

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2014-002270

RECEIVED

AUG 27 2015

KEVIN C. BRADLEY, 339031,

PETITIONER,

S.C. SUPREME COURT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

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Petitioner, acting through PCR Counsel, would offer the following in Reply to certain points made by Respondent in the State's Return. With regard to all other issues, Petitioner relies on the arguments and authorities presented in his Petition for Writ of Certiorari previously filed with this Honorable Court.

ARGUMENT

I

(a)

Respondent references a note, attributed to the Victim, which was read to the Court during Petitioner's plea proceeding. Return pg. 7, citing to App. p. 9, ll. 6-14. This statement, even if accurate, merely confirmed that the Victim claimed to have had sex with Petitioner. Even if taken on face value, this statement did not establish the crucial question of when the "sex" took place. Interestingly, the State persisted in dating the alleged "sex" to have occurred when the Victim became pregnant despite the fact that the State conceded that it had been established through a paternity test that Petitioner *was not* the biological father of the Victim's child. App. p. 8, ll. 18-23. The State informed the Court that Petitioner "was either seventeen or eighteen" when his sexual relationship with the Victim took place. App. p. 9, ll. 18-21. The records before the Court indicate that in 2008 when the Victim was evaluated by DJJ she was fifteen (15) years old. At that time her child was between one (1) and two (2) years of age. App. p. 8, ll. 1-7. Petitioner was born on July 17, 2007. The Indictment against him for Second Degree Criminal Sexual Conduct with a Minor alleged he had sex with this girl between "October 1, 2006 and October 1, 2007". Petitioner would not have turned eighteen (18) until July 17, 2007. There was no information before the Court establishing when Petitioner supposedly had sex with this Victim. If, as the State asserted, she was fifteen in 2008, then logic dictates that for at least part of 2007 she was *over* fourteen (14) years old. We know that until

July 17, 2007, Petitioner was seventeen (17) years old. In any event we know that Petitioner would not have turned nineteen (19) until July 17, 2008. This date falls outside the time period alleged in Petitioner's indictment. Therefore, pursuant to S. C. Code Ann. § 26-3-655 (B) (2) Petitioner could not have been guilty of Second Degree Criminal Sexual Conduct with a Minor if the alleged "sex" was consensual and took place after the Victim's birthday in 2007, but before Petitioner turned eighteen on July 17, 2007, inasmuch as her statement, read at the time of Petitioner's plea, clearly indicates that whatever "sex" she had with Petitioner was consensual. App. p. 9, ll. 6-14.

(b)

Respondent asserts that, "Plea Counsel stated that the results of the paternity test did not negate the fact that both victim and victim's mother believed that Petitioner was the father of her child. (App. p. 71 lines 14-p. 73 line 3). Nor does the paternity test impeach the victim's assertion that she had sex with Petitioner. (App. p. 77 lines 7-8)" Return, pg. 8. Respondent's assertion only serves to punctuate Petitioner's assertion that Plea Counsel had a conflict of interest in this case. His testimony highlights that he took at face value Victim's claim that she initially believed Petitioner to be the father of her baby. His PCR testimony confirms that he never even considered the possibility that this young girl may have accused Petitioner of fathering her baby in order to protect the true father from prosecution. As for Victim's mother, Plea Counsel's PCR testimony confirms that she named Petitioner as the possible father of her daughter's baby purely because he had been visiting her during the time when the baby was conceived. App. p. 71, l. 14-p. 72, l. 22. Once again, Plea Counsel's logic is flawed on two levels; first he, like the State, assumed that the "sex" alleged to have occurred between Petitioner and Victim had to have occurred when she was thirteen because she believed Petitioner may

have fathered her child, and second, he assumed that the “sex” had to have happened when Petitioner was a visitor at her mother’s home. The first faulty assumption fails to take into account the possibility that the young girl lied to protect the true father of the child, and the second, totally overlooks the very real probability that the friendship that existed during Petitioner’s visits to her home may have developed, *at a later date*, into a sexual relationship not conducted under the mother’s roof.

(c)

Respondent totally ignores the fact that Plea Counsel represented the Victim shortly before this time period, and that it is therefore, likely that he would have been able to contact her back at the time of Petitioner’s plea. App. p. 57, l. 21- p. 61, l. 4. PCR Counsel, as an Officer of the Court, advised the Court that she had tried unsuccessfully to locate Victim as a witness for this PCR hearing. Therefore, Plea Counsel could have interviewed Victim and chose not to. PCR Counsel exercised due diligence in trying to produce Victim as a witness for the PCR hearing held in Petitioner’s case. Due to the passage of time, PCR Counsel was unable to locate this witness. Therefore, Petitioner did not simply elect not to produce this witness as part of his offer of proof during his PCR hearing, he was unable to do so because her present whereabouts could not be discovered by PCR Counsel. App. p. 141, l. 20- p. 142, l. 18. PCR Counsel became aware during the PCR hearing that Plea Counsel had file materials in his file which PCR Counsel had previously been told he could not locate. The record in this matter was held open for ten (10) days for Plea Counsel to attempt to contact Victim at that address. PCR Counsel was unable to communicate with Victim at that address¹ and consequently, nothing further was submitted to the Court.

¹ PCR Counsel has recently been contacted by Victim, who no longer lives at the address located in Plea Counsel’s file. She has agreed to be interviewed by PCR Counsel and indicated that she wishes to be heard in this matter. PCR Counsel intends to interview this witness as soon as possible and will file any appropriate motion thereafter.

II

(a)

Respondent's Return indicates that this issue is misperceived by the State. Petitioner's allegation on this point goes to the fact that Plea Counsel failed to advise Petitioner that a successful direct appeal from the judgments and sentences entered at his previous jury trial on unrelated charges, would in no way impact the judgment and sentence entered in this case pursuant to a plea. In other words, although Petitioner perceived the two cases to be intertwined because of the threatened consequences if he did not accept the deal on the current case, he was never warned that if he were to successfully appeal the judgments and sentences from his jury trial, that ruling would provide him no relief from the judgment and sentence entered pursuant to his plea on this unrelated indictment. Thus, Petitioner did not assert that it was Plea Counsel's duty to inform Petitioner concerning his direct appeal rights in connection with the jury trial at which Petitioner was represented by separate counsel.

IV

Contrary to the assertions of Respondent, Petitioner never admitted having sex with Victim. He tried to tell the Court he was not guilty on this charge. Threatened with a life sentence, he entered an involuntary guilty plea. His own Plea Counsel acknowledged in his PCR testimony that Petitioner never admitted guilt of this charge. App. p. 105, ll. 5-16.

CONCLUSION

Based upon the reasons and authorities set forth in his Petition for Writ of Certiorari, as well as those presented herein, the Petitioner asks that the Writ be issued and that the Petitioner be afforded the opportunity to submit a full appellate briefing on the issues summarized in the Petition and Reply filed in this PCR appeal. Alternatively, he would ask that this Honorable Court dispense with further briefing and grant him a new trial.

Respectfully submitted,


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ATTORNEY FOR PETITIONER

This ^{24th} day of August, 2015.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2014-002270

KEVIN C. BRADLEY, 339031,

PETITIONER,

v.

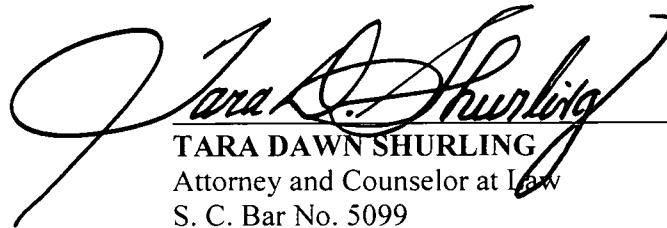
THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

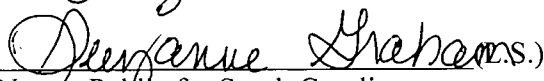
The undersigned attorney hereby certifies that a copy of the Reply to the State's Return to Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, this 24th day of August, 2015, by mailing one (1) copy in a stamped envelope properly addressed to:

Daniel Gourley, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211


TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 24th day
of August, 2015.


Notary Public for South Carolina
My Commission Expires: 2/28/24

LAW OFFICE OF



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August 24, 2015

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AUG 27 2015

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Kevin C. Bradley, 339031 v. State of South Carolina.
Appellate Case No. 2014-002270.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to State's Return to Petition for Writ of Certiorari and my Certificate of Service in the above-captioned case. I would appreciate your clocking and returning the extra two (2) copies of the Reply in the envelope provided. Thank you for your assistance in this matter. I remain,

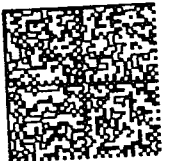
Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
Enclosures

cc: Daniel Gourley, Assistant Attorney General (w/enclosures)
Kevin C. Bradley, 339031 (w/enclosures)



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The Honorable Daniel E. Shearouse
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