STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUN 24 2015
S.C. SUPREME COURT

Certiorari To Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Maurice Graves, Petitioner

vs.

State of South Carolina, Respondent

Explanation Why Lower Court Determination Was Improper

Maurice Graves, #208580
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

ISSUES PRESENTED

1. Did the PCR court erred by dismissing Petitioner's successive application under newly-discovered evidence pursuant to South Carolina Code §17-27-45(C) when Petitioner made many attempts to retrieve all materials from the state, when the state lost Petitioner's entire record in which was retrieve by the Sumter County Clerk of Courts in 2014, holding Petitioner accountable for their mishandling of the record in which all records revealed a Brady violation occurred in which prove Petitioner's innocence.

2. Was the PCR court in error for failing to vacate all 2010 pcr orders and 2014 conditional order that was signed by the Honorable Jeffrey Young who presided over both cases, in which the lower court was aware that it was a potential conflict of interest because Petitioner was represented by the brother of the Honorable Jeffrey Young which is Kenneth Young (Counsel) in Petitioner's second pcr stage.

STATEMENT OF THE CASE

Petitioner Maurice Graves was indicted by the Sumter County Grand Jury during the November 1993 term of the Sumter County Court of General Sessions for one count of Murder and one count of Strong Arm Robbery. (93-GS-43-875). On December 13, 1993, Petitioner case proceeded before the Honorable David F. McInnis for trial. Jordan White (Counsel) represented Petitioner, while James Stoddard represented (Casey Stuckey), and Arthur Wilder represented (Cedric Williams). Deborah T. Nielsen, Mark Russell represented the state.

The Court heard many pretrial motions including brady motions during pretrial. See: Transcript pg. 1-54. After the motions in limine were heard and ruled upon, Petitioner plead guilty to voluntary manslaughter and strong arm robbery. See: Tr. pg. 1-122. Pursuant to a recommended sentence by the state prior to Petitioner's guilty plea, Judge McInnis sentence Petitioner to twenty years confinement. See: Tr. pg. 76, 121-22. Petitioner did not appeal.

On March 23, 1994, Petitioner filed his first PCR application (1994-cp-43-177), asserting claims of ineffective assistance of counsel, he plead guilty unknowingly, unwillingly, and involuntarily; and violation of constitutional rights. Specifically, Petitioner asserted that his attorney was ineffecting for advising him to plead guilty to the crime of manslaughter where the evidence introduced to the court clearly showed that Petitioner was innocent of such crime. The PCR court found that although trial counsel did

not do sufficient preparation to go to trial, there was no evidence to indicate that Petitioner ever sought a jury trial in this case or that he denied his involvement in the crime. The PCR court found that the crux of the dispute in this case was whether or not Petitioner was actually holding on to the victim physically and preventing him from getting free from the automobile before the collision which killed him. Although there was conflicting testimony on that point, the pcr court found that the conflicts and testimony have been resolved in favor of Petitioner by the state's decision to accept a plea for manslaughter rather than murder.

On February 16, 2000, Petitioner filed his second PCR application of ineffective assistance of trial and pcr conselor and his PCR attorney did not appeal Judge's Cooper decision stemming from his 1994 PCR application. An evidentiary hearing was convened on November 27, 2001 before the Honorable Howard P. King, Circuit Judge advising Petitioner that the one year statute of limitations had already expired, leaving Petitioner to withdraw his PCR application.

On May 21, 2010, Petitioner filed an third application asserting claims of ineffective assistance of counsel. Specifically, Petitioner requested an Austin review of the denial of relief from his first PCR action. On September 7. 2011, The Honorable Jeffrey Young signed the amended final order thating, "The PCR court found that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute

and for being successive". See: 2010 Amended Order

On April 14, 2014, Petitioner filed his forth PCR application raising newly-discovered evidence pursuant to 17-27-45(C), Brady violation, and actual innocence. The PCR court isssued a conditional order on July 18, 2014 signed by the Honorable Jeffrey Young. On February 12, 2015, the PCR court issued a final order signed by the Honorable R. Ferrell Cothran, Jr. and Amended order signed by the Honorable Judge Cothran on April 24, 2015. This petition follows.

ARGUMENT

Did the PCR court erred by dismissing Petitioner's successive application under newly-discovered evidence pursuant to South Carolina Code §17-27-45(C) when Petitionr made many attempt to retrieve all materials from the state, when the state lost Petitioner's entire 1994 record in which was retrieve by the Sumter County Clerk of Court in 2014, holding Petitioner accontable for their mishandling of the record in which all records revealed a Brady violation occurred in which proves Petitioner's innocence.

The PCR court reversibly erred when it summarily dismissed Petitioner's PCR application. Although Petitioner had filed several previous PCR application, the present claim was specifically premised on newly-discovered evidence: namely, Eyewitness Franklin White's 2013 affidavit and Illeterate Witness Charlie Wright's forge statement. Thus, the PCR court's finding under Section 17-27-45(A) of the South Carolina Code was erroneous. Moreover, the court's finding that Petitioner could have included the present claim in his first PCR application is likewise erroneous.

RELEVANT FACTS

Petitioner filed his first federal habeas corpus application challenging his 1993 voluntary manslaughter conviction on October 14, 2013. See: No. 1:13-2866-JFA-SVH. On pg. 4 of 63 of the Respondent's summary judgment motion, the respondent states in a footnote that:

> Respondent would note that there is no transcript of the evidentiary hearing to this first pcr action. Our records reflect that the Office of the South Carolina Attorney General's file for that action has been missing since at least 2006. Our office contacted the Sumter County Clerk

of Court regarding their file for this pcr action, and we were able to obtain a copy of the plea hearing transcript and the filed documents from the clerk's file. See: **Exhibit # 1** (pg. 4 of 63 of Summary Judgment Motion by the respondent).

Petitioner's position is the respondent are correct that their office and the Sumter Clerk of Court indeed lost Petitioner's first 1994 pcr files, however; the record will show that the respondent lost Petitioner's file well before 2006. However, Petitioner's "2000" State's Return never establish a successive nature in their motion, but only a one year statute of limitation argument pursuant to §17-27-45(A). See: **Exhibit #2** (2000 return). The suport this argument of facts, the Sumter County Third Judicial Circuit Public Index reveals a 1994 PCR application didn't exist in 2000. See: **Exhibit #3** (2000 Public Index). On April 23, 2014 the Sumter County Third Judicial Public Index updated realing that the 1994 PCR ded existed for the first time on record. See: **Exhibit #4** (2014 Public Index)

Petitioner ask this Honorable Court to note that the record is undisputed that Petitioner made many attempts to retrieve the lost records of his 1994 entire files and it was impossible to discovered the existence of Charlie Wright's forge statement because it was never disclosed. See: Petitioner's many attempts to retrieve the record. See:

Exhibit #5 Petitioner's interrogatories to Respondent on July 18, 1994

Exhibit #6 Request for Production on November 21, 1994

Exhibit #7 Request for Admission

Exhibit #8 Motion to Compel to Interrogatories on May 23, 1995

The fact of the matter is the motion to compel stemming from Petitioner's 1994 PCR application was never addressed leaving Petitioner disclose from critical evidence to prove his case and innocence.

In 2009 Petitioner wrote the Sumter County Clerk of Court office requesting for his entire file stemming from his 1994 PCR, Sumter County stated that **no** 1994 PCR existed. See: **Exhibit #9** (stating no 1994 pcr records existed). Once Petitioner was truly aware that the 1994 records was lost by the courts, Petitioner then wrote over several different agencies trying to locate the lost records. See:

Exhibit #10 letter from SLED stating their office doesn't keep pcr files on September 13, 2010

Exhibit #11 Letter from Petitioner's 1994 PCR Attorney David C. Holler stating he don't have records on April 6, 2010

Exhibit #12 Petitioner's interrogatories to the court for all 1994 records on September 14, 2011 that went unanswered

Exhibit #13 Petitioner's request for admission on September 14, 2011

Exhibit #14 Letter to Sumter Solicitor Office Dated September 18, 2013

Exhibit #15 Letter to Coronor's Office Dated October 31, 2013

Exhibit #16 Letter from Sumter Sheriff's Department providing limited reports not including statements,

In 2014, Petitioner filed a complaint against the solicitor Rober Daniel Corney for perjury for stating that no 1994 PCR existed. See: **Exhibit #17** (Letter from office of Disciplinary Counsel).

Petitioner's position, once he received the "Answer" from the Respondent following from his federal habeas petition, Petitioner discovered there was no evidence that he ever came in physical contact with the victim, only a statement from a illiterate witness who had the statement forge for him, stating, "the victim was being held by person in backseat", in which that statement was never disclosed to Petitioner. See: **Exhibit #18** (Charlie Wright's illiterate forge statement) and **Exhibit #19** (Petitioner's Affidavit).

In Footman v. Singletary, 978 F.2d 1207, 1212 (11th Cir. 1992) (This court stated that the fate of the motion after Footman file it was in the hands of the state court. Once Footman filed the motion in state court, the state court had responsibility for making the motion a part of the record and maintaining a copy of it. We will not require a habeas corpus Petitioner, particular one proceeding pro se in state court, to maintain copies of state court post conviction motions in case the state loses them).

A. The PCR court's finding that Petitioner's case should be summarily dismissed under Section 17-27-45(A) of the South Carolina Code was erroneous...

The PCR court's finding that Petitioner's claim "Should be dismissed because [Petitioner] has failed to comply with the filing procedures of the Uniform Post Conviction Procedures Act" was in error. The PCR court specifically cited Section 17-27-45(A) of the

South Carolina Code in support of this finding. See: Conditional Order, Final Order, Amended Order. Yet, the timeliness requirements of Section 17-27-45(A) apply generally to a first PCR application, not later PCR applications on the basis of newly-discovered evidence. The timeliness requirements for filing a successive PCR application pursuant to newly-discovered evidence are specifically governed by Section 17-27-45(C) of the South Carolina Code. See: McCoy v. State, 737 S.E.2d 623 (2013); Jamison v. State, 765 S.E.2d 123 (2014). Thus, the PCR court erred as a matter of law by finding Section 17-27-45(A) applied to Petitioner's present PCR action.

B. The PCR court's finding that Petitioner could have raised the grounds in his first PCR Action was erroneous.

The PCR court erroneously found that Petitioner "could have raised the new grounds for relief in his prior post-coviction application". See: Conditional Order, Final Order, and Amended Order. Applicant guilty plea was on December 13, 1993. His first PCR application was filed on March 21, 1994. An evidentiary hearing was held on August 28, 1995. And the order of dismissal was filed by the first PCR court on October 25, 1995. The background regarding Charlie Wright forge statement became aware to Petitioner was on June 12, 2014. See: **Exhibit #19** (Petitioner's Affidavit). As such this evidence was discovered well after Petitioner's first, second, and third PCR action. Accordingly, the PCR court's finding that Petitioner could have raised the new grounds for relief

in the prior PCR applications was erroneous, asit is not supported by the record.

SUPPORTING FACTS

On June 12, 2014, Petitioner received the Respondent's "Answer" stemming from Petitioner's federal habeas corpus action. In the respondent "answer", the record reveals the state exhibit form sheet stemming from the evidence that was submitted at the 1995 PCR and Charlie Wright's illiterate statement. See: **Exhibit #20** (1995 Exhibit form) The Exhibit form clearly shows that three people in the second vehicle, was actually four; which was Charlie Wright. The record reflects that its undisputed that Charlie Wright's statement was never disclosed leaving it impossible for Petitioner to raise his newly-discovered clam in his prior PCR application.

The PCR court may grant a motion by either party for summary disposition of the [PCR] application when...there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. code 17-27-70(c). When considering the state's motion for summary dismissal, where no evidentiary has been held, the PCR court judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. See: Leamon v. State, 611 S.E.2d 494, 495 (225)(citing 17-27-80). Where an Applicant alleges facts that would

establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. See: Delaney v. State, 238 S.E.2d 679, 679 (1977).

In this case, the PCR court was in error for not conducting a hearing based on the facts that Petitioner never knew Charlie Wright existed is overwhelming and can not be refuted by the record. See: **Exhibit #20** (1995 Exhibit Form)

C. The PCR court's find that Charlie Wright statement and Franklin White's 2013 Affidavit does not amount to sufficient newly-discovered evidence was erroneous.

Petitioner alleged in his PCR application that his guilty plea was not made as a sound decision because of information that was witheld by the state regarding Charlie Wright's forge statement; in otherwords, his guilty plea was not knowingly, intelligently, or voluntarily made because it was without knowledge or information that the only evidence that arrested and prosecuted Petitioner was from a statement from a illiterate person by the name of Charlie Wright in which was never disclosed. This information constituted newly-discovered Brady evidence in a guilty plea context.

RELEVANT FACTS

The PCR court stated in its 2015 final order that, "Applicant's

newly discovered evidence claim does not sufficiently or clearly present a "rare case" requiring a vacation in the interest of justice. First, Wright's statement neither exonerates nor inculpates Petitioner. In his statement, Mr. Wright does not identify any of the individuals in the car dragging the victim. Mr. Wright only notes that he observed the vehicle that was dragging the victim, and that the victim was held by the person in the backseat of the vehicle while another attempted to get something from the victim. Second, Applicant alleges that Charlie Wright's statement was forged because Mr. Wright acknowledged that he could not read or write. However, Applicant presents no evidence to show that the statement was not what Mr. Wright told law enforcement. Finally, Applicant has failed to show how this statement could not have been discovered through the exercise of due diligence. See: Amended Final Order pg. 3 of 4.

Petitioner's contends the PCR court was in error that Charlie Wright's statement doesn't inculpates him when Charlie Wright's statement was the only evidence that arrested and prosecuted Petitioner. See:

Exhibit #21 Arrest warrant that states victim was being held

Exhibit #22 Uniform Traffic Accident Report C-760194 reveals information identical to Charlie Wright's statement,

Exhibit #23 Supplemental Incident Report is identical to Charlie Wright's statement,

Exhibit #24 Reprot 93039458 which states identical to Charlie Wright's forge statement say

Exhibit #25 Case Summary Report is identical to the statement that was forge for Charlie Wright.

At the trial level, the court ask the state their theory of the case and it states as follows.. See: Trial Tr. pg..80-81

The Court: Wait a minute. Before we go, what's the state's theory? Who did what in this, just preliminary.

Mr. Russell: Your honor. Mr. Ced--It would be proven that Mr. Cedric Williams was driving the car. Mr. Graves was in the back seat of the car. Mr. Stuckey was in the front seat of the car.

They approached Mr. Wilson on the street corner, walking down the street, and they asked for change for a $100 bill. Mr. Wilson produced money. We--produced money.

They grabbed him. One was trying to take the money, one was grabbing him or holding on to him or a combination or Mr. Wilson was holding on and being held on to the car.

We have an eye-witness that they traveled through two stops and at least five hundred feet disregarding all stop signs and running into an intersection in which Mrs. Wright was just driving along on her right-a-way and Mr. Wilson in between the two cars.

In this case the PCR court was in error for noting that Charlie Wright's statement didn't inculpate him when the evidence of the record is overwhelming that Charlie Wright's statement arrested and prosecuted Petitioner. The PCR court also erred that Charlie Wright's statement wasen't forged. Charlie Wright statement was written and witness by the investigators of the case. The law is well settled that law enforcement can not be the sole witness of a statement being written for a illiterate witness or that statement would be deemed as forged.

Finally, the PCR court was in error for stating, "Applicant has failed to show how this statement could not have been dis-

covered through the exercise of due diligence", when the record is crystal clear that Petitioner made every attempt possible to retrieve all statement and records of this case.

In this case at bar, Petitioner asserted his guilty plea was made without knowledge of material evidence regarding Charlie Wright. A Brady claim is based on requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. See: Gibson v. State, 514 S.E.2d 320, 324 (1999).

In this case, outsid of the brady violation, the record is crystal clear that Petitione never came in physical contact with the victim because Petitioner was on the left side of vehicle behind the driver, and victim was on right side of vehicle. See:

evidence that supports Petioner actual innocence

Exhibit #26 Petitioner's statement that he was on left side of vehicle behind driver

Exhibit #27 Eyewitness Franklin White 1993 and 2013 Affidavit that Petitioner was on left side of vehicle

Exhibit #28 Sled Latent Print reports states Petitioner never came in physical contact

Exhibit #29 Sled DNA proves Petitioner was on left side during accident

Exhibit #30 Autopsy Report reveals on small abrasions on foot and only a needle mark in arm

Exhibit #31 Eyewitness Ruth Wright, Melissa Fickens, and Barbara Fickens stated they had only a second to react.

Petitioner also providing this court with a guilty plea

questionare that states, "Petitioner plead guilty for evidence of a robbery". See: **Exhibit #32** (Guilty plea questionare pg. 3)

This case is undisputed that Petitioner never came in physical contact with the victim and that Charlie Wright's statement was never disclosed to Petitioner. See: **Exhibit #20** (1995 Exhibit form). Finally, this court should remand this case for a evidentiary hearing to correct unjust so a "grave miscarriage of justice" can become vanishly rare.

ARGUMENT

Was the PCR court in error for failing to vacate all 2010 PCR orders and 2014 conditional orders that was signed by the Honorable Jeffrey Young who presided over both cases, in which the PCR court was aware that it was a potential conflict of interest because Petitioner was represented by the brother of the Honorable Jeffrey Young which is Kenneth Young (counsel) in Petitioner's second PCR stage.

RELEVANT FACTS

The Honorable Jeffrey Young, Third Circuit Judge and Attorney Kenneth Young were both partners of the Firm "Young and Young" in Sumter County when Kenneth Young (counsel) represented Petitioner at the "2000" pcr stage.

The Honorabl Jeffrey Young also presided over Petitionerr's entire 2010 pcr proceeding that Petitioner held Kennth Young accontable for misleading information stemming from his "2000" PCR and partial of Petitioner's 2014 PCR proceeding by signing off on a conditional order.

After consulting with fellow Inmate Torey Green, Petitioner and Torey Green discovered that the Honorable Jeffrey Young was

the brother of Kenneth Young (counsel). Torey Green and Petitioner both were aware that they both had Kenneth Young as counsel and immediately notify the courts of this potential conflict of interest. On October 15, 2014, The Honorable Kenneth Young vacated Green's conflict and ignore Petitioner's conflict by signing another judge to the case to sign off on final orders. See: Petitioners 2010 and 2014 orders, also see: **Exhibit #33** (Green conditional order being vactated by Judge Young).

Federal statute calling upon any judicial officer of the United States to qualify himself in any proceeding in which his impartiality might reasonably be questioned provides broader grounds for recusal than federal statute requiring recusal of judge when there is person bias or prejudice; statute requires recusal not only when there is actual partiality; but also when there is even appearance of partiality. U.S. v. El-Gabrowny, 844 F.Supp. 955 (S.D. N.Y. 1994). Judge whose attorney nephew appeared before him, was require to disqualify himself from deciding motion to disqualify nephew's law firm, therefore; motion would be referred to clerk for reassignment to another judge. USX Corp. V. TIECO, inc., 929 F.Supp. 1460 (W.D. Ala. 1996). If alleged partiality of a judge stems from source other than judicial proceeding, such as former partnership with counsel representing one of the parties, judge must recuse himself if reasonable person, knowing all the facts, would harbor doubts concerning judge's impartiality. LLoyds v. Orgt energy Co., 944 F.Supp 566 (S.D. Tex. 1996)...

EQUAL PROTECTION

When fundamental rights are involved, the Equal Protection Clause of the fourteenth Amendment requires that there be "uniform" and "specific" standards to prevent the arbitrary and disparate treatment of similarly people. Bush v. Gore, 531 U.S. 98, 106 (2000). Bush v. Gore, was not the first time a court has held that a system in which government officials had unbounded discretion was unconstitutional. The Supreme Court and federal appellate courts have found violations of the Fourteenth Amendment when governments and governmental agencies have unlimited discretion to select among qualified applicants for licenses and government be-- nefits. Those courts reasoned that allowing governmental decision makers to make these choices without any uniform standards allowed an intolerable amount of arbitrariness. Although these cases have not been widely followed, they provide further persuasive backing for the Equal Protection holding in Bush and for the necessity of some restraint of prosecutorial discretion in the South Carolina's system.

Conclusion

For all the reason Petitioner has stated, this case should be remanded to the lower court for a full evidentiary hearing.

Sincerely,

Maurice Graves

June 16, 2015

To: The Supreme Court of South Carolina
Daniel E. Sherouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

From: Maurice Graves #208580
Lee Corr. Inst.
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Maurice Graves vs. State of S.C. (Explanation Why Lower Court Determination was Improper)

Date: June 17, 2015

Dear: Clerk of Court,

Please note that Petitioner received a letter from this office from the Institutional Mailroom on June 9, 2015 to "Explain why lower court determination was improper"

Therefore, Petitioner is now providing his explaination Pursuant to SCACR 243(c).

Sincerely,

Maurice Graves

MAURICE GRAVES #208580
LEE Corr. Inst. F-5 C #123
990 Wisacky Hwy.
Bishopville, SC 29010

The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
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