MC, C.T. mail on this 2nd day of May 15 to be placed in the U.S. mail with postage prepaid the Hon. Supreme Ct.

MR. Daniel E. Shearouse
P.O. Box 11330
Columbia SC 29211

SUBSCRIBED to before me of Tyrone BEATY
this 2nd day of May, 2015

Penny G. Morder
Notary Public

my Commission Expires Feb 28, 2018

The Supreme Ct. of S.C.
Mr. Daniel E. Shearouse, Clerk
P.O. BOX 11330
Columbia SC 29211
Date 5-21-15

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Dear Mr. Clerk Shearouse

Please find enclosed for filing my
pro-se brief.

Would you be so kind as to return
me back a filed copy.

Thanking you in advance, I am

Sincerely
Tyrone BEATY

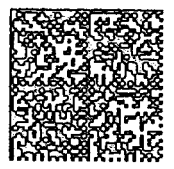


Mr. Tyra Beatty

191955 / MGC-I / Unit 1-193-A

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