

The State of South Carolina
In the Courts of Appeals
In the Supreme Court

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JUL 29 2015

Appeal from Lee County
Court of Common Pleas
Case No. 2014 CP 31-100148

S.C. SUPREME COURT

State of South Carolina Respondent

Robbie Collins v. Appellant

Proof of Service

I certify that I have served the Notice of Appeal on Alan Wilson by depositing a copy of it in the United States Mail postage prepaid, on July 20, 2015, addressed to the Attorney General Alan Wilson at Rembert C. Dennis Bldg, P.O. Box 11549, Columbia, S.C. 29211.

July 20, 2015

In the Supreme Court
of South Carolina

Robbie Collins
Petitioner

Memorandum of law
in Support of Rule 243(c)

CA: 2015-000996

2014-CP-31-00148

✓
State of South Carolina

Petitioner argues that a statute of limitations does not bar a claim of Extrinsic Fraud. The Court determined that a statute of limitations purporting to Bar all actions to set aside a judgment would not limit a court's inherent authority to set aside a Judgment for Extrinsic Fraud (Robinson v. Estate of Harris 529 S.E.2d 717) The Courts have a longstanding policy towards final judgments and that "important benefits are achieved by the preservation of final Judgment but A court must balance the interest of finality against the need to provide a fair and Just Resolution of the dispute (Chewning 579 S.E.2d at 609) In "Chewning" the courts held "The Subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute Extrinsic fraud. (Id. 579 S.E.2d at 610". Petitioner argues that these laws apply to this Court as well, "however, our holding in Chewning does not limit the finding of extrinsic fraud to misconduct of an attorney or an officer of the Court. As we noted in "Evans", fraud upon the court has been defined as "that species of fraud which does or attempts to, Subvert the integrity of the Court, itself, or is a fraud perpetrated by officers of the Court so that the Judicial machinery cannot perform in the usual manner its impartial task of

adjudging cases that are presented for adjudication (Evans v. Guntter 366 S.E.2d 44)

Petitioner argues that at PCR hearing Trial Counsel knowingly committed Extrinsic fraud. At PCR hearing Trial Counsel testified to, "There are certain things that me and Robbie discussed that I could not put him on the Stand and Say, did you do this, with him answering So, I didn't, with me knowing from my Conversations with him that it wasn't True" (PCR Tr. pg 52, l. 1-5). Petitioner argues that Trial Counsel knowingly committed Extrinsic Fraud, testifying that petitioner had told him that he committed the Crime (PCR Tr. pg 52 l. 1-5). The State argues that petitioner is procedurally barred. Although one may reach this result under a hyper-technical analysis, Petitioner argues such a conclusion must be rejected in the present case because due to Trial Counsel and Post-Conviction Relief Counsel Fraud upon the Court, Petitioner argues that he did not receive due process at his initial collateral Review. "The United States Supreme Court in Giglio v. United States 92 S.Ct. 763, stated that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of Justice, the same results obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears" (Washington v. State 478 S.E.2d 833). The state argues that, "as long as it was possible to raise argument in first post-conviction relief application, applicant may not raise it in successive application." (Aire) Petitioner argues that "as with most broad rules, there have been exceptions. See, e.g. (Case v. State 277 S.C. 474) (unique combination of facts warranted allowing successive application)

The Courts rely on "Aice" but Aice doesn't answer the question of, when Trial Counsel and Post Conviction Counsel committed Extrinsic Fraud upon the court by giving perjured testimony and Concealing documents by an official of the Court. "Extrinsic Fraud being defined as a fraud, in collateral or external to the matter tried. (Evans v. Gunter, 294 S.C. 523)" "doctrines of res judicata and collateral estoppel do not bar collateral attack of a Judgment based on fraud." (Gunter Supra) Petitioner argues that the doctrines of res Judicata and Collateral estoppel do not bar his attack of the Judgment based on fraud. The Courts held "The Complaints of a plaintiff must be liberally construed in favor of the pleader and Sustained if the facts alleged, and the inferences reasonably deducible therefrom, entitle plaintiffs to relief on any theory of the case, even though different from that on which they may have supposed themselves entitled to recover." Springfield v. Williams Plumbing Supply Co. 153 S.E. 2d 184"

Rule 60(b) provides in part... On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:... (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the Judgment should have prospective application (emphasis added)

Rule 60(b) provides the motion shall be made within a reasonable time and for Subsections (1), (2), and (3) of the rule, not more than one year after the Judgment was entered. Subsection (5) is notably not limited by the one year provision, but only that of a reasonable time. The rule further provides it "does not limit the power of a court to entertain an independen

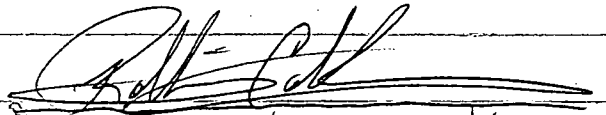
dent action to relieve a party from a Judgment, order or proceeding, or to set aside a judgment for fraud upon the Court. "Again, there is no specific time limit. Fraud upon the has been defined as "that species of fraud which does, or attempts to, Subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the Judicial machinery cannot perform in the usual manner it's impartial task of adjudging cases that are presented for adjudication." (South Carolina Civil Procedure, 408, By trial counsel intentionally committing perjury and PCR counsel concealing documents from the Courts amounts to Extensive fraud under Rule 60(b).

Attached is the Statement that PCR Counsel concealed from the Courts, When Trial Counsel testified at Post-Conviction Relief hearing Stating Petitioner "Committed the Crime and told Trial Counsel" PCR Counsel withheld this document that would of Proved Trial Counsel was intentionally committing Perjury which is Fraud Upon the Court. Post-Conviction Relief Counsel put Petitioner back on the Stand at hearing and Petitioner testified that he never told Trial Counsel he Killed anybody and that petitioner always maintained his innocence. After hearing Post Conviction Relief Sent Petitioner a copy of the Statement she withheld from the courts. Had ~~that~~ PCR Counsel used this Statement at the hearing then it would of Showed the Courts Trial Counsel was intentionally committing fraud upon the Courts.

Conclusion

That the final Judgment of the PCR hearing
Be Reversed and Petitioner Be Remanded for a
New Trial,

July 24, 2015



Robbre Collins 290946
L.C.T. P.O. Box 205
Ridgeville S.C. 29472



Tuesday June 07, 2005

Certified Mail

Attorney Charlie Jay Johnson, Jr.
1634 Main St. Ste 95
Columbia, SC 29211

Dear Attorney Johnson Jr:

Please find enclosed a unsigned copy of Mr. Robbie Collins statement. I will get Mr. Collins to sign and give him his copy hopefully on Tuesday June 14, 2005. Mr. Collins has indicated to me that he would be willing to plea to Accessory After The Fact because he did not shoot the victim but he did help hide the gun.

If at all possible I would like to return to obtain the following on Monday June 13, 2005 and visit with Mr. Robbie Collins on Tuesday June 14, 2005.

1. A complete copy of the written statements of each person interviewed.
2. Copy of all search warrants.
3. All SLED Laboratory reports: Ballistic and Latent
4. Coroners Report
5. SLED crime scene report.
6. Color photographs of everything photographed.
7. Color photographs of the photo line ups.
8. Be able to examine all physical evidence
9. Shown were the gun was found. (Mr. Collins stated it was found on his property and a search warrant was not obtained.)

Sincerely,

Phillip Young
Private Investigator - SLED # 2297

P.O. Box 754 Road Chapin, SC 29036
Telephone: 803-960-3976 Fax: 803-920-1358
Email: pyoung@carolina-forensic.com Website: <http://www.carolina-forensic.com>
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STATEMENT FORM

I, _____, _____, do declare and say that I am making this statement
(First Name) (Last Name)
at _____ in _____, _____, and that the facts contained
(Address of Location) (City) (State)
herein are within my personal knowledge and if called upon to testify as a witness I could and would competently testify to the following:

1. On August 23, 2004 between 6:00pm and 7:00pm (it was dark) we were standing on Jamestown
2. Road and Mr. Jumal Prescott (Boomer) pulled up in a tan vehicle with an Escort right behind him.
3. Mr. Prescott got out of vehicle and went over to the driver side window of Mr. Tieron Parks vehicle
4. (2004 Black Malibu). He told Mr. Parks that he had a person that wanted to purchase two ounces
5. of "coke." Mr. Prescott went over to the passenger side of the Escort and the passenger got out and
6. and went over to Mr. Parks' vehicle and got in on the passenger side of Mr. Parks vehicle. At this
7. time all of us were pretty much surrounding Mr. Parks' vehicle. Mr. Parks pulled the product
8. from his groin area and gave it to the passenger to exam. The passenger examined the product and
9. tasted it. The passenger got into a verbal disagreement with Mr. Parks regarding the quality. The
10. passenger then threw it into Mr. Parks' lap. Mr. Parks jumped out of his vehicle in a rage and
11. stated that he would fuck him up. The passenger got out of the vehicle and got back into the front
12. passenger side of the Escort. The Escort pulled off. Mr. Parks was still cursing and swearing and
13. and got back into his vehicle and pulled his vehicle near an abandon club. Mr. Jumal Prescott and
14. Mr. Tieron Parks got into the Ford Escape. Mr. Prescott was the driver and Mr. Tieron Parks was
15. the passenger. They headed behind the Escort. I saw them turn behind the Escort onto Salem

I have read the foregoing statement consisting of _____ full pages and _____
handwritten lines and I declare under penalty of perjury pursuant to the laws of the State of South
Carolina that it is true and correct. Executed this _____ day of _____ (Month),
_____, at _____ (city, state). X-----X

Signed:  Date: June 14, 2005

Sworn to and subscribed before Phillip T. Young
This _____ day of _____ 20____
Notary Public for South Carolina
My Commission Expires: April 01, 2015

Signature: _____

STATEMENT FORM

I, _____, _____, do declare and say that I am making this statement
(First Name) (Last Name)
at _____ in _____, _____, and that the facts contained
(Address of Location) (City) (State)
herein are within my personal knowledge and if called upon to testify as a witness I could and would
competently testify to the following:

16. Church Road. After that I did not see them. I had a crack head name "Dot" take me home in her
17. gray Buick Olds. When I got home I took a shower and got something to eat. I then called my
18. girlfriend Shel in Georgia. I called her from my mother's cellphone and she call me back on the
19. house phone. I talked to her for about 45 minutes. I then walked back up Jamestown Road near
20. the old Wayside Club. No one was there so I walked back home and stayed there the rest of the
21. night. At about 12:00pm August 24, 2004, I walked up the street to Mr. Antwan Myers house and
22. found Mr. Myers, Quinton Davis and Tieron Parks sitting inside a car. I started to get into the
23. back of the passenger side of this vehicle. They told me to get out that they were talking about
24. something. I got out and sat on an old abandon Honda. They drove off and then came back. I
25. guess circled the block because they were not gone very long. They got out of the vehicle and Mr.
26. Myers went straight into the house. Mr. Davis, Mr. Parks and myself stayed outside and smoked
27. marijuana for about five minutes when Mr. Myers returned. He came out carrying a shoe with a
28. bag wrapped up inside the shoe. He asked me to take it to my house and stash it for him. I got
29. into the car with Mr. Myers and we went to my mother's house. I asked him what's going on as
30. we were driving towards my mother's house. He said some crazy shit went down last night. He

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Carolina that it is true and correct. Executed this _____ day of _____ (Month),
_____ at _____ (city, state). X-----X

Signed:  Date: _____

Sworn to and subscribed before Phillip T. Young
This _____ day of _____ 20____
Notary Public for South Carolina
My Commission Expires: April 01, 2015


Signature: _____

STATEMENT FORM

I, _____, _____, do declare and say that I am making this statement
(First Name) (Last Name)
at _____ in _____, _____, and that the facts contained
(Address of Location) (City) (State)
herein are within my personal knowledge and if called upon to testify as a witness I could and would competently testify to the following:

41. He asked me to just stash it for him and he would come back and get it later. I stashed the gun for
42. him in the woods. Mr. Myers saw were I put the gun. I got back into the car and went back up to
43. Mr. Myers house. We got back up there and started chilling with Mr. Parks and Mr. Quinton
44. Davis. Mr. Tieron Parks asked Mr. Davis to ride with him. While they were gone Mr. Prescott
45. called Mr. Myers on his cellphone and they talked about 2 to 3 minutes. I asked Mr. Prescott what
46. they talked about and he stated that Mr. Prescott's crazy ass wanted to no where Mr. Tieron Parks
47. was at. About an hour later Mr. Tieron Parks returned and dropped Mr. Davis off. Mr. Davis
48. stated they went to Bethune to the victim's house and that Mr. Tieron Parks was related to the
49. victim. Mr. Tieron Parks later returned and stated that the people in Bethune said Delvin must
50. have done something to those boys in Egypt to cause it. Mr. Parks stated he was going to
51. Columbia. He dropped seven cookies off to Mr. Myers to hold until he came back. I asked Mr.
52. Parks to let me ride with him. He stated he was only going to be gone for a minute. He gave Mr.
53. Myers the dope and left. I can't remember where Mr. Davis went. The next thing that happen the
54. police came. They stated that the investigator downtown wanted to ask me some questions. I
55. asked for what? They stated they did not know but ask them to see if they could get me to come

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handwritten lines and I declare under penalty of perjury pursuant to the laws of the State of South
Carolina that it is true and correct. Executed this _____ day of _____ (Month),
_____, at _____ (city, state). X-----X

Signed:  Date: _____

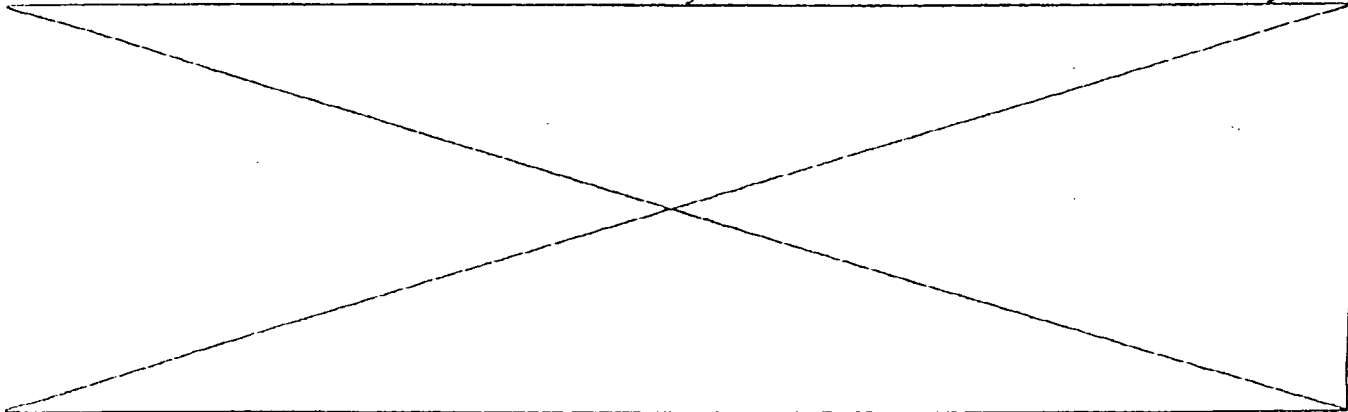
Sworn to and subscribed before **Phillip T. Young**
This _____ day of _____ 20____
Notary Public for South Carolina
My Commission Expires: **April 01, 2015**

Signature: _____


STATEMENT FORM

I, _____, _____ do declare and say that I am making this statement
(First Name) (Last Name)
at _____ in _____, _____, and that the facts contained
(Address of Location) (City) (State)
herein are within my personal knowledge and if called upon to testify as a witness I could and would
competently testify to the following:

57. down. I asked if he was going to bring me back. I went downtown. They put me in a room.
58. Daniel Simon and JD stated before they could talk to me they needed me to sign a paper. I signed
59. it. They asked if I knew anything about the murder. I told them I did not know anything that I
60. was at home. They yelled at me and tried there scare tactics. They then left me alone in the room
61. for about 15 minutes. They then came and got me and stood me up in the hallway. They brought
62. Mr. Prescott into the hallway and told us to look at each other and not to say anything. We stood
63. there about a minute. They then took me back into the room and told me that Mr. Prescott said I
64. was the shooter. I told them that he was lying and then tried to leave. They restrained me and put
65. an officer on the door and in about two hours they came with the warrant. I was then taken to jail.



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Carolina that it is true and correct. Executed this _____ day of _____ (Month),
_____ at _____ (city, state). X-----X

Signed:  Date: _____

Sworn to and subscribed before **Phillip T. Young**
This _____ day of _____ 20____
Notary Public for South Carolina
My Commission Expires: **April 01, 2015**

Signature: _____

Robbie Collins 290946

P.O. Box 205

Ridgewell S.C. 29472

AS 49

inter-agency

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JUL 24 2015

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The Supreme Court
of South Carolina
P.O. Box 1135D
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