

-1597

WORK COPY



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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

June 17, 2003

REMITTITUR

RECEIVED

OCT 16 2015

SC Court of Appeals

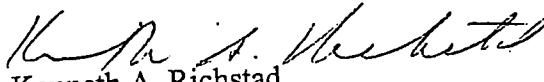
The Honorable Thomas H. Comerford
139 E. Main Street, Rm 107
Lexington, SC 29072-3456

Re: The State v. Williams, James C.
2000-GS-32-00688

Dear Mr. Comerford:

Enclosed is the Remittitur in the above entitled matter. A copy of this letter is being sent to all counsel.

Sincerely,


Kenneth A. Richstad
CLERK

KAR/fd

cc: Assistant Appellate Defender Robert M. Dudek
James C. Williams # 282929
Assistant Deputy Attorney General Donald J. Zelenka
Donald V. Myers, Esquire

ATTORNEY GENERAL'S OFFICE
RECEIVED 6-17-03
ADMINISTRATIVE INSTRUCTIONS
FILE _____ OPEN _____ END _____
DATE _____ COPIES MADE _____
ROUTE TO _____
ORDER: _____ TRANSCRIPT _____
PEN RECORDS _____ CLERK RECORDS _____
OTHER: _____

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

CERTIORARI TO LEXINGTON COUNTY · APR. 20 2006

JAMES W. JOHNSON, JR., CIRCUIT COURT JUDGE
S.C. SUPREME COURT

JAMES C. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR PETITIONER.

INDEX

INDEX	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT.....	4
CONCLUSION	5
PETITION TO BE RELIEVED AS COUNSEL.....	6

ISSUE PRESENTED

Whether petitioner's guilty plea complied with the mandates set forth in Boykin v.
Alabama?

STATEMENT

On May 21, 2002, petitioner appeared before the Honorable Marc H. Westbrook in Lexington County and pled guilty to murder. A thirty- (30) year sentence was imposed. William F. Gorski, Esquire was plea counsel.

After an unsuccessful appeal pursuant to Anders v. California, 386 U.S. 738 (1967), petitioner filed an application for post-conviction relief on May 21, 2003.

On June 27, 2005, an evidentiary hearing was held before the Honorable James W. Johnson, Jr. Petitioner was present and was represented by Robert N. Boorda, Esquire. Respondent was represented by Sabrina C. Todd and David Spencer, Assistant Attorney Generals. Petitioner testified in his own behalf and he called William Gorski to testify.

On August 1, 2005, Judge Johnson issued an order denying and dismissing the application.

This petition follows:

ARGUMENT

Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

The record in this case indicates the trial court failed to do so.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of April, 2006.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
JAMES W. JOHNSON, JR., CIRCUIT COURT JUDGE

JAMES C. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

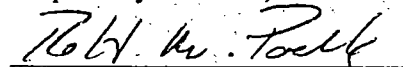
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James C. Williams states:

1. He is Assistant Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 27, 2005. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for James C. Williams.

Respectfully submitted,



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of April, 2006

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
JAMES W. JOHNSON, JR., CIRCUIT COURT JUDGE

JAMES C. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

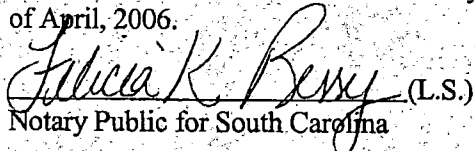
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Sabrina Todd, Esquire, and James C. Williams, #282929, Lieber Correctional Institution, this 20th day of April, 2006.



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of April, 2006.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL TO LEXINGTON COUNTY
Court of Common Pleas

Honorable James W. Johnson, Circuit Court Judge

Case No. 2003-CP-32-1863

James Chester Williams #282929,.....Petitioner, pro se,

v.

State of South Carolina,.....Respondent.

PETITION FOR WRIT OF CERTIORARI

RECEIVED

FEB 15 2006

S.C. SUPREME COURT

Petitioner, pro se,

James Chester Williams #282929
Lieber Corr.Inst. CB-10
Post Office Box 205
Ridgeville, South Carolina
29472+0205

Other Counsel of Record:

Sabrina C. Todd
S.C. Attorney General's Office
Dennis Bldg., Box 11549
Columbia, South Carolina
29211+1549

Attorney for Respondent.

Robert N. Boorda, Esq.
Attorney at Law
16 Meadowmist Court
Columbia, South Carolina
29229

Attorney for Petitioner.

STATEMENT OF CASE

Petitioner was indicted at the January, 2000 term of the Lexington County Grand Jury for murder, indictment 2000-GS-32-689 and possession of a weapon during the commission of a violent crime, indictment 2000-GS-32-688. Petitioner was represented by William F. Gorski, Esq. On March 21, 2002 the Petitioner pled guilty to murder. The possession of a weapon during a violent crime charge was dismissed in exchange for Petitioner's guilty plea. The Honorable Mark H. Westbrook sentenced the Petitioner to confinement for a period of thirty(30) years with the South Carolina Department of Corrections.

The Petitioner appealed and was represented on appeal by Robert M. Dudek. After a review pursuant to Anders v. California, 386 U.S. 738(1967), the South Carolina Court of Appeals dismissed the appeal, State v. Williams, Op. No. 03-UP-329(decided May 15, 2003). The remittitur was issued on June 17, 2003.

Petitioner then filed a Post-Conviction Relief Application on May 21, 2003. In his application, Petitioner alleges his trial counsel was ineffective by not being prepared for trial due to his failure to do an adequate investigation of the facts of this case. Petitioner alleges his trial counsel failed to:

- 1). Obtain the red skirt the victim was wearing at the time of the incident. Petitioner alleges that had counsel obtained this red skirt, he could have shown the jury that the skirt had gun powder residue on it which would show that the victim was holding the gun when the gun went off.

2). The gun in this case is a 16 gauge shotgun. The trigger guard had been cut off thereby exposing the shotgun to being easily discharged by accident or inadvertence. This fact goes along with the Petitioner's contention the shotgun went off accidentally during a struggle with the victim over the shotgun.

Petitioner's trial counsel failed to file a Rule 5, SCRCrimP, Brady Motion to obtain evidence that would lead him to present a plausible defense that the shooting was a result of an accident due to a struggle with the victim over the shotgun. Nor did the prosecutor offer any forensic evidence concerning gun powder residue on the victim's skirt which would also indicate the shotgun went off accidentally. "The petitioner was denied due process of law by the State's suppression of evidence before his trial began. The proceeding must commence again from the stage at which the petitioner was overreached. The denial of due process of law vitiated the verdict and the sentence. Rogers v. Richmond, 365 U.S. 534, 545, 81 S.Ct. 735, 5 L.Ed.2d 760. The verdict is not saved because of other competent evidence would support it. Columbe v. Connecticut, 367 U.S. 568, 621, 81 S.Ct. 1860, 6 L.Ed.2d 1037."

The overriding concern in cases such as this one is the Petitioner's right to a fair trial. "One of the most basic elements of fairness in a criminal trial is that available evidence tending to show innocence, as well as that tending to show guilt, be fully aired before the jury; more particularly, it is that the State in its zeal to convict a defendant not suppress evidence that might exonerate him. See Moore v. Illinois, 408 U.S. 786, 810

92 S.Ct. 2562, 2575, 33 L.Ed.2d 706(1972)(opinion of Marshall, J.). This fundamental notion of fairness does not pose any irreconcilable conflict for the prosecutor, for as the Court reminds us, the prosecutor "must always be faithful to his client's overriding interest that 'justice shall be done.'" No interest of the State is served, and no duty of the prosecutor advanced, by the suppression of evidence favorable to the defendant. On the contrary, the prosecutor fulfills his most basic responsibility when he fully airs all relevant evidence at his command. United States v. Agurs, 96 S.Ct. at 2403(1976).

Had trial counsel filed a Rule 5, SCRCrimP, Brady Motion, to obtain the red skirt the victim was wearing at the time of the shooting, the Petitioner would have elected to proceed to trial instead of pleading guilty. Also, had the prosecutor disclosed to the defense any forensic gun shot residue evidence on the red skirt, the Petitioner would have elected to go to trial instead of pleading guilty. The non-disclosed evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. This standard of materiality is sufficiently flexible to cover cases of prosecutorial failure to disclose evidence favorable to the defense regardless of whether the defense makes no request, a general request, or a specific request. Although the prosecutor's failure to respond fully to a specific request may impair the adversary process by having the effect of representing to the defense that

certain evidence does not exist, this possibility of impairment does not necessitate a different standard of materiality. Under the standard stated above, the reviewing court may consider directly evidence any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case. United States v. Bagley, 105 S.Ct. 3375(1985).

Prosecutor's duty to disclose evidence favorable to the defense does not absolve the defendant's attorney's duty to do a reasonable investigation of the facts of the case. In Dove v. State, 337 S.C. 298, 523 S.E.2d 459(S.C.1999), the Supreme Court ruled that petitioner's counsel was ineffective for failing to obtain records to use in his defense. That Court said; "Petitioner was prejudiced because he was unable to present important and relevant evidence supporting his assertion that his wife committed suicide. For example, petitioner could have used the medical records to challenge the testimony of the mother that her daughter never had suicidal thoughts. The State's case consisted entirely of circumstantial evidence and, while the State's theory was plausible, petitioner's suicide theory also was plausible."emphasis added. The Court went on to say, "The point is that she may have wanted to end her life, for whatever reason, and petitioner did not have a chance to introduce relevant and material evidence of those suicidal tendencies." As in Dove, the Petitioner in this case was not able to present relevant and important evidence that the shooting was an accident

because his attorney failed to obtain any reports concerning gun powder residue tests on the red skirt the victim was wearing at the time of the shooting. If Petitioner's attorney had obtained the report and it stated the skirt did have gun powder residue on it, the theory that the victim was holding the shotgun would be plausible because, if the victim was holding the shotgun, surely at least a trace of gun powder residue would have gotten on her skirt.

Also see the SLED Forensics Services Laboratory Report on the Petitioner's clothing. This report states that samples were taken from Petitioner's shoes, socks, pants and shirt and tested for DNA, blood and gun powder residue. All tests came back negative. This would also bolster the Petitioner's theory that the victim was holding the shotgun when it discharged. Petitioner's attorney could have easily built a plausible defense with this report that the victim was holding the shotgun when it discharged.

3). Petitioner's attorney also failed to obtain statements from several witnesses including, Petitioner's brother and daughter. Any attorney that is concerned with his client's best interests knows that he has to interview and obtain statements from any potential witnesses that could possibly testify in his client's favor. Need for defense counsel to conduct pretrial investigation increases with seriousness of offense and gravity of punishment. Jones v. Jones, 988 F.Supp. 1000(E.D.La.1997). Ineffectiveness of counsel is clear if attorney fails to investigate plausible line of defense or interview available witnesses; these can hardly be considered strategic choices since counsel by his failure has not

obtained facts upon which such tactical decisions could be reasonably made. Nealy v. Cabana, 764 F.2d 1173(5thCir.1985), Bryant v. Scott, 28 F.3d 1411(5thCir.1994); Profitt v. Waldron, 831 F.2d 1245(5thCir. 1987); United States v. Gray, 878 F.2d 702 (3rdCir.1989).

Petitioner also alleges his guilty plea was not entered knowingly and voluntarily.

"The Fourteenth Amendment Due Process Clause requires that a plea of guilty be knowingly and voluntarily entered because it involves a waiver of a number of the defendant's rights." Gaddy v. Linahan, 780 F.2d 935, 943(11th Cir.1986). A plea of guilty "cannot support a judgement of guilt unless it was voluntary in a constitutional sense." Henderson v. Morgan, 426 U.S. 637,644-45, 96 S.Ct. 2253,2257, 49 L.Ed.2d 108(1976).

Aside from the obvious involuntariness of a coerced plea, the Supreme Court has identified two other ways that a defendant's guilty plea may be involuntary in a constitutional sense: A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving, see, e.g., Johnson v. Zerbst, 304 U.S. 458,464-465, 58 S.Ct. 1019,1023, 82 L.Ed. 1461[(1938)], or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in this latter sense. Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572, 85 L.Ed. 859[(1941)].

Henderson, 426 U.S. at 645 n.13, 96 S.Ct. at 2257 n.13. As the Supreme Court has plainly instructed, the voluntariness requirement is not satisfied unless the defendant receives real notice of the nature of the true nature of the charged crime: "[C]learly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" Id. at 645, 96 S.Ct. 2257-58 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 574, 85 L.Ed. 359 (1941)).

A defendant does not receive "real notice" of the charge when he has been informed of both the nature of the charge to which he is pleading and its elements. This is so because a plea of guilty represents, in essence, an admission as to each and every element of the offense. In addition, the defendant should understand how his conduct satisfies those elements. *Gaddy*, 780 F.2d at 943-44. See also *Stano v. Dugger*, 921 F.2d 1125, 1142 (11th Cir. 1991) (en banc) (recognizing that, prior to entering a guilty plea, a defendant must receive information on the "nature of the offense and the elements of the crime"). "At the very least, due process requires that the defendant, prior to tendering a plea of guilty, receive a description of the 'critical elements' of the charged offense...." *Gaddy*, 780 F.2d at 945.

The record makes clear during the colloquy of the judge and the Petitioner during his guilty plea hearing that the judge did not inform the Petitioner of the nature of the offense or the

elements the State would have to prove beyond a reasonable doubt. The following colloquy took place between the judge and the Petitioner:

EXAMINATION BY THE COURT

Q. THANK YOU. MR. WILLIAMS, I UNDERSTAND THAT YOU WISH TO PLEAD GUILTY TO A CHARGE OF MURDER. IS THAT CORRECT?

A. YES SIR.

Q. DO YOU UNDERSTAND THAT ON A CONVICTION OF MURDER THAT YOU COULD GET AS MUCH AS A LIFE SENTENCE BUT AT LEAST 30 YEARS?

A. YES, SIR.

Q. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND ON THIS CHARGE DO YOU UNDERSTAND WHAT THE STATE ALLEGES THAT YOU'VE DONE TO HAVE BEEN CHARGED WITH MURDER?

A. YES, SIR.

Q. OKAY. IN FACT, DO YOU UNDERSTAND THEY ALLEGE THAT ON SEPTEMBER 15, 1999, THAT YOU SHOT ONE KATHY ARETHA WILLIAMS AND THAT SHE DIED AS A RESULT OF SHOOTING? DO YOU UNDERSTAND THAT THAT'S WHAT THEY CHARGE YOU WITH DOING?

A. YES, SIR.

Q. OKAY. NOW, DO YOU UNDERSTAND THAT YOU DON'T HAVE TO PLEAD GUILTY? YOU HAVE A RIGHT TO PLEAD NOT GUILTY. IF YOU PLEAD NOT GUILTY, YOU WOULD HAVE A JURY TRIAL. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND, IN FACT, YOU UNDERSTAND THAT THERE IS A JURY WAITING RIGHT NOW AND YOU WOULD BE AVAILABLE -- YOU WOULD BE ABLE TO HAVE YOUR JURY TRIAL STARTING IN JUST A LITTLE WHILE? DO YOU UNDERSTAND THAT?

A. YES, SIR. ROA p.31 L.23, p.32.

The trial judge went on to make a vague statement about the trial process itself but at no time did the trial judge inform the Petitioner about the elements of murder and what the State would be required to prove beyond a reasonable doubt. Nor did the trial judge ask the Petitioner if his counsel had informed him of the elements of murder and that the State would have to prove each and every element of murder. Reviewing the record with a practical eye, there is no evidence the trial judge or the Petitioner's counsel informed him what the elements of murder are, or, what the State would be required to prove beyond a reasonable doubt. The record makes clear the Petitioner was not informed about the elements of the offense to which he pleaded guilty. In U.S. v. Brown, 117 F.3d 471(11th Cir.1997), that court stated; "In view of the undisputed facts and the Supreme Court's subsequent decision in Ratzlaf v. United States, 510 U.S. 135, 136-37, 114 S.Ct. 655, 657, 126 L.Ed.2d 615(1994), it is clear that Brown was not informed of the "true nature of the charge against him," Smith, 312 U.S. at 334, 61 S.Ct. at 574. Instead, he was affirmatively misinformed about a "'critical element[]" of the charged offense," Gaddy, 780 F.2d at 945, and that misinformation caused him to plead guilty." It necessarily follows that the Petitioner's guilty plea was involuntarily and not knowingly made in the constitutional sense.

Respectfully submitted,

James C. Williams
Petitioner pro se,

James C. Williams #282929
Lieber Corr.Inst. CB-10
Post Office Box 205
(9) Ridgeville, South Carolina
29472-0205

CERTIFICATE OF SERVICE

I, James C. Williams #282929, do hereby certify that on this 10th day of February 2006, I did deposit in the United States Mail at the Lieber Corr. Inst. mailroom, one(1) original and one(1) true copy of my PETITION FOR WRIT OF CERTIORARI to the below listed individual(s) at their last known address as follows:

Hon. Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina
29211-1330

Henry D. McMaster
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina
29211-1549

Respectfully submitted,

James C. Williams
James C. Williams #282929
Lieber Corr. Inst. CB-10
Post Office Box 205
Ridgeville, South Carolina
29472-0205

SWORN to and subscribed to before me

on this 13 day of Feb., 2006.

Yvette Blom
My commission expires on: 8/2/06

The South Carolina Court of Appeals

James C. Williams,

Petitioner

v.

State of South Carolina,

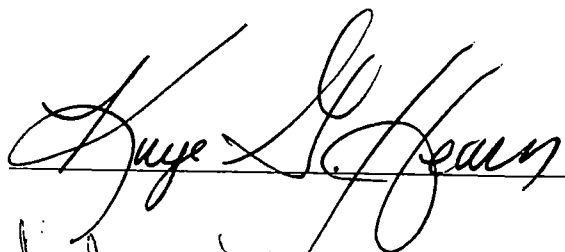
Respondent

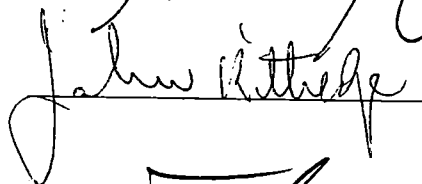
ORDER

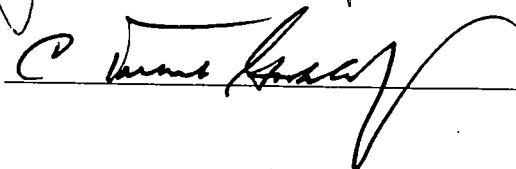
This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner filed a pro se response.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

 _____, C.J.

 _____, J.

 _____, J.

Columbia, South Carolina

September 21, 2007

FILED

9/21/07



1111-120
#5 Rem 12

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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

October 10, 2007

REMITTITUR

The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: Williams, James Chester v. State
2003-CP-32-1863

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

A handwritten signature in cursive script that reads "V. Claire Allen".

DEPUTY CLERK

cc: Assistant Appellate Defender Robert M. Pachak
James C. Williams, #282929
Assistant Attorney General Sabrina C. Todd

#7

SCL

AUG 21 2008

LS

2008CP3203561

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

In the Court of Common Pleas

County of LEXington

2008 AUG 27 A 10:32

KULE. 59-E

James Chester Williams

Full name and prison number (if any) of Applicant

vs.

State of South Carolina

Name of Respondent.

CLERK OF COURT
LEXINGTON SC

NEWLY DISCOVERED EVIDENCE

APPLICATION FOR

POST-CONVICTION RELIEF

SUCCESSIVE P.C.R.

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Inst P.O. Box 205
Ridgerville South Carolina 29472
2. Name and location of Court which imposed sentence General Sessions
LEXington County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2000-BS-32-689. Murder
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) March 21, 2002
(b) 30 year Sentence
(c) _____

Approved
Judge

5. Check whether a finding of guilty was made

(a) after a plea of guilty

yes

(b) after a plea of not guilty

N/A

(c) after a plea of nolo contendere

N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i.

The S.C. Court of Appeal

ii.

The S.C. Supreme Court

iii.

(b) the result in each such Court to which you appealed:

i.

Appellate Counsel filed Anders brief

ii.

The S.C. Supreme Court denied Writ of Certiorari

iii.

(c) the date of each such result:

i.

Final Anders brief filed November 1, 2002

Dismiss May 15, 2003

ii.

Writ of Certiorari Denied 9/21/07

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i.

ii.

iii.

N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

(b)

(c)

N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a)

(b)

(c)

INEffective Assistance of Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a)

(b)

(c)

Rule 11, Defendant argues that his guilty plea did comply with the mandates set forth in Boykin v. Alabama

See Attach →

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? N/A
- (c) your sentencing? N/A
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Sally J. Henny, Lexington County Public Defender
2060 E. main St, Lexington
- ii. William F. Gorski
205 W. main St Lexington S.C. 29102
- iii. Robert M. Duder Assistant Appellate Defender
S.C. office of appellate defense Columbia S.C. 29201

(b) the proceedings at which each such attorney represented you:

- i. arraignment
- ii. trial / guilty plea / sentencing
- iii. Anders brief on appeal

18. State clearly the relief you seek in filing this application.

A new trial and my release.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

Lexington

2008CP320356

VERIFICATION

SCANNED
ORIGINAL

I, James C. Williams, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James C. Williams

SWORN to and subscribed before me this 19th

day of

August

2008

Chandra L. Walker (L.S.)

Notary Public

My Commission Expires:

4/4/2017

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2008 AUG 27 A 10:32

FILED

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

James C. Williams
Applicant

2008CP3203561

SWORN or affirmed to and subscribed before me this

19th day of August 2008

Chandra L. Walker
Notary Public

My Commission Expires

4/4/2017

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2008 AUG 27 A 10:32

FILED

①

SCANNED

ORIGINAL LS

Argument

2008CP3203561

Counsel Was Ineffective of Counsel, because allowed, and ~~coerce~~ the petitioner into pleading to a Charge that the petitioner never understood. The petitioner argues that the Court never advised him of his constitutional right

petitioner argues that his guilty plea should be set aside because it had been accepted in violation of (Rule 11) of the Federal Rule of Criminal Procedure.

petitioner contended ① that the State Court had accepted his plea without first addressing (him) personally and determining that the plea was made voluntarily with understanding of the nature of the charge.

FILED
2008 AUG 27
BETH A. SANDRIG
CLERK OF COURT
LEXINGTON, SC

②

- ② That the Court had entered a judgment with determining that there was a factual basis for the plea.

The process of Law requires that before a guilty plea can be entered voluntarily and intelligently a defendant must be advised of his privilege against compulsory self incrimination, the right to trial by a jury, and the right to confront one's accusers, a waiver of these rights cannot be presumed from a silent record

(Rule 11) is designed to assist the judges in making the constitutionally required determination that a defendant's guilty plea is truly voluntary, second the rule is intended to produce a complete record at the time the plea is entered of the factors relevant to this voluntary determination.

W

③

Counsel was Ineffective because the Counsel failed the petitioner on this level. Counsel should have objected to the Court failing to uphold his duty to fully remind the petitioner of his Constitutional right.

And because Counsel failed to uphold his duty in this area, according to Rule 11, and Due process of the Law. Counsel should be held accountable and find to be INEFFECTIVE ASSISTANCE of Counsel.

Respectfully
James C. Wulfe

#282979
Mr. James C. Williams
Wando - B-133

Lieber Correctional Inst

P.O. Box 215

Ridgeville S.C. 29472

ORIGINAL

FILED

LS

2008 AUG 27 A 10:32

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2008CP3203561

Ms. Beth Carrigg
Clerk of Court
205 E Main St
Lexington S.C. 29012-3456

Dear Clerk of Court I am filing
my post conviction application with this
Court, and I am requesting that you
clock it, docket it, and certify it, and
make it a copy, and please forward a stamped
copy back to me, that's why I have included
a self address stamped envelope. Thank you
very much. James C. Williams

#8

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
James C. Williams, #282929)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2008-CP-32-3561

RETURN AND MOTION TO DISMISS

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 27, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2000 term of the Lexington County Grand Jury for murder (00-GS-32-689). William F. Gorski, Esquire, represented him. On March 21, 2002, the Applicant pled guilty as charged. The Honorable Mark H. Westbrook sentenced the Applicant to confinement for a period of thirty (30) years.

The Applicant appealed. Robert Dudek, Esquire, represented the Applicant on appeal. After a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal, State v. Williams, Op. No. 03-UP-329 (decided May 15, 2003). The Remittitur was issued on June 17, 2003.

First PCR Application (2003-CP-32-1863)

The Applicant subsequently filed an application for post-conviction relief to challenge his 2002 murder guilty plea. The Application was filed on May 21, 2003 and

the State made its Return on May 20, 2005. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel in that counsel failed to investigate or prepare Applicant=s case for trial.
2. Involuntary guilty plea due to trial counsel=s ineffective representation.
3. Applicant was not advised of community supervision.
4. Lack of subject matter jurisdiction; indictments defective.

An evidentiary hearing was held on June 27, 2005 at the Lexington County Courthouse. The Applicant was present and represented by Robert Boorda, Esquire. The honorable James W. Johnson denied and dismissed Applicant's application by written Order dated August 5, 2005.

The Applicant filed a pro se Notice of Appeal on or about November 23, 2005. Robert M. Pachak, Esquire, represented the applicant on appeal. Appellate counsel submitted a Johnson¹ Petition and a Petition to be Relieved as Counsel. By Order dated September 21, 2007, the South Carolina Court of Appeals denied the petition and granted counsel's request to withdraw. The Remittitur was issued on October 10, 2007.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea; and
2. There was no factual basis for the trial judge to accept the guilty plea.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant

bears the burden of showing that the allegations could not have been raised previously.
Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on March 21, 2002. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on May 15, 2003. This Application was filed on August 27, 2008, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes

the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

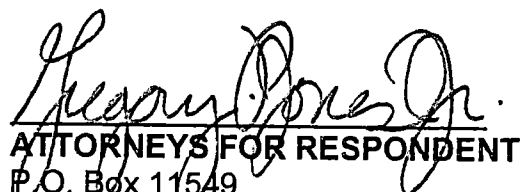
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

GREGORY P. JONES, JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

December 1, 2008.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Williams, #282929

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) FOR THE 11TH JUDICIAL CIRCUIT

) Case No.: 2008-CP-32-3561

) DOCS 10 A 8:25

) JETH A. CARRIGG
) CLERK OF COURT

) JTH/SC

) **CONDITIONAL ORDER OF DISMISSAL**

This matter comes to the court by way of an application for post conviction relief (PCR) filed August 27, 2008. Respondent made its return and motion to dismiss on December 2, 2008.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2000 term of the Lexington County Grand Jury for murder (00-GS-32-689). William F. Gorski, Esquire, represented him. On March 21, 2002, the Applicant pled guilty as charged. The Honorable Mark H. Westbrook sentenced the Applicant to confinement for a period of thirty (30) years.

The Applicant appealed. Robert Dudek, Esquire, represented the Applicant on appeal. After a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal, State v. Williams, Op. No. 03-UP-329 (decided May 15, 2003). The Remittitur was issued on June 17, 2003. ✓

First PCR Application (2003-CP-32-1863)

The Applicant subsequently filed an application for post-conviction relief to

Handwritten signature/initials

#9

challenge his 2002 murder guilty plea. The Application was filed on May 21, 2003 and the State made its Return on May 20, 2005. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel in that counsel failed to investigate or prepare Applicant's case for trial.
2. Involuntary guilty plea due to trial counsel's ineffective representation.
3. Applicant was not advised of community supervision.
4. Lack of subject matter jurisdiction; indictments defective.

An evidentiary hearing was held on June 27, 2005 at the Lexington County Courthouse. The Applicant was present and represented by Robert Boorda, Esquire. The honorable James W. Johnson denied and dismissed Applicant's application by written Order dated August 5, 2005.

The Applicant filed a pro se Notice of Appeal on or about November 23, 2005. Robert M. Pachak, Esquire, represented the applicant on appeal. Appellate counsel submitted a Johnson¹ Petition and a Petition to be Relieved as Counsel. By Order dated September 21, 2007, the South Carolina Court of Appeals denied the petition and granted counsel's request to withdraw. The Remittitur was issued on October 10, 2007.

Applicant's Current PCR Application

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea; and
2. There was no factual basis for the trial judge to accept the guilty plea.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

ALV

#9

Before this Court are the records of the Lexington County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's Application for Post-Conviction Relief dated August 27, 2008, and Respondent's Return to same.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant

[Handwritten signature]

#9
bears the burden of showing that the allegations could not have been raised previously.

Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

Statute of Limitations

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on March 21, 2002. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on May 15, 2003. This Application was filed on August 27, 2008, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the

119

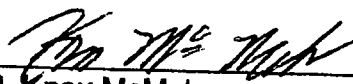
Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

II. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Lexington County Clerk of Court and shall serve opposing counsel at the following address:

Gregory P. Jones, Jr., Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED!



R. Knox McMahon
Chief Administrative Judge

 _____, South Carolina
 _____, 2008

#10
(2)
ORIGINAL
FILED

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

James C. Williams, #282929,)

Applicant,)

v.)

State of South Carolina.)

Respondent.)

IN THE COURT OF COMMON PLEAS

FOR THE 11TH JUDICIAL CIRCUIT

Case No.: 2008-CP-32-35612012/JAN 30 P 4: 01

DELA. CARRIGG
CLERK OF COURT
LEXINGTON SC

FINAL ORDER

2nd PCR

This matter comes before this Court by way of an Application for post-conviction relief (PCR) filed August 27, 2008. Respondent made its Return and Motion to Dismiss on or about December 2, 2008, requesting that the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed December 10, 2008, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is the acknowledgement of receipt form dated December 29, 2008, of the above-mentioned Conditional Order of Dismissal from the Applicant.

In a document captioned "Objections to Conditional Order of Dismissal," filed December 29, 2008, Applicant argues that his application should not be summarily dismissed based on the statute of limitations and doctrine of successiveness because he was incompetent at the time of his crime and guilty plea. The following documents were attached: "Amended Post Conviction Application" and "Notice and Motion to Withdraw Guilty Plea." On January 12, 2009, Applicant filed documents

AW

SCANNED

#12

The Supreme Court of South Carolina

James C. Williams, Petitioner,

v.

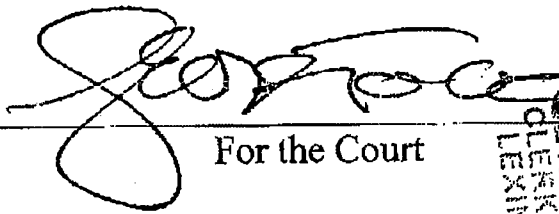
State of South Carolina, Respondent.

The Honorable R. Knox McMahon
Lexington County
Trial Court Case No. 2008-CP-32-03561

ORDER of DISMISSAL

In the explanation required by Rule 243(c), SCACR, petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

IT IS SO ORDERED.


For the Court

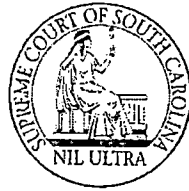
Columbia, South Carolina

April 20, 2012

cc: Appellate Defense
James C. Williams #282929
Assistant Attorney General Kaelon E. May

2012 MAY 17 PM 12:14
SETH A. CARRICO
CLERK OF COURT
LEXINGTON SC

FILED



13

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
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

May 16, 2012

Beth Carrigg
205 E Main St Ste 146
Lexington SC 29072-3557

REMITTITUR —

Re: James C. Williams v. The State
Lower Court Case No. 2008CP3203561
Appellate Case No. 2012-209487

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Kaelon Elizabeth May
James C. Williams, 00282929
Appellate Defense

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

James Chester Williams, #282929,	)	C/A No. 3:07-3714-GRA-JRM
	)	
Petitioner,	)	
	)	RETURN AND MEMORANDUM OF
v.	)	LAW IN SUPPORT OF MOTION
	)	FOR SUMMARY JUDGMENT
Jon Ozmint, Director, S.C. Dept. of	)	
Corrections; and Stan Burt,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, above-named, by and through the Attorney General of South Carolina, hereby makes Return to the Rule to Show Cause filed by the Honorable Joseph R. McCrorey, United States Magistrate Judge, dated November 26, 2007 to the Petition for Writ of Habeas Corpus filed November 3, 2007. The Respondent would show this Court the following:

PROCEDURAL HISTORY

The records before this Court reflect Petitioner is presently confined at the Lieber Correctional Institution in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the January 2000 term of the Lexington County Grand Jury for murder (00-GS-32-689) and possession of a weapon during the commission of a violent crime (00-GS-32-688). He was represented by William F. Gorski, Esquire. On March 18, 2002, Petitioner proceeded to trial. On March 21, 2002, Petitioner pled guilty to murder after a jury had been impaneled. The Honorable Mark H. Westbrook sentenced Petitioner to confinement for a period of thirty (30) years in keeping with the State's recommendation. The possession of a weapon charge was dismissed as part of the plea agreement.

#16

Motions

3:07-cv-03714-GRA-JRM Williams v. Ozmint et al

HABEAS, PRISONER

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered by Mabry, James on 2/19/2008 at 3:56 PM EST and filed on 2/19/2008

Case Name: Williams v. Ozmint et al

Case Number: 3:07-cv-3714

Filer: Jon Ozmint

Document Number: 13

Docket Text:

MOTION for Summary Judgment by Jon Ozmint. Response to Motion due by 3/10/2008 (Attachments: # (1) Certificate of Service - SJ)No proposed orderMotions referred to Joseph R McCrorey.(Mabry, James)

3:07-cv-3714 Notice has been electronically mailed to:

James Anthony Mabry amabry@ag.state.sc.us

Donald John Zelenka agdzelenka@ag.state.sc.us, aglbrawley@ag.state.sc.us

3:07-cv-3714 Notice will not be electronically mailed to:

James Chester Williams

282929

Lieber Correctional Insitution

PO Box 205

Ridgeville, SC 29472

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=2/19/2008] [FileNumber=2276610-0]
][9f35b0b783dd4ef1c64a73c3f5f2caff7c3922b97cddf2658ee67d0c792ef577e22

#16

5664be302b8989ebd4c84a8e44f0df7cf7fdf75967fc15cdb5aa76c007e0]]

Document description: Certificate of Service - SJ

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=2/19/2008] [FileNumber=2276610-1

] [09dca152cd70cb6918bfec123aaf40a74f4b871aff8f4ff12ac107eeb8f493a438d

2c7686c9eb05f9c6e67353d47f340a81fd21f7269e5ed4b944ca7a7b160c0]]

18

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

James Chester Williams, #282929,	)	C/A No.: 3:07-cv-3714-GRA
	)	
Petitioner,	)	ORDER
	)	(Written Opinion)
v.	)	
	)	
Jon Ozmint, Director S.C. Dept. Of	)	
Correction; and Stan Burtt,	)	
	)	
Respondents.	)	
	)	

This matter comes before the Court to review the magistrate's Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.03(B)(2)(c), D.S.C., filed on July 25, 2008. Petitioner originally filed this habeas corpus petition pursuant to 28 U.S.C. § 2254 on November 16, 2007. The respondents filed a Motion for Summary Judgment on February 19, 2008. After receiving an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner responded on February 26, 2008. The magistrate recommends granting summary judgment for the petitioners and dismissing the petition. On August 19, 2008, Petitioner filed a motion to withdraw the petition after reviewing the magistrate's Report and Recommendation and agreeing with the magistrate that he failed to exhaust all available state court remedies.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those

#18

state court in South Carolina, those claims will be barred and cannot be considered by the Court. Section 2254 requires the petitioner to present any claim he has to the state courts before he can proceed on that claim in this court. See *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). The exhaustion requirement allows state courts the first opportunity to address the alleged constitutional errors in a defendant's state trial and sentencing. The federal court may only consider claims which have been presented to the South Carolina Supreme Court, and the petitioner has the burden of proof in showing that he has presented these claims to the state's high court. See *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997) *cert. denied*, 522 U.S. 833 (1997).

A claim is unexhausted unless the substance of the petitioner's claims are "fairly presented" to the state courts. This fair presentation requires that the petitioner present the substance of his habeas claim to the state court, and it "contemplates that both 'operative facts' and the controlling 'legal principles' must be presented to the state court." *Matthews v. Evatt*, 105 at 911. The petitioner must assert the same facts and legal arguments to the federal court that he asserted in state court. *Id.*

After sentencing, the petitioner filed a direct appeal to the South Carolina Court of Appeals. The court dismissed the appeal. The petitioner did not appeal that decision to the South Carolina Supreme Court. Therefore, the petitioner has not exhausted his claims in his direct appeal.

Petitioner also filed an application for post-conviction relief ("PCR") to challenge his guilty plea on May 21, 2003. After an evidentiary hearing, the state court

concluded that the petitioner failed to meet his burden of establishing that his attorney provided ineffective assistance. The petitioner timely appealed the denial to the South Carolina Court of Appeals. The court denied his appeal. With respect to the application for PCR, the petitioner has exhausted his administrative remedies. However, the grounds asserted in his habeas petition were not included in the application for PCR and are therefore not exhausted. A habeas petition in federal court may only assert those issues which were presented either through a direct appeal or from the denial of the PCR application to the South Carolina Supreme Court. See *Matthews v. Evatt*, 105 F.3d 907, 911 ("a federal habeas court may consider only those issues which have been 'fairly presented' to the state courts"); see also *Joubert v. Hopkins*, 75 F.3d 1232, 1240 (8th Cir. 1996) (the same factual grounds and same legal theories must be presented to the state court for a federal habeas court to review the claim).

The petitioner has failed to properly raise the issues asserted in his Section 2254 petition to the state court. He is therefore required to return to the state court to exhaust his claims. See *Rose v. Lundy*, 455 U.S. 509 (1982).

Since the petitioner failed to exhaust state court remedies, the merits of the habeas petition are not properly before the Court and will not be addressed.

#18

After consideration of the entire record, this Court declines to adopt the magistrate's Report and Recommendation. IT IS THEREFORE ORDERED THAT the petitioner's motion be GRANTED and that this case be DISMISSED without prejudice.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

August 28, 2008
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Petitioner has the right to appeal this Order within thirty (30) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**

#19

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 00-GS-32-688
00-GS-32-689

James C. Williams, #282929)
Petitioner,)
vs.)
The State of South Carolina)
Respondent.)

MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE

"REQUEST EVIDENTIARY HEARING"

2012 JUL 23 PM 4:35
FILED
CLERK OF COURT
LEXINGTON

PLEASE TAKE NOTICE that the Petitioner, James C. Williams, #282929, through is undersigned PRO SE, will move before the Presiding Judge, Eleventh Judicial Circuit, Lexington County Courthouse, Lexington, South Carolina, at such place and time as the Court may appoint for an Order pursuant to Rules 29(e), SCR.Crim.P. and Rule 50 (B)(3), SCRCP Motion fo After-Newly Discovered Evidence and Fraud upon the Court. The grounds for this Motion are as follows:

MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE PURSUANT TO RULE 29(e),
SCR.CRIM.P

Ground A. Respondent has failed to commence this action as required by Brady or Rule 5

SUPPORTING FACTS ARGUMENT

The Petitioner discovered on April 15, 2012 that Solicitor's withheld exculpatory evidence from the Petitioner. As a resuly, the State failure to inform the Petitioner of a SLED Report that would have exonerate Mr. Williams. The Testimony from a SLED Agent will prove beyond a reasonable doubt that the Petitioner is actual innocence, but this [New Evidence] proves that victim accidentally shot herself on September 15, 1999.

The Petitioner humbly contends what the occurred between when Jury was impaneled at 12:08 p.m. on March 18, 1999, then why it took three days to persuade Mr. Williams unto a plaee of guilty? When his attention was go to trial. In those three days the defense counsel failed to discuss the plea with his client. Therefore, the Petitioner was tricked in a plea of guilty by the Solicitor becuase the Solicitor knew there was no probable cause to convict Mr. Williams of this allege crime, the Solicitor Office was aware of this incident being a accidental shooting because the SLED Report will prove beyond a reasonable doubt that shooting was accidental. Furthermore, a Petitioner can't be tricked into or force to enter a guilty plea it has to agree to it by his own choice.

Specifically, the Police or Prosecutor cann't coerce the defendant to enter a "plea of guilty" or "no contest." As a result, pleading guilty comes at a cost, though. A defendant gives up a lot of important right, like a jury trial and confronting witnesses. It also means conviction and punishment. Guilty pleas are serious business; they must be entered into voluntary or else they're invalid. A defendant can't be tricked into or force to enter a guilty plea; it has to agree to it by his own choice and free well. Obviously, the Solicitor's manipulated,mentally and/or psychologically coerce and/or force him into a plea. Such a heavy weight of shifting the burden of persuasion and the taking away of one's pesumption of innocence by the indictment(s) of South Carolina have been unjustly and unconstitutionally used against Dedendant in the State of South Carolina to mentally and/or psychogically coerce and/or force them into plea barggains and at their trials, for far too long.

Specifically, the Solicitor's played on the Petitioner's emotion by threaten the defendant with his children to be put on the stand to testified against him if he did not plead guilty to the allege charges. However, in this case, he-

has also learned of additional new evidence by SLED Agent which tends to exonerate Mr. Williams. Scientific analysis has shown that gun accidental discharge while the red skirt gotten caught up in the broken trigger guard then gun accidentally discharged while the gun was in victim hand.

In addition, the Newly-Discovered evidence included Testimony from SLED Agent and Solicitor withheld exculpatory evidence, the Solicitor failed to present [red skirt] into evidence. The alleged SLED Report exonerating Mr. Williams from this allege crime and the allege SLED Report implicating his wife accidental shot herself.

On January 10, 2012—U.S. Supreme Court Tosses murder conviction for Brady violation by New Orleans DA. The U.S. Supreme Court has overturned a murder conviction obtained by New Orleans prosecutors because the defense didn't receive important exculpatory evidence before the trial. Further, Chief Justice John G. Roberts, Jr., wrote the four-page majority opinion (PDF) finding the conviction must be overturned because the undisclosed evidence was material under standard set by Brady v. Maryland. The lone dissent by Chief Justice John G. Roberts Jr.. At issue is whether the failure to turn over the materials violated Smith's right under Brady v. Maryland, because the information was material to guilt. However, the Court have ruled that if the piece of discovery is in the possession of the police, the DA must go get it and hand it over. This includes the entire police file. As a result, there is a new case from the United States Supreme Court on this issues. Jean Smith, Petitioner v. Burl Cain, Warden, No. 10-8145, 2012 WL 43512 (January 10, 2012). In this matter, the Court ruled that even the hand written notes inside the police file of the investigation officer must be handed over to the defendant. This case is similar to Mr. Williams case because the Solicitor failed to turned over the SLED Report and other exculpatory evidence. As a result, if the Defendant was made aware of the exculpatory evidence he would not have plead to these charges and there would have had a different outcome.

GROUND B. DID THE DEPUTY SOLICITORS AND DEFENSE COUNSEL COMMITTED FRAUD UPON THE COURT?

SUPPORTING FACTS ARGUMENT

The Petitioner contends it is well established that the Deputy Solicitor's, Defense Counsel and Law Enforcement Officers did not have any "technical or scientific," as well as information upon which Officers use false evidence, including false testimony, to secure a conviction, Mr. Williams due process rights was violated. See Phillips v. Woodford, 267 F.3d 956 (9th Cir. 2001); Wilson v. Lawrence County, 260 F.3d 946 (9th Cir. 2001).

Accordingly, the Deputy Solicitor's indicted Mr. Williams, for the principal of murder. In this case, the victim accidental shot herself. The facts set forth in this case constitute the facts material to issue of fraud upon the Court. Specifically, the Deputy Solicitor, allege on page 39 line 4 thru. 11 that the Defendant had a sawed-off-shotgun. Further, SLED came to Lieber April of 2012, the SLED Agent told the Petitioner that the shooting was accidental. The State's failure to disclose portions of a SLED Report dealing statement given by SLED Agent. Thus, the Deputy Solicitor perjury herself before the Court because Deputy Solicitor manipulated the Court to believe that the Defendant kill Kathy Aretha Williams on September 15, 1999. Here facts and evidence will establish that the Deputy Solicitor also conspired with several other State Judicial personnel in order to commit fraud upon the Court. Defense Counsel committed fraud upon the Court because Defense Counsel committed perjury upon the Court, the Defense Counsel ask the Court for a continuance because he was sick. On page 28, line 17 thru. 20:

5

The Court: All Right. Jurors, those of you who have been selected, I'm going to ask you to do this. We're actually going to -- because of some scheduling problems, we have a - we have a sick lawyer.

The Court given the Defense Counsel instruction to bring back a Doctor's statement to the Court. Page 30 line 19 thru.23:

The Court: Okay. Thank You. All right. Counsel, what we'll do is just let the jury call back. Mr.Gorski, if you could, how about be sure and get us a Doctor's statement back as soon as we can so that we can know what kind of position we'll be in. Okay?

Inasmuch, the Defendant defense counsel failed to present a Doctor's statement to the Court. Obviously, defense counsel was not sick because he never present the Court with a Doctor's Statement. Furthermore, the Deputy Solicitor and Defense Counsel both conspired together psychologically coerce the Petitioner into a plea of guilty. As a result, both of them committed fraud upon the Court.

Thus, by the aforementioned it can be factually stated that Law Enforcement committed fraud upon the Court. In this case, there was probable cause to arrest Mr.Williams because the SLED Report will prove beyond a reasonable doubt that the Petitioner did not kill his wife on September 15,1999. Therefore, the Law Enforcement Officer states the children who were present in the apartment. on page 38 line 16 thru. 22:

Ms.Carroll: The victim and the argued a little bit about him that point the Defendant left the apartment, went down to his car, armed himself with a shotgun, took one shotgun shell, loaded the gun and went back into into the apartment. He went straight back-

to the victim's bedroom and motioned
her to come into the bedroom with him.

As stated above, the children statement states their father did not had a gun when he entered the apartment or went back to his car and retrieve a shotgun and came back into the house with the gun. The statement of the children will prove beyond a reasonable doubt that the Deputy Solitictor's and Law Enforcement Officer committed "fraud upon the court" and "perjury and subornation of perjury," states in pertinent part:

A (2) It is unlawful for a person to willfully
give false, misleading, or incomplete
information on a document, record, or re-
port, or form required by the law of this
State.

In Schaff v. Snyder, 190 F3d 513 (7th Cir.1999), thus, a Soli-
citor's knowing use of perjured testimony violates due process clause.
Also, see Hughes v. Johnson, 191 F3d 607 (5th Cir.1999), a defendant's
right to due process is violated when, upon a request for exculpatory
evidence, the Deputy Solicitor conceals evidence that is both favor-
able to the defendant and material to the defendant's guilty or puni-
shment. If officers use false evidence, including false testimony,
to secure a conviction, the defendant's due process rights are viol-
ated.

In State v. Adams, 277 S.C. 115, 283 S.E. 2d 582 (1981) our Supreme
Court emaciated the "Practical Eye Test." It is perspicuous that the
"Deputy Solicitor" and "Defense Counsel" psychologically coerce and/or
force him into a plea. Due to this psychologically coerce the Defen-
dant's Fifth, Sixth and Fourteenth Amendment Rights of the United States
Constitution and his Rights of Due Process were violated and such-

7

also aids to deprive the Defendant of Equal protection of the laws against unjust prosecution.

Specifies the necessary elements of a properly-filed petition for fraud upon the court. It states, in pertinent part:

1. Who is an "Officer of the Court"?

A judge is an officer of the Court, as well as are all attorneys. A State judge is a state judicial officer, paid by the state to act impartially and lawfully. A Federal Judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. Therefore, the Stated and Federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E. 2d 626 (1980).

2. What is "fraud on the court"?

Whenever any officer of the court commits fraud upon the court." In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "fraud upon the court" is fraud which is directed to the judicial machiney itself and is not fraud between the paties or fraudulent documents, false statements or perjury.

... It is where the Court or a member is corrupted or influence or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been difined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officer of the court so that the judicial machinery can not perform in the usual manner its-

impartial task of adjudging cases that are presented for adjudication."

Kenner v. C.I.R., 387 F.3d 685 (1958); 7 Moore's Federal Practice 2d ed., p.512¶ 60,23. The 7th Circuit Further stated" a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

3. What effect does an act of "fraud upon the court" have upon the court proceeding?

"Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois Law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)("The maxim that fraud vitates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Slevens, 336 Ill. 316; 168 N.E. 259 (1929)("The maxim that fraud vitates every transaction into which it enters...")

In re Village of Willowbrook, 37 Ill.App.2d 393 (1962)("It is axiomatic that fraud vitates everything."); Dunham v. Dunham, 57 Ill.App.475 (1894), affirmed 162 Ill.App.589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App.86 N.E.2d 875, 883-4 (1949); Thomas Stagel v. The American Home Security Corporation, 362 Ill. 350; N.E.798 (1935).

Under Illinois and Federal Law, when any officer of the court has committed "fraud upon the court," the orders and judgment of that court are void, of no legal force or effect.

Calling the compromised evidence "a situation that strikes at the very heart of our democracy and justice system." "All Petitioner know is that the-

evidence was compromised." Therefore, the Police, Deputy Solicitor and defense counsel for instigating what he called "a fraud upon the court."

This information exonerating the Petitioner was not available at trial because the Deputy Solicitor and defense counsel psychologically coerce and/or force him into a plea. However, in this case, the plea were made after the all white jury was sworn in, so the plea were not foreseeable and thus this conclusion is a due process violation. (See attach documents) that would prove beyond a reasonable doubt that the Deputy Solicitor and Law Enforcement did committed fraud upon the court. On page 39 line 4 thru.11, Deputy Solicitor stated that the Defendant had a sawed-off-shotgun. As a result, Exhibit [A] will corroborate that shotgun was not a sawed-off-shotgun; on page 38 line 16 thru. 22, Deputy Solicitor stated in open court that the children statement states theie father left the apartment, went down to his car, armed himself with a shotgun, the Exhibit [C] will corroborate that the Petitioner never left the apartment or came into the apartment with a shotgun. As a matter of record, there was no deal made by Deputy Solicitor because the Petitioner still plea guilty to murder as a matter of law this case should be [Vacated].

CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Petitioner's motion to vacate the conviction and sentence and grant an Evidentiary Hearing.

Respectfully submitted,



James C. Williams, #282929
Lieber C.I. SA-31
P.O.Box 205
Ridgeville, SC 29472-0205

July 20, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
) CASE NO.: 00_GS-32-588
00-GS-32-599

James C. Williams, #282929
Petitioner,

v.

The State of South Carolina
Respondent.

REQUEST FOR APPOINTMENT COUNSEL

BETTY A. CARROLL
CLERK OF COURT
LEXINGTON, SC

2012 JUL 23 PM 4:35

FILED

Pursuant to 28 U.S.C.A. 1915 (e)(1), Petitioner moves for an **Order Appointing Counsel** to represent him in this case. For the reason hereafter set forth, the State Court are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law. Pursuant to Rule 608 of the SCRPC Appointment of Lawyer for Indigents. In support of this request, Petitioner states:

1. Petitioner cannot afford to hire a lawyer, he is poor enough to qualify for public assistance, a free lawyer, waiver of court fee, etc.
2. Under Gideon v. Wainwright, (372 U.S.335) The 1963 U.S. Supreme Court decision that gave criminal defendant in State felony trials the right to Counsel. Gideon v. Wainwright and Argersinger v. Hamlin clearly show that the Supreme Court regards the right to counsel as "fundamental and essential to a fair trial." The Gideon case held that the Sixth and Fourteenth Amendments extend the right to counsel to all indigents tried for serious crimes in state courts. The Argersinger case extended this right to any state proceeding in which a convicted defendant is imprisoned. The Justice concluded that when an indigent accused is confronted by the government's prosecutorial "machinay,"-

the defendant must have "the guiding hand of counsel" to balance the scales of the adversary system.

3. The issues in this case are complex. A lawyer would help Defendant to apply the law properly in this criminal matter.

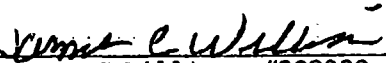
4. This case will likely involve substantial investigation and discovery. Also, the law library is limited access.

5. The Defendant's has a Constitutional Rights to Counsel in a criminal matter. As such, Defendant has a fundamental right to be represented by counsel of his own choice.

6. The Defendant has a Sixth Amendment Rights to legal counsel.

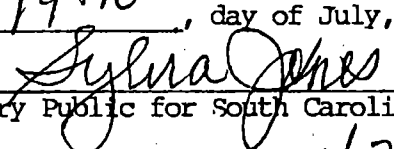
7. WHEREFORE, Petitioner requests that the Court appoint counsel to represent him in this legal matter.

Respectfully submitted this 20, day of July, 2012


James C. Williams, #282929

SWORN TO BEFORE ME THIS

19th, day of July, 2012

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
)
)
V E R I F I C A T I O N

PERSONALLY appeared before me, James C. Williams, #282929, who being first duly sworn, deposes and says: That he is the Petitioner in the foregoing Motion for After-Newly Discovered Evidence and Motion for Appointment of Counsel, that he has read the foregoing Motion, and that those matters to be upon information and belief and, as to those, he believe them to be true.

James C. Williams
James C. Williams, #282929

SWORN TO BEFORE ME THIS

18th day of July, 2012

Sylvia Jones (L.S.)
Notary Public for South Carolina

My Commission Expires:

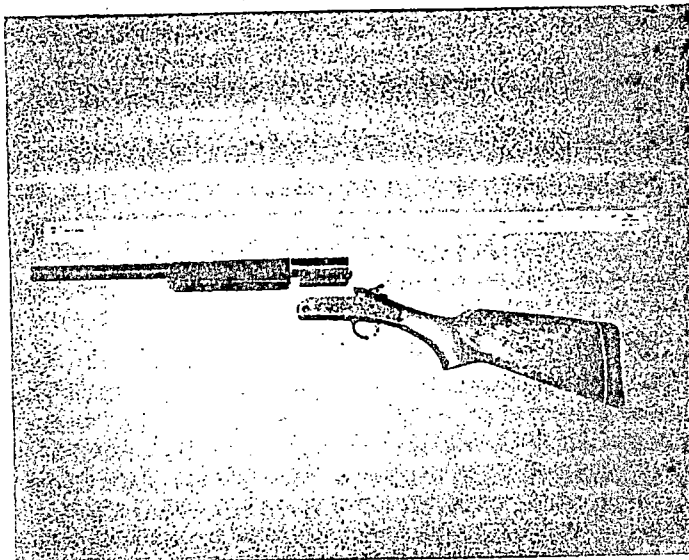
1/24/2018

BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SC

2012 JUL 23 PM 4:35

FILED

L9912571



ITEM 7 SHOTGUN W/BARREL REMOVED
AS RECEIVED. NOTE BROKEN TRIGGER
GUARD. 36" SCALE P 30 *DA*

- STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PERSONALLY APPEARED BEFORE ME: KEVIN WILLIAMS

, Page - 2 -

Williams: Yeah.

McIntosh: What were they arguing about?

Williams: Cause James, cause James was having (inaudible)

McIntosh: Was that what he wanted? That you could tell?

Williams: Um hmm

McIntosh: Before that night, did you ever see a gun in the house?

Williams: No.

McIntosh: Did you ever see a gun in your dad's car?

Williams: No.

McIntosh: Have you ever known your dad to have a gun?

Williams: Yes.

McIntosh: What kind?

Williams: A 38.

McIntosh: A 38? Do you know where he kept that? When ah, when you heard the shot that night, where were you?

Williams: In the front room watching TV.

McIntosh: You were in the front room watching TV? Okay and what did you do when you heard that?

Williams: I ran out.

McIntosh: You ran out of the house? When you ran out of the house, where did you go?

Williams: To my cousin's house.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PERSONALLY APPEARED BEFORE ME: ANSONETTE ABRAMS

Page - 5 -

McIntosh: When he ran out that night, did you see the gun?

Abrams: No, Sir.

McIntosh: But, now did you see him when he went out the door?

Abrams: Um hmm

McIntosh: He ran right by you?

Abrams: Yes. (Inaudible)

McIntosh: When you were standing at the door to your room he ran out?

Abrams: Um hmm

McIntosh: And you did not see the gun?

Abrams: No, Sir.

McIntosh: Okay. (Inaudible) bring Kevin in please.

SEP 18 2014

SC Court of Appeals

1 State of South Carolina Court of General Sessions
2 County of Lexington
3
4

5 State)
6)
7 v.) Transcript of Record
8 James Chester Williams) 00-GS-32-689
9 Defendant.)

10
11 June 20, 2013
12 Lexington, South Carolina

13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

16 A P P E A R A N C E S:

17 John Walter Whitmire, Assist. Attorney General
18 S. Rick Hubbard, III, Deputy Solicitor
Attorneys for the State

19 David M. Mauldin, Assist. Public Defender
20 Attorney for the Defendant
21

22

23

24

25

Stacy L. Sheppard, RPR
Circuit Court Reporter

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS

PAGE

Certificate of Reporter

~~58~~

(There were no witnesses.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Gunshot Residue Analysis Forms	12	
C-2	1999 SLED Report	12	
C-3	2000 SLED Report	12	
C-4	Eight Photographs	57	
C-5	Transcript	57	

2

1 (The following proceedings were held on June
2 20, 2013.)

3 **THE COURT:** All right. I had asked or directed
4 that a status conference be held on the record
5 concerning the case of the State versus James
6 Chester Williams. Mr. Williams was convicted of
7 murder and perhaps other offenses. And he was
8 sentenced by Judge Westbrook on March 21st, 2002, to
9 a term of imprisonment of 30 years with credit from
10 September of 1999.

11 He forwarded to the court, Clerk of Court,
12 various documents, the essence of which is that he
13 claims that he is entitled to a new trial based on
14 after-discovered evidence. He has filed numerous
15 documents pro se. I've read through all of this and
16 I tried to do a search of the website to see what
17 showed up. It appeared that he filed a
18 post-conviction relief action in 2003. It was
19 dismissed by Judge Johnson. And the Court of
20 Appeals reviewed it, did not change the decision.

21 Another PCR case appears to have been filed in
22 2008. It's difficult to tell from what I was
23 looking at, but it appeared that the Supreme Court
24 did not grant any relief on that post-conviction
25 relief action.

48

1 I did a five-page order on October the 25th,
2 2012, which recited all of this. And part of it
3 reads that the present motion is submitted by the
4 defendant in a self-represented capacity. He seeks
5 appointment of counsel. The motion is somewhat
6 confusing because it claims that there is
7 after-discovered evidence presumably in the form of
8 a SLED report that contained exculpatory evidence
9 that was concealed from the defendant. So there
10 appears to be a claim of a violation of Rule 5 South
11 Carolina Rules of Criminal Procedure and Brady
12 versus Maryland. The materials submitted to the
13 Court do not contain a copy of this SLED report.

14 Then I noted that the motion made a reference
15 to Rule 29(e) of the South Carolina Rules of
16 Criminal Procedure, which I didn't see how that
17 applied. It seemed perhaps that the intent was to
18 cite Rule 29(b) which sets out the rule related to
19 new trials based on after-discovered evidence.

20 Mr. Williams seems to be aware, from what he
21 has sent in, that those motions are supposed to be
22 made within one year after the date of actual
23 discovery of the evidence or a date when the
24 evidence could have been ascertained by the exercise
25 of reasonable diligence. The motion that was filed

5

1 claiming after-discovered evidence was filed on July
2 23rd, 2012.

3 Reading the documents, it seems that there's a
4 claim that the decedent was shot accidentally and a
5 claim that there is evidence that would exonerate
6 him. Though it did appear, from reading the
7 submissions, that this report was in existence at
8 the time the case was tried.

9 There's a claim of a coercive guilty plea, if I
10 read that correctly.

11 I noted that Mr. Williams was also citing a
12 civil rule, a Rule of Civil Procedure, Rule 60(b)(3)
13 for relief from a judgment or order. I noted that I
14 was unaware of any civil proceeding that was
15 pending. Claims of this nature typically come
16 through writs and are handled in civil court;
17 though, as I mentioned previously, there is a Rule
18 of Criminal Procedure.

19 There's also references in the submissions
20 about a lack of knowledge about testimony that
21 Mr. Williams claims was available from his children.
22 The decedent, I believe, was his wife.

23 I took the extraordinary step of appointing an
24 attorney to look into this. So I appointed the
25 public defender's office and Mr. Mauldin was

1 assigned to the case. My understanding is that he
2 has met with Mr. Williams. Mr. Williams has now
3 filed a motion to relieve Mr. Mauldin. This was
4 filed March -- it's hard to read because the writing
5 on the stamp is the same location where there's
6 writing, but I think it's March 11th, 2013 -- I'm
7 sorry, that's -- that's proof of service.

8 The motion to relieve counsel was put in
9 another file. It's in the file for possession of a
10 firearm or knife during the commission of a violent
11 crime. It's dated May 30th, 2013, filed June the
12 4th, 2013. That charge was nol prossed. I don't
13 know why Mr. Williams uses that case number.

14 So I felt like the most expeditious thing to do
15 was to ask Mr. Williams to be brought from the
16 department of corrections.

17 Are you James Chester Williams, sir?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** And ask him to tell me what he
20 claims is after-discovered evidence and what he
21 claims he's entitled -- what he claims is entitling
22 him to a new trial. I'd be happy to hear from
23 Mr. Mauldin.

24 You're Mr. Whitmire?

25 **MR. WHITMIRE:** Yes, Your Honor.

1 **THE COURT:** You're from the Attorney General's
2 office?

3 **MR. WHITMIRE:** Yes, Your Honor.

4 **THE COURT:** Do y'all have anything you want to
5 put on the record before I find out from
6 Mr. Williams what it is he is seeking or what he
7 bases it on?

8 **MR. MAULDIN:** Yes, sir, Your Honor.
9 Mr. Williams and I have engaged in written
10 correspondence since I was appointed this case. You
11 appointed the office a little earlier. I came back
12 some time in mid, late December and that's when I
13 got the case.

14 And regarding the SLED report, Bill Gorski, the
15 trial attorney, no longer had his file. He had sent
16 it to Appellate Defense. So I had gone to Appellate
17 Defense to review that. We had also filed a motion
18 with the Solicitor's office for them to provide us
19 with discovery they had at the time. The SLED
20 report was located in the discovery for the
21 Solicitor's office and it was also located in
22 Mr. Gorski's file at Appellate Defense.

23 I've explained that to Mr. Williams. I think
24 Mr. Williams' contention is that there is an item of
25 clothing, a skirt, that was not tested in the SLED

1 report, that he believes that the gunshot residue
2 would be located on that skirt and that would
3 indicate that it would be more of an accidental
4 shooting, that there was a struggle and the gunshot
5 went over a broader area. There's also some
6 information he says regarding the gun might have
7 been broken at the time and that's why gunshot
8 residue would come out.

9 I have checked with the evidence custodian at
10 the sheriff's office. This was a guilty plea and
11 not a trial. So the evidence was not preserved by
12 the Clerk of Court. It was kept at the sheriff's
13 office. Apparently that evidence was destroyed some
14 time after his PCR, so that evidence is unavailable
15 for me to have tested to see if there is gunshot
16 residue. And I've explained to Mr. Williams that,
17 you know, this report existed at the time. His
18 attorney at the time could have looked into it or
19 his PCR attorney, in reviewing the discovery, could
20 have made that an issue in his PCR.

21 Mr. Williams tells me that he was not made
22 aware of the SLED report even though his lawyer at
23 the trial level seems to have had access to it. I'm
24 not sure about his PCR lawyer, but he was saying
25 that the evidence had not been provided to him by

8

1 either his trial lawyer or his PCR lawyer, but
2 nonetheless it was in existence at the time. And,
3 of course, his children were listed in the police
4 report as potential witnesses and Mr. Gorski could
5 have talked to them or his PCR lawyer could have
6 talked to them and brought them up at a PCR as well.

7 I think Clark v. State, 315 S.C. 385, has five
8 elements of obtaining a new trial based on
9 after-discovered evidence. And the third one of
10 that is that it could not have been discovered
11 before trial. Obviously, I'm not certain to the
12 level of what the attorney shared in discovery with
13 Mr. Williams, but it appears that his trial attorney
14 and possibly his PCR attorney had access to this
15 evidence and could have questioned it for that
16 trial. But Mr. Williams feels that the evidence was
17 withheld from him, not necessarily maybe from his
18 attorneys. He feels that that is inappropriate.

19 I discussed with him that it probably should
20 have been brought up as a PCR issue or if his PCR
21 lawyer was deficient, there's a federal habeas
22 issue, if he had filed one of those at that point in
23 time. But nonetheless Mr. Williams is not satisfied
24 with my investigation and my opinion in the matter
25 so here we are today.

1 **THE COURT:** All right. Mr. Williams, what do
2 you want to tell me?

3 **DEFENDANT:** It seem like everybody is putting
4 evidence about what each person should have known --
5 have, right, but what I want to know, what evidence
6 they got that charge me with murder? Murder is a
7 serious crime and I don't see no evidence. They
8 don't have no gun, no fingerprint. They ain't had
9 no forensics on my hand. They ain't had no DNA on
10 me. They had nothing. So how can they charge me
11 with murder?

12 **THE COURT:** Well, apparently, they not only
13 charged you with it, you pled guilty to it.

14 **DEFENDANT:** They threatened me with my kids. I
15 love my kids, Your Honor, and I couldn't put them
16 through that.

17 **THE COURT:** That's not -- you're going off on
18 issues that have nothing to do with this precise
19 issue before me. You claim that there is
20 after-discovered evidence.

21 **DEFENDANT:** Yeah, the forensics right here. I
22 didn't see these until 2012 when SLED brought them
23 down and delivered them. This is what I got.

24 **THE COURT:** Let me see what he's talking about.

25 **DEFENDANT:** This is what they turn over to me,

1 but they hid this from me.

2 **THE COURT:** When you say this, what are you
3 talking about?

4 **DEFENDANT:** Forensics. They turned that over,
5 but they didn't turn that over. They withheld that
6 from me.

7 **THE COURT:** Make copies of those, please.

8 (Pause.)

9 **THE COURT:** Give those back to him, please.

10 Mr. Williams, which one of these did they turn
11 over to you? I've got a SLED report dated April 24,
12 2000, and a trace department report from SLED dated
13 October the 18th, 1999.

14 **MR. MAULDIN:** It would be the ones without the
15 SLED letterhead and the SLED seal on them, Your
16 Honor, the two gunshot residue analysis information
17 forms.

18 It's the opposite, Your Honor. He said he
19 didn't know anything about the ones with the SLED
20 letterhead.

21 **THE COURT:** All right. So, Mr. Williams, you
22 knew about the gunshot residue analysis information
23 forms?

24 **DEFENDANT:** Yeah, I know about that.

25 **THE COURT:** These two?

1 **DEFENDANT:** Yeah, but I didn't know about the
2 other two.

3 **THE COURT:** Mark these as...

4 (Court's Exhibit Number 1, gunshot residue
5 analysis forms, marked for identification.)

6 **THE COURT:** All right. I've had the gunshot
7 residue analysis information forms marked as Court's
8 Exhibit Number 1.

9 Now, there's a SLED report dated April 24th,
10 2000, addressed to Detective O. McIntosh of the
11 Lexington County Sheriff's Office and there's a SLED
12 report dated October the 18th, 1999, addressed to
13 Senior Deputy Carter. You say you did not have
14 these?

15 **DEFENDANT:** Did not have those.

16 **THE COURT:** All right. Did your attorneys have
17 them?

18 **DEFENDANT:** I don't know.

19 **THE COURT:** You don't know.

20 **DEFENDANT:** I don't know.

21 **THE COURT:** All right. I'm going to mark the
22 one that's dated 1999 as Court's 2 and the one
23 that's dated 2000 as Court's 3.

24 (Court's Exhibit Numbers 2 and 3 marked for
25 identification.)

1 **THE COURT:** All right. You filed a
2 post-conviction relief action?

3 **DEFENDANT:** Uh-huh.

4 **THE COURT:** Is that a yes? She has to take
5 down everything you say and if you just nod your
6 head and say uh-huh --

7 **DEFENDANT:** Okay. Talking about in 2002?

8 **THE COURT:** Did you file any post-conviction
9 relief action?

10 **DEFENDANT:** Yeah.

11 **THE COURT:** And what claims did you make
12 against your attorney, Mr. Gorski? Mr. Gorski
13 represented you at the plea?

14 **DEFENDANT:** Yeah. Ineffective assistance of
15 counsel is what I made against him because he didn't
16 investigate the case and he didn't prepare himself
17 for trial because he walked off of trial when I
18 selected a jury and told the judge that he was sick.
19 The judge ordered him to bring back a doctor's
20 excuse. He didn't bring it back and that's when
21 they come back, threatened me with my kids.

22 **THE COURT:** Did you raise all of those issues
23 in the post-conviction relief action?

24 **DEFENDANT:** I had Mr. Robert Border. He didn't
25 want to listen to nothing I said. He done what he

1 wanted to do. I --

2 **COURT REPORTER:** I didn't understand.

3 **THE COURT:** What did you say, sir?

4 **DEFENDANT:** Robert Border or Bourder, whatever
5 his name was, represented me at the PCR hearing, and
6 he didn't want to listen to nothing I had to say.
7 He took it upon himself to do what he wanted to do.

8 **THE COURT:** What proof do you have that these
9 reports were not in your attorney's file?

10 **DEFENDANT:** SLED. I mean, I don't know if it
11 was in his file, but I got proof by SLED it wasn't
12 turned over because SLED brought these reports at
13 Lieber.

14 **THE COURT:** Turned over to who?

15 **DEFENDANT:** Turned over to me. SLED brought it
16 to me at Lieber. I didn't know that my attorney had
17 it in his file.

18 **THE COURT:** Why did SLED bring you reports at
19 Lieber?

20 **DEFENDANT:** Because when he came up there, he
21 told me --

22 **THE COURT:** Who is he?

23 **DEFENDANT:** Last name is Dowling.

24 **THE COURT:** Dowling?

25 **DEFENDANT:** Dowling. I can't remember his

1 first name.

2 **THE COURT:** This is a SLED agent?

3 **DEFENDANT:** Yeah, a SLED agent.

4 **THE COURT:** Why did he come talk to you --

5 **DEFENDANT:** He came up there to see another guy
6 and he called me out and he told me he was keeping
7 up with my case and he didn't see how that the
8 Solicitor can charge me with the murder. There
9 wasn't no evidence there to support murder. He told
10 me that he didn't see how that Solicitor had charged
11 me with murder because he didn't see no evidence to
12 support that.

13 **THE COURT:** Why would he be keeping up with
14 your case? Why was he keeping up with your case?

15 **DEFENDANT:** I don't know, Your Honor. He just
16 told me he was keeping up with the case.

17 **THE COURT:** Describe this person to me.

18 **DEFENDANT:** He's about my height.

19 **THE COURT:** How tall are you?

20 **DEFENDANT:** About my height.

21 **THE COURT:** How tall are you? I mean, you're
22 sitting down. I can't tell --

23 **DEFENDANT:** About six three or six four.

24 **THE COURT:** You're six three or six four?

25 (Defendant stands.)

1 **THE COURT:** You don't look that tall to me now
2 that you're standing up.

3 **MR. MAULDIN:** He's about five nine to five ten,
4 Your Honor, by my guess.

5 **THE COURT:** All right. Describe him for me.

6 **DEFENDANT:** I really wasn't expecting him to
7 come up there and I really wasn't expecting him to
8 talk to me. He just come at me all at once and
9 started explaining things to me and I just didn't
10 understand what was going on.

11 **THE COURT:** That's all he talked to you about?
12 He didn't talk to you about any other cases or ask
13 you for information on anything?

14 **DEFENDANT:** No. He just said he was keeping up
15 with my case and he don't see how they can charge me
16 with murder because they didn't have evidence to
17 support murder.

18 **THE COURT:** Do you swear or affirm the
19 statements you tell me are the truth, the whole
20 truth, nothing but the truth so help you God?

21 **DEFENDANT:** I'm telling you the truth, Your
22 Honor.

23 **THE COURT:** You've taken an oath now. I'm
24 putting you under oath.

25 *****

1 JAMES CHESTER WILLIAMS,
2 having been duly sworn, testified as follows:

3 THE COURT: A SLED agent came to you in the
4 department of corrections and told you he'd been
5 keeping up with your case and he didn't understand
6 how the State could charge you with murder because
7 they didn't have any evidence against you?

8 DEFENDANT: Yes, sir.

9 THE COURT: And his name is what?

10 DEFENDANT: His last name was Dowling. If I
11 tell you another name, I could be lying on the
12 record, but I know his last name was Dowling. I
13 don't want to sit here and tell you nothing that
14 ain't the truth.

15 COURT REPORTER: Is he saying Darling or
16 Dowling?

17 THE COURT: I think he's saying D-o-w-l-i-n-g,
18 but I don't know if that's what he's saying. I
19 don't know if he knows.

20 Contact SLED right now, we're going to take a
21 break, find out if y'all can locate this officer for
22 me.

23 MR. HUBBARD: Yes, sir.

24 THE COURT: All right. Mr. Williams, you can
25 step back to wherever the security people put you.

1 I'm going to keep on working on other cases, okay.

2 (Brief Recess.)

3 **THE COURT:** All right. Mr. Williams, they --
4 is Mr. Whitmire here? We've got Solicitor Hubbard
5 present. I think we can go ahead.

6 Can you find Mr. Whitmire?

7 (Pause.)

8 **THE COURT:** Mr. Mauldin, you said you found Mr.
9 Gorski's file?

10 **MR. MAULDIN:** That's correct, Your Honor.

11 **THE COURT:** And where else did you go to find a
12 file that had the report in it?

13 **MR. MAULDIN:** We filed a discovery motion with
14 the Solicitor's office here and provided us with
15 discovery that they had on the case. I reviewed
16 that first. It had -- when he corresponded with me,
17 he was mainly concerned with the gunshot residue
18 report and a skirt that was not tested in the
19 report. So I was mainly concentrated on finding
20 that report.

21 I found that report. It was in the discovery
22 the Solicitor sent me, but I double checked by going
23 to Mr. Gorski's file, which was in a separate
24 compartment from all the other matters that
25 Appellate Defense had as far as the appeal of his

1 original case, the appeal of his PCR, those matters.
2 They had that separately and it was contained within
3 that discovery. There was a cover letter from the
4 Solicitor's office to Mr. Gorski that contained a
5 list of what he had been provided, as well as the
6 actual report that Mr. Williams had called into
7 question this correspondence.

8 **THE COURT:** All right. So what is this
9 information that has just come to light that would
10 tend to exonerate you, Mr. Williams?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** What is it? What have you just
13 discovered that would entitle you to a new trial?
14 What have you just discovered that would help you be
15 found not guilty?

16 **DEFENDANT:** Because I couldn't have discovered
17 it, you know.

18 **THE COURT:** What? That's what I'm asking you,
19 what?

20 **DEFENDANT:** I didn't see no evidence. You
21 know, you got to have evidence to find people
22 guilty, but I didn't see none in my case. I didn't
23 see nothing.

24 **THE COURT:** Mr. Williams, you have filed a
25 whole series of papers. Some of them look like

1 they're kind of boilerplate, that means that I get
2 the same language from all different kind of inmates
3 in different institutions and it says the same
4 thing. And then you've got these assertions that
5 SLED withheld information from you or the prosecutor
6 withheld information from you that if you had known,
7 you would not have pleaded guilty and that that
8 evidence shows that you're not guilty.

9 Okay. My question to you is, what are we
10 talking about? What specific things? Mr. Mauldin
11 mentioned a dress. So what is it that would help
12 your case that you didn't know about?

13 **DEFENDANT:** He said the dress had been
14 disposed. And I didn't know about the forensics on
15 the SLED report and the gun didn't have no
16 fingerprints or nothing on it.

17 (Mr. Whitmire enters the courtroom.)

18 **THE COURT:** Did you know about the fingerprints
19 on the gun?

20 **DEFENDANT:** I got my --

21 **THE COURT:** Mr. Whitmire's back. We just
22 started back.

23 **DEFENDANT:** I got my preliminary hearing
24 transcript and it says all that in there.

25 **THE COURT:** So when did you get that?

1 **DEFENDANT:** I got that back when I got --
2 where's that stuff I showed you?

3 **THE COURT:** Showed me or showed Mr. Mauldin?

4 **DEFENDANT:** Showed Mr. Mauldin, not the SLED
5 report, the other --

6 **THE COURT:** Were you at the preliminary
7 hearing?

8 **DEFENDANT:** No.

9 **THE COURT:** Were you at the preliminary
10 hearing?

11 **DEFENDANT:** No.

12 **THE COURT:** Well, then how did you get a
13 transcript of a preliminary hearing?

14 **DEFENDANT:** I had to get it from the courts.

15 **THE COURT:** Okay. I don't understand. If I
16 heard you correctly, you said that they denied your
17 preliminary hearing.

18 **DEFENDANT:** Excuse me. I'm kind of nervous,
19 Your Honor. Let me get myself together.

20 **THE COURT:** Okay. Well, you've been here a
21 while.

22 **DEFENDANT:** Ms. Sally Henry had my case and
23 they called me downstairs to the holding cell for
24 the preliminary hearing, but her and Mr. McEntire
25 {phonetic}, they shouldn't have got me and they sent

1 me back upstairs.

2 **THE COURT:** So you were not in the room when
3 the preliminary hearing was held?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** And you say that in the preliminary
6 hearing, you were represented by Sally Henry of the
7 public defender's office?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** And that in the transcript you have
10 seen, it indicates there are no fingerprints on the
11 gun?

12 **DEFENDANT:** Yes, sir, said the gun was sent to
13 SLED twice, no fingerprints.

14 **THE COURT:** Okay. And Ms. Henry would have
15 known that.

16 **DEFENDANT:** I mean, she had to know it. I
17 mean, it was in that preliminary hearing transcript.

18 **THE COURT:** Okay. So what else is it that you
19 claim is newly discovered evidence, evidence that
20 you didn't know about before, could not have known
21 about through the exercise of reasonable evidence?

22 **DEFENDANT:** A picture of the gun, that wasn't
23 disclosed to me either.

24 **THE COURT:** A picture of the gun?

25 **DEFENDANT:** Yeah.

1 **THE COURT:** How would that help you be found
2 not guilty?

3 **DEFENDANT:** Well, it had a broke trigger guard
4 on it and she had forensics all over her hand and
5 her clothes. And that skirt, it's disposed of, so I
6 ain't got no evidence on that. But what I'm saying,
7 if I had the gun, don't you think some evidence
8 would have been on me?

9 **THE COURT:** Mr. Williams, here's the thing, I'm
10 not starting at the beginning like -- I'm not
11 rolling back the clock to when you were originally
12 charged with this case. What I have before me is a
13 man who is in prison on a 30-year sentence where he
14 pleaded guilty in front of another judge who is now
15 dead. And this man who is in prison claims that he
16 is entitled to a new trial because there is new
17 evidence that was not known at the time and could
18 not have been discovered through the exercise of
19 reasonable effort -- diligence. That's what I'm
20 looking at. You've got to tell me what it is. If
21 you just tell me you don't think they had any
22 evidence against you, we might as well quit.

23 If that SLED agent told you everything you
24 claim he said, I don't know if it makes any
25 difference at all. But he's on his way and we'll

1 find out what he says he told you.

2 I mean, I'm going out of my way doing
3 everything I know to try to give you an opportunity
4 to be treated fairly by the Court at this point, but
5 you've got to tell me what it is that would make a
6 difference. The outcome of -- this newly discovered
7 evidence would have to be of such a nature that it
8 would most like -- would likely change the outcome
9 of your case.

10 **DEFENDANT:** Well, Your Honor, the only thing
11 that I have that, my opinion, that could have
12 changed the outcome of my case were those forensic
13 reports.

14 **THE COURT:** Okay. So how would they change the
15 outcome of your case?

16 **DEFENDANT:** Because I think the forensic report
17 could say that there wasn't no forensics on my
18 clothes, wasn't no DNA on my clothes. And if I had
19 have been anywhere close to the victim, I should
20 have had blood or residue on my hands. I mean,
21 that's the only thing that I can show.

22 **THE COURT:** Why would you not know that at the
23 time?

24 **DEFENDANT:** Because all that was hid from me at
25 the time, Your Honor. Your Honor, they didn't show

1 me nothing. They didn't tell me nothing, Your
2 Honor. I sat in jail for two and a half years and
3 then they come back, next thing I know they threaten
4 me to plea. I didn't know what was going on. This
5 was my first time I ever been in trouble, Your
6 Honor. I ain't never been in trouble like this
7 before.

8 **THE COURT:** Well, unfortunately, a lot of
9 people that are in prison for murder, it's the first
10 time they ever get in any trouble. It's usually
11 they get mad at somebody or something happens,
12 there's an argument and next thing you know there's
13 a gun and next thing you know somebody's dead.

14 **DEFENDANT:** I don't got no idea where that gun
15 come from. I didn't even see that gun.

16 **THE COURT:** But you would have known back then.
17 You would have known if you were there.

18 **DEFENDANT:** Yeah, I was there.

19 **THE COURT:** You were there.

20 **DEFENDANT:** Yes, sir, I was there. But in the
21 statement, my children told the detective that they
22 didn't see no gun because they don't know where the
23 gun come from either, you know. I don't know where
24 it come from.

25 **THE COURT:** What's new, though?

1 **DEFENDANT:** Your Honor, that's what I was based
2 on that, that forensic that show that, you know, I
3 didn't know anything about the gun or the clothes.
4 That's the only thing.

5 **THE COURT:** Hand me those Court's Exhibits.

6 (Pause.)

7 **THE COURT:** All right. You had, according to
8 what you told me earlier, you had Court's Exhibit 1.
9 You had these two papers.

10 **DEFENDANT:** Yeah.

11 **THE COURT:** All right. One of them is the
12 collecting officer's name, on both of them, is J.L.
13 Hickman of the Lexington County Sheriff's
14 Department. The one on you indicates that you're
15 left handed.

16 **DEFENDANT:** Right.

17 **THE COURT:** That he checked for debris or blood
18 on your hands and both hands appeared to have grease
19 on them, according to this report.

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** It asks, Has the subject washed his
22 hands since the shooting? No.

23 Your occupation is listed as a mechanic.

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Then the shooting information at

1 the bottom says that the shooting occurred on
2 September the 15th, 1999, at 2210 hours, that's
3 10:10 p.m. I believe, inside. And it was a shotgun.
4 One shot was fired.

5 They also, according to this report,
6 Mr. Hickman, I assume that's a man, checked the
7 hands of Cathy A. Williams, who was dead. They
8 found blood splattered on her right back -- back of
9 her right hand and on her left palm. They did not
10 know whether she had washed her hands since the
11 shooting.

12 I don't know the extent of the injury, so I
13 won't comment on that other than she died.

14 And it says the same thing about the time of
15 the shooting, that it occurred inside and that there
16 was one shot fired from a shotgun.

17 So you had that?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now, what you say you did not have,
20 Court's Exhibit Number 2. This says that
21 examinations were conducted by SLED. Items
22 submitted was a gunshot residue kit from Cathy
23 Williams, a gunshot residue kit from James Williams,
24 a pair of black socks, a pair of blue work pants, a
25 blue button-down work shirt, a pair of underwear

1 that's white in color, a pair of white tennis shoes
2 and a gray T-shirt.

3 As to the gunshot residue kit of Cathy
4 Williams, gunshot residue was found on the left
5 palm. Round led particles were found on the palm
6 and the back of the right hand. Round led particles
7 are one of the components of gunshot residue. The
8 results for the back of the left hand were
9 inconclusive.

10 As to the gunshot residue collected on you, it
11 says, No analysis was performed. The samples were
12 collected beyond the six hour timeframe in which
13 probative evidence would be found. So they're
14 saying that your hands were not swabbed within six
15 hours and they didn't test this.

16 On the clothing, other than the gray T-shirt,
17 it says no holes or physical effects indicative of
18 gunpowder residue were found. And on the gray
19 T-shirt, the area around the hole in the upper chest
20 region of the gray T-shirt was examined for the
21 presence of led and a pattern of gunshot residue --
22 gunpowder residue. Residue and physical
23 characteristics around the hole are consistent with
24 a contact shot.

25 All right. So the black socks, were they

1 yours?

2 **DEFENDANT:** Yes. Yes, sir.

3 **THE COURT:** You were wearing them then?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** The work pants were yours?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** The button-down shirt was yours?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** The white underwear was yours?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** And the white tennis shoes were
12 yours?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** And it states that they didn't find
15 any holes in them or physical effects indicative of
16 gunpowder residue on those items of clothing.

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Is that what you're basing this on,
19 your claim that this is evidence that would affect
20 the outcome of your trial and that you didn't know
21 about?

22 **DEFENDANT:** I mean, yes, sir, that's what --
23 that's what they based it on, you know. Because
24 like I say, I don't know anything about the law or
25 whatever, but that's what I'm basing it on.

1 **THE COURT:** All right. So it's those items and
2 not the gray T-shirt -- I assume she was wearing the
3 gray T-shirt.

4 **DEFENDANT:** She was wearing the gray T-shirt.

5 **THE COURT:** But you're basing it on the clothes
6 that you had on?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** All right. Now, Court's Exhibit
9 Number 3 is the one that was sent to the sheriff's
10 office by SLED. It's a pair of black socks, a pair
11 of dark blue work pants, a pair of -- a dark blue
12 work shirt, a pair of underwear and white tennis
13 shoes. They found no blood on the socks. It
14 states, Samples collected and sent to the DNA
15 department for blood identification on the work
16 pants, no blood on the work shirt, on the underwear
17 or the white tennis shoes.

18 Do you know if they found blood on your pants
19 or not?

20 **DEFENDANT:** I don't see nothing in there -- in
21 the report saying they found blood.

22 **THE COURT:** Well, it says they sent those to
23 the DNA department for blood identification. So
24 they took samples off of pants. They must have
25 suspected they were something whether they suspected

1 they were blood or -- they sent them off to be
2 analyzed for DNA. DNA would have to be something
3 like blood or saliva or something of that nature.
4 But you don't know any of that?

5 **DEFENDANT:** Pardon me?

6 **THE COURT:** You don't know what they found on
7 your pants?

8 **DEFENDANT:** No. No, sir.

9 **THE COURT:** They didn't find any blood on your
10 work shirt, your underwear or your tennis shoes.

11 **DEFENDANT:** No, sir.

12 **THE COURT:** And what is it about this report
13 that you're claiming is new evidence that would
14 change the outcome of your case likely, change the
15 outcome of your case?

16 **DEFENDANT:** What I'm saying, Your Honor, they
17 said it was six inches away and the gun has an upper
18 angle when she was shot. And if I had have been
19 anywhere close to her, I would have been washed down
20 in blood, too --

21 **COURT REPORTER:** I didn't hear the last part.

22 **DEFENDANT:** The upper angle, the upper angle,
23 said it was six inches away. If I was standing
24 anywhere close to her, I would have had blood,
25 forensics and everything all over me.

1 **THE COURT:** Why wouldn't you know that
2 immediately after you were arrested?

3 **DEFENDANT:** What's that now?

4 **THE COURT:** Why wouldn't you know that
5 immediately after you were arrested? What's new
6 about that?

7 **DEFENDANT:** I couldn't answer that, sir,
8 because I don't want to tell you nothing wrong. I
9 don't want to keep going over the same thing over
10 and over. But, you know, I just thought that could
11 be an exhibit, you know, that I can show the court
12 that I wasn't no part of that gun or whatever when
13 it discharged.

14 **THE COURT:** You're claiming that she committed
15 suicide?

16 **DEFENDANT:** No. It had a broke trigger guard
17 on it and I think she handled it wrong and her dress
18 tripped that trigger and shot her. And they never
19 sent the dress to SLED that had evidence, that red
20 dress. That red dress could have proved some of the
21 things I'm talking about, but they disposed that.

22 **THE COURT:** She had a dress and a T-shirt on?

23 **DEFENDANT:** A red skirt.

24 **THE COURT:** A skirt?

25 **DEFENDANT:** Yeah.

1 **THE COURT:** She was shot in the chest.

2 **DEFENDANT:** Yeah, six inches away. The gun
3 went up like this (indicating). It was not a
4 straight in shot, you know. And if I had have been
5 anywhere close to her like this with a gun, I would
6 have been everything, sir.

7 **THE COURT:** Where is his PCR file?

8 **MR. WHITMIRE:** Your Honor, Mr. Zelenka
9 relinquished our files to Mr. Hubbard a few months
10 back in this matter. He has filed two applications
11 for post-conviction relief and he has filed appeals
12 on both of those, as well as a federal habeas
13 petition.

14 **THE COURT:** What happened to your federal
15 habeas corpus petition?

16 **DEFENDANT:** Well, I didn't preserve all my
17 remedies. And I wrote the court and ask could they
18 dismiss that without prejudice so I could get some
19 more information.

20 **THE COURT:** Do y'all have the transcript of the
21 guilty plea?

22 **MR. HUBBARD:** Yes, sir. I also have photos,
23 Your Honor, if Your Honor wishes to see where she
24 was shot, what she was shot with and the nature of
25 her wounds. It's attached to the motion.

1 For the record, I'm handing up five
2 photographs. Two are x-ray shots of the victim.
3 Two are cleaned up autopsy close-up shots of the
4 wound. One is an unclean photo shot of the wound at
5 the neck, and a photo of the sawed-off shotgun that
6 he used.

7 As Your Honor will also see in the transcript,
8 there was a fingerprint, it was on the box of
9 shells. One shell was missing, that was the one
10 that went into the victim's neck.

11 **THE COURT:** All right. They've handed me the
12 transcript of the guilty plea in front of Judge
13 Westbrook. And Judge Westbrook asked you a series
14 of questions. And then he asked the prosecutor, it
15 appears the prosecutor was Tracey Carroll, who is
16 now a magistrate in Aiken County, and he asked her
17 to give the facts of the case.

18 She stated that on the night of September the
19 15th of 1999, Lexington County Sheriff's Department
20 responded to an apartment in River Oaks Apartments
21 in Lexington County. When they arrived, they found
22 the body of Cathy Williams, who was 41 years old,
23 who had been obviously shot in the neck area.

24 They also found three of her children who were
25 frantically running around the apartment trying to

1 get help for their mother. Law enforcement
2 questioned the children who were present in the
3 apartment when their mother was shot. At that time,
4 they were ages 8, 13 and 15. The children were able
5 to tell law enforcement that the evening -- I'm
6 sorry -- that that evening their father or
7 stepfather, the defendant, came over to speak to the
8 mother supposedly to bring some money so the
9 youngest child could play football.

10 At that point, the defendant and the victim had
11 been separated. She had moved out of the marital
12 home into these apartments in River Oaks. He was
13 not living there. The victim and the defendant
14 argued a little bit about him coming over all the
15 time.

16 At that point, the defendant left the
17 apartment, went down to his car, armed himself with
18 a shotgun, took one shotgun shell, loaded the gun
19 and went back into the apartment. He went straight
20 back to the victim's bedroom and motioned her to
21 come into the bedroom with him. The children heard
22 some more arguing. Two of the children hear the
23 victim saying in a very stronger voice, What are you
24 going to do, shoot me? And then immediately
25 afterwards they heard a gunshot fired. The

1 defendant runs out of the apartment leaving
2 Ms. Williams alone on the floor to die.

3 Law enforcement gets a tip as to where the
4 defendant may be located. He had some family
5 members, I believe, in Barnwell County. The next
6 morning they're able to go out there. I believe
7 they were actually contacted by his family members.

8 When they went to the brother's house, they
9 found the defendant in that home. They found the
10 car he was driving hidden behind another home in the
11 area, as well as a sawed-off shotgun hidden in an
12 old refrigerator behind the trailer and a box of
13 shotgun shells. Out of the box of ammunition, one
14 shotgun shell was missing. That was sent to SLED
15 and forensic were -- they were able to determine
16 that the defendant's palm print was on the box of
17 ammunition.

18 It talks about the autopsy. It says the
19 autopsy was performed on Ms. Williams. Dr. Carter
20 determined that she died from a gunshot wound to the
21 neck area. He approximates that the gun was less
22 than six inches from her neck when it was discharged
23 and basically it severed her spinal cord. So she
24 had absolutely no chance of surviving after she was
25 shot.

1 Gunshot residue tests were performed on both
2 the defendant and the victim. It obviously came up
3 negative on the defendant due to the lack of or the
4 great period of time that lapsed between the
5 shooting and taking the test. I believe it was over
6 at least 18 hours or a little bit less when they
7 actually did that test on him.

8 But the expert from SLED would have testified
9 that the gunshot residue test that was done on the
10 victim would have been consistent with the victim's
11 hands being up in the surrender position. It was
12 not on the gun at any time.

13 It states then about your prior record of
14 criminal domestic violence and that she was the same
15 person -- she was the victim in that case. You had
16 a grand larceny charge in 1994.

17 And that, We had also had planned on calling
18 witnesses from the defendant's work place who
19 indicated that for at least weeks before this crime,
20 he had threatened to kill his wife, Cathy Williams,
21 as well as killing himself. And we had intended to
22 call them as witnesses if this case had, in fact,
23 gone to trial.

24 In exchange for the defendant's plea today, we
25 are dismissing the charge of possession of a weapon

1 during the commission of a violent offense and we
2 are recommending a 30-year sentences.

3 **MR. HUBBARD:** Your Honor, I've got a couple of
4 other photographs, too. And I don't know how Your
5 Honor wishes to do this, but it might not be a bad
6 idea, if Your Honor's okay with that, we'll be
7 offering these as court's exhibits for this hearing.
8 There's two photos of the victim as she was found.
9 And I don't know if Your Honor wishes to make this
10 transcript part of the record, too. I know you've
11 read it into the record.

12 **THE COURT:** I can get a copy of it.

13 **MR. HUBBARD:** Yes, sir. Thank you.

14 **THE COURT:** All right. Mr. Williams, I had you
15 brought over here to tell me whatever it is you want
16 to tell me about this newly discovered evidence
17 claim or any kind of impropriety and now is your
18 chance.

19 **DEFENDANT:** Well, the only thing I can say,
20 Your Honor, and this might not be newly discovered
21 evidence, I didn't do no crime. I didn't kill no
22 one. That's all I can say. I'm innocent as y'all
23 are.

24 And when the Solicitor said in the transcript
25 that I went downstairs and armed myself and came

1 back with a shotgun, my kids wasn't in the living
2 room. They didn't see no gun. I didn't have no
3 gun. And then the Solicitor said in the transcript
4 the gun was a sawed-off shotgun. This gun is 36
5 inches. I got pictures right here. Your Honor, I
6 need help. I didn't kill nobody.

7 **THE COURT:** Well, then why did you plead
8 guilty?

9 **DEFENDANT:** I plead guilty because they
10 threatened me with my children.

11 **THE COURT:** Threatened you with your children
12 in what way?

13 **DEFENDANT:** They're going to put them on the
14 stand to testify against me. And it was two years
15 after it happened. They hadn't gotten over their
16 mother yet.

17 **THE COURT:** The threat was that they were going
18 to put them on the stand to testify?

19 **DEFENDANT:** Yeah, put them on the stand and
20 testify against me.

21 **THE COURT:** That was the threat?

22 **DEFENDANT:** That was the threat.

23 **THE COURT:** That ain't no threat.

24 **DEFENDANT:** This the first time I been in
25 trouble. I didn't know what they were going to do.

1 **THE COURT:** Mr. Williams, look, if you're
2 innocent and you've got evidence to show actual
3 innocence, that's why I had you brought you over
4 here today, but all you're telling me is that you
5 disagree with what was done to you back then. And
6 you were present and you kept your mouth shut. You
7 didn't object to any of this stuff that was said
8 about you. You didn't tell the judge, No, judge,
9 that's not the way it happened.

10 **DEFENDANT:** Your Honor, that plea, it was an
11 involuntary plea. It was not knowingly and
12 intelligently because I never was advised of my
13 rights.

14 **THE COURT:** What do you mean you weren't
15 advised of your rights?

16 **DEFENDANT:** They didn't tell me my right to a
17 jury trial, my right to confront an accuser.

18 **THE COURT:** Hand me that transcript.

19 **MR. HUBBARD:** Your Honor, I just took it out to
20 photocopy it.

21 **THE COURT:** You raised those kind of issues in
22 the previous proceedings and they were ruled against
23 you, didn't you?

24 **DEFENDANT:** You can check the transcript, Your
25 Honor.

1 **THE COURT:** But you don't get to keep raising
2 the same -- if you get one set of judges to rule on
3 something -- if we just keep having to rule on the
4 same things over and over again, we don't ever get
5 to any of these folks. They just sit in jail.

6 **DEFENDANT:** Well, the issues I raised ain't
7 never been preserved. They never been ruled on,
8 because every time I got to go to court with them,
9 they kick them out.

10 **THE COURT:** Sounds like they're ruling on them
11 to me. You -- I don't want to argue with you,
12 Mr. Williams. I'm trying to give you every
13 opportunity --

14 **DEFENDANT:** I understand.

15 **THE COURT:** In 99 out of a hundred cases, I
16 would have never appointed an attorney to look into
17 this.

18 **DEFENDANT:** I understand, Your Honor. I
19 understand.

20 **THE COURT:** But let me see the transcript.

21 **MR. HUBBARD:** Yes, sir, Your Honor.

22 **THE COURT:** All right. This transcript -- and
23 I don't know why the court reporter wouldn't have
24 taken it down accurately. There's been no assertion
25 that she didn't. Judge Westbrook -- you're placed

1 under oath. Y'all apparently had had a jury
2 selection, a jury was seated.

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** He told you that the attorneys
5 would make opening statements, that the evidence
6 would start. The State would have to put up
7 witnesses. They would have to testify in open
8 court. Your lawyer would have to -- have a right to
9 question those witnesses. Do you understand that?
10 The answer is, Yes, sir.

11 And you understand the reason that they do that
12 is because they have the burden of proof. They must
13 prove you guilty beyond a reasonable doubt. Do you
14 understand that? The answer is, Yes, sir.

15 And you understand that that means that you
16 don't --

17 **MR. HUBBARD:** Judge, you may need this other
18 one because I don't think it got the other side.
19 We'll substitute a copy.

20 **THE COURT:** You don't have to prove anything.
21 You're not required to prove a thing. And, of
22 course, we will tell the jury that, too. Do you
23 understand that? Yes, sir.

24 And that means that you can testify if you want
25 to, but you wouldn't have to. It's up to you. You

1 can call witnesses if you want to, but again you
2 wouldn't have to. That would be up to you. Do you
3 understand that? Yes, sir.

4 Now, regardless of what you did, once all that
5 was over, then your lawyer would have a chance to
6 speak to the jury again on your behalf at the end
7 and give what's called a closing statement. Do you
8 understand that? Yes, sir.

9 And then following that, the State would have a
10 chance to make a closing statement. I would tell
11 the jury the law and they would go out and come back
12 with a verdict. Do you understand that? Yes, sir.

13 Now, do you understand that during all of this,
14 there are from time to time various motions that can
15 be made on your behalf and your lawyer would be able
16 to make those? You understand that? Yes, sir.

17 And if the jury were to find you guilty, you
18 would have a right to appeal to the State Supreme
19 Court. Do you understand that? Yes, sir.

20 All right. And do you understand basically
21 then what your rights are in the jury trial? Yes,
22 sir.

23 Do you have any questions about this at all?
24 No, sir.

25 And you've been over all that with your lawyer?

1 Yes, sir.

2 And you understand that if you plead guilty,
3 you're going to give all of that up. You
4 understand? Yes, sir.

5 And, of course, that means if you had any
6 defenses that you wanted to bring up or any motions
7 or any claims of your own or any complaints about
8 the way you were treated, you would give all that
9 up. Do you understand that? The answer is, Yes,
10 sir.

11 And understanding that then, do you still want
12 to plead guilty? The answer is, Yes, sir.

13 All right. Now, Mr. Williams, are you pleading
14 guilty of your own free will? Yes, sir.

15 Okay. Has anybody threatened you in any way to
16 make you plead guilty? Answer is, No, sir.

17 All right. Now, there's, except for any
18 argument, anything that may have been worked out
19 between your lawyer -- except for any agreement,
20 anything that may have been worked out between your
21 lawyer and the State, and I don't want to know about
22 that, I'll find out if there has been, except for
23 anything that might have been worked out with that,
24 has anybody promised you anything to get you to
25 plead guilty? No, sir.

1 Okay. Do you admit that you're guilty of this
2 charge? Yes, sir.

3 All right. Now, at this time, are you under
4 the influence of any drugs or alcohol or medication
5 of any kind? The answer is, No, sir.

6 Now, is there any medicine that you're supposed
7 to be taking that you're not taking? No, sir.

8 Okay. Are you satisfied with your lawyer?
9 Yes, sir.

10 Have you had his advice in this matter? The
11 answer is, Yes, sir.

12 Do you feel like he's done everything you
13 wanted him to do? The answer is, Yes, sir.

14 All right. And understanding everything that
15 I've asked, do you still want to plead guilty? The
16 answer is, Yes, sir.

17 And shortly after he talks about the appellate
18 rights, he hears the recitation from the State.

19 All right. Anything else y'all need to put on
20 the record?

21 **DEFENDANT:** Yes, sir. According to Boykin
22 versus Alabama, right, he never advised me of my --
23 privilege --

24 **THE COURT:** He never advised you --

25 **DEFENDANT:** -- self-incrimination, wasn't

1 nothing in there.

2 **THE COURT:** He told you you could testify or
3 not testify. It's up to you.

4 **DEFENDANT:** That's my self-incrimination is
5 what he tell me. He didn't tell me I have the right
6 to remain silent. Ain't none of that in there.

7 **THE COURT:** It's the same thing.

8 **DEFENDANT:** Okay. Your Honor, I appreciate it.

9 **THE COURT:** It's no magic words in all of this,
10 Mr. Williams.

11 **DEFENDANT:** I don't want to waste your time,
12 Your Honor. But I like I said, I'm just as innocent
13 as y'all are. I just got caught up in the spot. I
14 just got caught up in the spot.

15 **THE COURT:** Well, we got that SLED agent
16 probably driving slightly above the speed limit on
17 his way back from Florence, so let's hear what he
18 has to say. We'll be in recess for five minutes and
19 then I'll do guilty pleas or motions or whatever. I
20 want to get as much done today on this case because
21 like I said, Mr. Williams, I'm trying to give you a
22 chance to tell me what it is that entitles you to a
23 new trial, where the problems are, all right.

24 **DEFENDANT:** Yes, sir.

25 Your Honor, can I ask you one question? Those

1 motions what I raised when I got into court, I can
2 raise further, right, like a PCR?

3 **THE COURT:** I can't give you legal advice,
4 Mr. Williams. I just have to make rulings on what's
5 before me and what you do from that point forward is
6 up to somebody with a higher pay raise than mine. I
7 can't give you legal advice.

8 I'm trying to do what the law requires me to do
9 and what I think is fair and right. If I'm wrong, I
10 hope somebody does correct it, but whether
11 procedurally you'll be barred from doing it or what
12 another court might do or a higher court might do, I
13 couldn't say.

14 **DEFENDANT:** Well, I thank you, Your Honor.

15 **THE COURT:** Well, I'm going to get back to you
16 as soon as the SLED agent gets here. All right.
17 Thank you. We're in recess.

18 (Brief recess.)

19 **THE COURT:** All right. We're back on the
20 record on James Chester Williams. Mr. Williams is
21 that Agent Dowling that talked to you in prison?

22 **DEFENDANT:** Yeah.

23 **THE COURT:** And what did he tell you?

24 **DEFENDANT:** Well, I might have misinterpreted
25 what he said.

1 **THE COURT:** Well, I'm not asking you to
2 misinterpret. What did he say?

3 **DEFENDANT:** I think he said, when he came down
4 to see me, he said, he didn't see how I got that
5 much time.

6 **THE COURT:** You didn't say anything about time
7 earlier. You told me that he told you that he'd
8 been keeping up with your case and that he didn't
9 see how you got any murder charge against you. Is
10 that right or wrong?

11 **DEFENDANT:** Well, Judge, I'm like this, right,
12 I'm doing time. I mean, Mr. Dowling here, me and
13 him been knowing each other for a long time. And I
14 don't want to do nothing to get him in trouble at
15 his job. I'm doing time already, so I don't see no
16 way that, you know, that I can get out of everything
17 I tried to do. So ain't no need to put him
18 involve --

19 **THE COURT:** Well, if you give me something to
20 work with, Mr. Williams, I promise you -- I honestly
21 have a whole lot of stuff to do, and I have tried to
22 set aside all the time in the world just so I can
23 find out that -- whether I'm missing anything. I
24 didn't want to just look at the papers and say,
25 well, there's nothing there and throw it out. I

1 wanted to give you a chance to tell me what this
2 newly discovered evidence was.

3 And then I appointed you a lawyer and the
4 lawyer looked into it and he gave you bad news. The
5 dress that you were interested in, the skirt,
6 whether it would have any significance or not, I
7 still don't know, but it's destroyed. It's gone.
8 The other items were in the file. You may have had
9 some claims against your lawyers, but you've already
10 raised two PCR cases. So I'm not looking for
11 anything against you. I'm looking for you to tell
12 me the stuff for you.

13 And I just -- again, this was an extra caution
14 on my part. You said a SLED agent said he'd been
15 keeping up with your case, which I took to mean
16 maybe he'd been investigating your case and maybe
17 there was some evidence out there that you claim to
18 have, but he's driven here from Florence.

19 **DEFENDANT:** I must have misinterpreted what he
20 was saying. I might have misunderstood what he was
21 saying. You know, I don't want to get him involved
22 in my case or get him in trouble. We grewed {sic}
23 up together, you know. And I'm doing time. I got a
24 life sentence because of my age. But I'm going to
25 tell, on the record, I didn't kill nobody. I'm just

1 as innocent as you are. If they had never come at
2 me with my kids, Your Honor, I would have never
3 plead guilty.

4 Mr. Dowling, he's a fine man, you know, and I
5 can't sit here and put him involved because he
6 didn't make me commit this crime, you understand
7 what I'm saying, you know. This doesn't help all of
8 a sudden.

9 **THE COURT:** Mr. Dowling since you came, would
10 you, please, raise your right hand for me, please.

11 JAMES HENRY DOWLING,
12 having been duly sworn, testified as follows:

13 **THE COURT:** What's your full name?

14 **AGENT DOWLING:** James Henry Dowling.

15 **THE COURT:** D-o-w-l-i-n-g.

16 **AGENT DOWLING:** Yes, sir.

17 **THE COURT:** And what's your position with SLED?

18 **AGENT DOWLING:** I'm a regular investigator,
19 sir. You got to excuse my attire because I was out
20 in the field working.

21 **THE COURT:** Listen, I appreciate you coming
22 here today. Like I said, I'm trying to go the extra
23 mile here and we had everybody assembled here today
24 so your name didn't come up until today.

25 **AGENT DOWLING:** Yes, sir.

1 **THE COURT:** Did you have a conversation with
2 Mr. Williams at the penitentiary?

3 **AGENT DOWLING:** Lieber. I believe that's what
4 it was, right?

5 **DEFENDANT:** Yeah, Lieber.

6 **AGENT DOWLING:** We were working on another
7 case, Judge, Your Honor, Sammy Garrett.

8 **DEFENDANT:** Yeah, Sammy Garrett.

9 **AGENT DOWLING:** After the interview, I asked to
10 see him because we growed {sic} up together. When
11 he and I met, we talked about back in the day. We
12 talked about classes. We talked about other
13 classmates. He brought up, he said, I got an
14 appeal. My attorney's going to appeal my case. I
15 should be out -- did you say 30, 60 days?

16 **THE COURT:** No, just tell me what you --

17 **AGENT DOWLING:** That's what he told me. And I
18 said, Okay, good luck. So we continued to talk
19 about classmates, that's it.

20 **THE COURT:** Did you ever make any statement to
21 him like that you had been keeping up with his case?

22 **AGENT DOWLING:** No, sir, never, never.

23 And you cannot sit there and tell me that --

24 **THE COURT:** Don't talk to him. Talk to me
25 right now.

1 **DEFENDANT:** No, he didn't say that, Your Honor.

2 **THE COURT:** Well, I can get the court reporter
3 to read it back. That's almost word for word what
4 you told me he said before.

5 Let me just put on the record what he says
6 happened and then if you say something -- I mean,
7 that happens all the time. I get one person in here
8 say the sky's blue and I got another one that come
9 in here and say the sky is orange.

10 All right. Have you been keeping up with his
11 case?

12 **AGENT DOWLING:** Never, sir.

13 **THE COURT:** Did you investigate his case in any
14 way?

15 **AGENT DOWLING:** No, sir.

16 **THE COURT:** Do you have any additional evidence
17 that might help him?

18 **AGENT DOWLING:** No, sir.

19 **THE COURT:** Do you know of any impropriety or
20 anything that any law enforcement agent or
21 prosecutor or judge or defense attorney or anybody's
22 done to withhold information from him that would be
23 helpful to him?

24 **AGENT DOWLING:** No, sir.

25 **THE COURT:** Got anything against him?

1 **AGENT DOWLING:** I thought he was my friend,
2 sir. That's why --

3 **THE COURT:** Well, apparently, he thinks y'all
4 are friends and you thought he was your friend.

5 **AGENT DOWLING:** Yes, sir. I didn't figure he
6 would lie on me like that.

7 **THE COURT:** Well, if I was in prison for 30
8 years, I don't know what I would do. I'd be trying
9 to get out.

10 **AGENT DOWLING:** Yes, sir.

11 **THE COURT:** I mean, I understand that. I don't
12 condone if he is lying.

13 **AGENT DOWLING:** Oh, yes, sir, he's lying on me.

14 **DEFENDANT:** Yes, sir, I'm lying.

15 **THE COURT:** Well, don't say that because you'll
16 get indicted for perjury.

17 **DEFENDANT:** He didn't.

18 **THE COURT:** All right.

19 **DEFENDANT:** I'm lying.

20 **THE COURT:** Y'all need to ask any questions of
21 Agent Dowling?

22 **MR. HUBBARD:** No, sir, nothing from the State.

23 **THE COURT:** Mr. Mauldin, do you?

24 **MR. MAULDIN:** No, Your Honor?

25 **THE COURT:** Mr. Williams, do you?

1 **DEFENDANT:** No. I want to tell him I'm sorry I
2 made up that lie on you.

3 **AGENT DOWLING:** No problem, we cool.

4 **THE COURT:** All right. Well, Agent Dowling,
5 thank you very much for coming and I'm sorry you had
6 to --

7 **AGENT DOWLING:** No problem, sir.

8 **THE COURT:** -- make that detour.

9 **AGENT DOWLING:** No problem.

10 **THE COURT:** All right. Mr. Williams, if
11 there's nothing else, I'm going to rule on what you
12 got in writing and there will be a copy of it sent
13 to you. You asked me about an appeal and any appeal
14 you wish to file, I think you know the process, you
15 have to do it in writing. I can't say if you can or
16 cannot file an appeal.

17 **DEFENDANT:** Mr. Keesley.

18 **THE COURT:** Yes, sir.

19 **DEFENDANT:** Truly, sir, from my heart, I didn't
20 kill nobody, a life sentence for nothing. I mean, I
21 don't even know where the gun come from or nothing.

22 **THE COURT:** Well, if you've got proof of actual
23 innocence aside from you just saying it, I'd be
24 happy to try to arrange something for that to be
25 presented, but if --

1 **DEFENDANT:** I mean, what I'm saying --

2 **THE COURT:** The problem was that, like I told
3 you before, we don't just keep going over the cases.

4 **DEFENDANT:** I understand, too.

5 **THE COURT:** Once we move a case, it's moved and
6 you've got to have something that meets those five
7 elements, and you know what the elements are. I
8 think you wrote them in one of your briefs. And,
9 you know, I think one of the cases you were
10 referring to was one of the cases I was very much
11 involved in and I consider it kind of the critical
12 element is that you've got to show that it would
13 have some effect.

14 But I can't just say, Mr. Williams came in here
15 and said he didn't do it, so I've got to give him a
16 new trial. If I did that, the penitentiary would be
17 all over here in the courthouse. You may be telling
18 a hundred percent truth, but you should have told it
19 to Judge Westbrook.

20 **DEFENDANT:** They done me wrong, told me if I
21 pleaded and I come up on PCR, they'd get me out. So
22 they lied to me.

23 **THE COURT:** They lied to you about what?

24 **DEFENDANT:** Told me if I come up on a PCR,
25 they'd get me out.

1 **THE COURT:** Who told you that?

2 **DEFENDER:** Solicitor and Westbrook told me
3 that. They said if I plead guilty, say I was
4 involved and come up on a PCR, they'd help me get
5 out. They lied on me for nothing.

6 **THE COURT:** Judge Westbrook and the Solicitor
7 told you?

8 **DEFENDANT:** And the Solicitor and the man named
9 Gorski, all of them told me that. I wanted to go to
10 trial, I really -- the day of the trial, walking out
11 of trial, tell the lie about he was sick. The man
12 wasn't sick. Got me doing a life sentence for
13 nothing.

14 **THE COURT:** Where did Judge Westbrook say this
15 to you?

16 **DEFENDANT:** Back in the courtroom.

17 **THE COURT:** In the courtroom?

18 **DEFENDANT:** Yeah. We looking for it in the
19 record. They didn't put it in the record. I mean,
20 it's a shame the way they done me.

21 **MR. HUBBARD:** This would be a good time to hand
22 up a clean copy of the transcript, Your Honor.

23 **DEFENDANT:** I didn't know the law was like that
24 to tell you the truth.

25 **THE COURT:** Well, Judge Westbrook is buried out

1 there near the airport, so I don't think we can ask
2 him any questions.

3 **DEFENDANT:** They did me wrong. They did me
4 wrong. I'm innocent. I didn't kill nobody. I got
5 to do a life sentence for nothing. Everywhere I go
6 for help, nobody want to listen to what I say.

7 **THE COURT:** Well, Mr. Williams, you might can
8 say that about somebody else, but I'm telling you
9 the truth, I've listened to you --

10 **DEFENDANT:** Wrong the way they done me. Wrong,
11 Judge. I tell you --

12 **THE COURT:** It's now 1:30. We're 30 minutes
13 past where we normally break for lunch. I've done
14 everything I know to possibly do to hear you out and
15 I've heard you out. I'll make the ruling and I'll
16 do my job. I wish you the best. Good luck to you,
17 sir.

18 Thank y'all very much.

19 (Court's Exhibit Numbers 4 and 5 were marked
20 for identification.)

21

22 END OF PROCEEDINGS

23

24

25

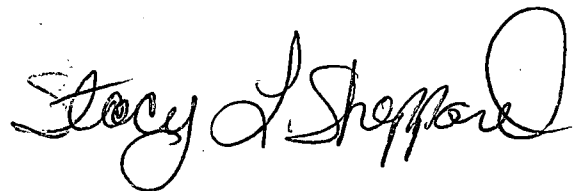
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 20th of June, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 2, 2014



Stacy L. Sheppard, RPR
Circuit Court Reporter

#21

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)

Indictment # 2000-GS-32-00689
Warrant # G-213779

The State of South Carolina,

v.

James Chester Williams, #282929,
Defendant.

COPY

**ORDER REGARDING MOTION
CONCERNING CLAIM OF
AFTER-DISCOVERED EVIDENCE**

By letter dated October 12, 2012, the defendant, Mr. James C. Williams, notified the court that he had filed a motion concerning a claim of after-discovered evidence. The court obtained the motion today and makes this order establishing the procedure to be followed.

WPC
#1

The listings on the Case Management System (CMS) website for Lexington County indicate that Mr. Williams pleaded guilty to murder before The Honorable Marc H. Westbrook on March 21, 2002. He was sentenced to imprisonment for 30 years, effective September 16, 1999 [Indictment Number 2000-GS-32-00689; Warrant Number G-213779]. He was represented by William Gorski, Esquire.

A post-conviction relief (PCR) action was filed in 2003 [Case Number 2003-CP-32-01863]. Mr. Williams was represented by Robert N. Boorda, Esquire. This PCR case was dismissed by The Honorable James W. Johnson, Jr. The matter appears to have been reviewed by the Court of Appeals of South Carolina, without changing the decision to dismiss.

Another PCR case was filed in 2008 [Case Number 2008-CP-32-03561]. Pursuant to the Administrative Orders issued by the Chief Justice of the Supreme Court of South Carolina concerning the procedures for appointing counsel in PCR cases [see, for example, the Order of Chief Justice Toal dated October 6, 2008, a copy of which is attached], it does not appear that Mr. Williams had counsel before the PCR court. The listings on CMS seem to indicate that there was a motion to amend and the matter seems to have been reviewed by the Supreme Court of South Carolina, without changing the dismissal.

WP #2
The present motion is submitted by the defendant in a self-represented capacity. He seeks appointment of counsel. The motion is somewhat confusing because it claims that there is after-discovered evidence, presumably in the form of a SLED report that contained exculpatory evidence that was concealed from the defendant. So, there appears to be a claim of a violation of Rule 5, SCRCrP, and Brady v. Maryland. The materials submitted to the court do not contain a copy of this SLED report.

The defendant claims that he learned of this evidence on April 16, 2012. He cites Rule 29(e), SCRCrP, which appears to be a mistaken citation. Rule 29(b), SCRCrP, reads, as follows:

(b) New Trials Based on After-Discovered Evidence. A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if

no appeal has been taken or if the appeal has been finally decided in the appellate court.

The pending motion was filed July 23, 2012. So, if he just discovered this evidence, the motion was made within one year.

The assertion is that Mr. Williams first learned in April 2012 about a SLED report that contained evidence establishing that the shooting of his wife was accidental, which would exonerate him on the murder charge for which he pleaded guilty. The report presumably was in existence at the time that his case was called for trial. He asserts that it was intentionally withheld by the prosecution. He claims that he was coerced into entering a guilty plea based on his perception of the case against him.

(In addition to the claim related to the SLED report, which appears to be one that is properly stated on its face, there are other assertions of fraud and misconduct by various officials, including the prosecutor and the defense attorney. Mr. Williams cites a civil rule, Rule 60(b)(3), SCRCP. Rule 60 reads, in part:)

**RULE 60
RELIEF FROM JUDGMENT OR ORDER**

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. 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: . . .

(3) fraud, misrepresentation, or other misconduct of an adverse party; . . .

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal,

leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

The court is unaware of any civil proceeding that is pending, though the claims made herein might be proper in a civil context. However, Rule 60(b)(3) is not likely to be the controlling rule, and it is to be raised within a one-year deadline from the entry of the judgment. At this point, the court is interpreting this as an attempt by the defendant to obtain a new trial based on a claim of actual innocence or newly-discovered evidence.

WPA #4
It is somewhat troubling, however, that the motion can be read as a request by the defendant to go on a fishing expedition. Many of the things that he insinuates as indicating some conspiracy against him are difficult to follow. The assertions related to his lack of knowledge about shortcomings in testimony that the State claimed to be available from the defendant's children seemingly concern matters that would have been or should have been known at a much earlier time. Nonetheless, because there appears to be a claim of newly obtained, after-discovered evidence, the court believes that appointment of counsel is appropriate to flesh out the evidence, refine the claims that are being made, and make the proper filings, if any, in the appropriate court.

THEREFORE, IT IS ORDERED that the Clerk of Court for Lexington County appoint the Public Defender to represent Mr. Williams.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this order and the motions filed by Mr. Williams to the Public Defender, the Solicitor's office of the Eleventh Judicial Circuit, and the South Carolina Attorney General's office.

IT IS FURTHER ORDERED that a copy of this order be sent to Mr. Williams at the following address: (James C. Williams, #282929, Leiber C.I., SA-31, PO Box 205, Ridgeville, SC 29472-0205).

IT IS FURTHER ORDERED that the attorneys contact the court to schedule any hearings that may be needed and keep the court informed of the status of this matter.


William P. Keesley
Chief Judge for Administrative Purposes
General Sessions

Edgefield, South Carolina

October 25, 2012

#5

David Mauldin
Public Defender

3

FILED

STATE OF SOUTH CAROLINA
2013 AUG 19 PM 2:56
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Indictment # 2000-GS-32-00689
Warrant # G-213779

#22

The State of South Carolina,

v.

**ORDER FOR STATUS CONFERENCE
REGARDING MOTION ON CLAIM OF
AFTER-DISCOVERED EVIDENCE**

James Chester Williams, #282929,

Defendant.

A hearing/status conference was held on June 20, 2013, to try to determine how to proceed regarding the documents being filed by James Chester Williams seeking a new trial. He also filed a document seeking to relieve his attorney. The court dismisses the motion for a new trial claiming after-discovered evidence. The court relieves the attorney from further participation in the case, with the exception of filing a notice of appeal, if Mr. Williams desires to appeal.

WPA
#1

After a jury was impaneled in March 2002, Mr. Williams entered a plea of guilty to murdering his wife. The presiding judge, The Honorable Marc H. Westbrook, accepted the defendant's guilty plea and the recommended sentence of imprisonment for 30 years. An appeal was filed and ultimately dismissed.

Mr. Williams filed two previous Post-Conviction Relief Actions, but has not prevailed on either. He also has filed a petition for habeas corpus in the federal courts, which he claims he withdrew. His claims have been rejected on appeal more than once.

On July 23, 2012, Mr. Williams filed a "Motion for After-Newly Discovered Evidence." He sent a letter on October 12, 2012, questioning the status of his motion. The court, upon learning of this motion, reviewed the documents and issued an order that was filed October 19, 2012. In view of the confusing nature of the assertions being made by Mr. Williams, the court took the extraordinary step of appointing an attorney for him to see if anything could be developed to support the claim for a new trial based on after-discovered evidence (or any other reason). In that order the court mentioned issues and concerns, including the fact that the defendant is citing a SLED report as after-discovered evidence, but seems to want to conduct discovery to seek out new matter.

WPK #2

The Public Defender's office was designated to represent Mr. Williams and, in December, Assistant Public Defender David Mauldin, an experienced trial attorney, began working on the case. He learned that Mr. Williams was claiming newly-discovered evidence in the form of SLED reports that he claims were never made available to him. However, Mr. Mauldin obtained copies of the files of the attorney who handled the plea (Mr. Gorski) and the appellate file, and he learned that the reports are in those files, and that they were supplied to the defense by the Solicitor's office in the normal course of discovery. In the conference on June 20, 2013, Mr. Williams stated that he had seen two Gunshot Residue Analysis forms (these forms were marked as court's exhibits for the June 2013 status conference), but had not seen the reports from SLED dated October 18, 1999 and April 24, 2000 (which were also marked as court's exhibits). The only conclusion that can be drawn is that these reports were given to Mr.

Williams' attorney long before the plea, but Mr. Williams claims that he had not seen them.

If they were withheld from him (and there is no credible evidence that they were), the court was still at a loss to understand how those reports would benefit the defendant and entitle him to a new trial. The October 18, 1999 report relates to gunshot residue taken from the victim and the defendant. Mr. Williams was swabbed for gunshot residue, but he fled from the scene and was not captured until about 18 hours later in another county. The report only indicates that the test was not performed because there had been too long a lapse of time to comply with the testing protocol. The gunshot residue test found residue on the victim's left palm and the back of her right hand. The report states that there were round, lead particles found. Nothing conclusive was found on the back of the decedent's left hand.

WPK
#3
The October 1999 SLED report also mentioned clothing that was examined. The defendant's socks, pants, shirt, underwear, and tennis shoes were examined. The victim's t-shirt was also examined. The report found no holes or "physical effects indicative of gunpowder residue" on the defendant's clothing. It found residue and physical characteristics on the victim's t-shirt that were consistent with a contact wound. The victim was killed with a shotgun.

The SLED report of April 2000 related to the defendant's clothing. No blood was detected on his socks, shirt, underwear, or tennis shoes. Samples were lifted from his pants and sent for DNA analysis and blood identification.

Mr. Williams admits that he was present at the scene. His children were also there. The recitation of facts given by the Deputy Solicitor at the plea indicated that the

victim and defendant were estranged. The defendant came over to the victim's apartment. An argument ensued. The defendant left the apartment, went to his vehicle, retrieved a shotgun, and returned to the apartment. Once inside, he had the victim come into a bedroom outside the view of the children. However, the children could hear the discussion. It was reported that the victim asked the defendant something to the effect of whether he was going to kill her. One shot was then fired, and the defendant fled. The defendant admitted his guilt to Judge Westbrook and never took issue with the recitation of facts during the guilty plea.

The defendant went to a location where his family resided. When he was found, he was hiding. The shotgun was found and a box of ammunition. One shell was missing. The defendant's palm print apparently was on the box of ammunition.

WAL #4
Mr. Williams seems to believe that the absence of any mention of blood on his clothing is newly-discovered evidence that proves he is not guilty. He was present at the scene, however, and the report indicates that samples were taken from his pants and submitted for analysis. He has offered no hint of newly-discovered evidence related to these reports that could form the basis of granting a new trial.

Mr. Williams told his attorney that the victim was wearing a skirt and that there was no forensic examination of the skirt. The wound was to the victim's neck. Other than the blanket assertion that there was no analysis done of the skirt, there has been no showing that anything related to the skirt could support a new trial. After the appeals and PCR cases were denied, the skirt was destroyed. Since there was no trial, it was never entered into evidence, and the Sheriff's Department eventually threw it away. There is no assertion that the destruction of the skirt was improper. It seems to be pure

speculation on the part of the defendant that a forensic examination of the skirt would have yielded evidence that would show that the defendant never fired the weapon.

There is simply nothing in the way of newly-discovered evidence that would warrant allowing this claim to proceed. There are no affidavits, no test results, no new material at all that was unknown to the defendant at the time of the plea or which could not have been discovered through the exercise of reasonable diligence.

Mr. Williams said that a SLED agent visited him at the prison and told him that the agent had kept up with this case over the years and that there was no evidence that Mr. Williams committed murder. The court had the attorneys contact SLED. The agent was located and said he knows Mr. Williams from having grown up together. He also admitted that there had been a conversation between them at the prison. So, the court instructed the agent to come to court and waited while the SLED agent in question drove from Florence to Lexington.

When the SLED agent arrived, Mr. Williams immediately reversed himself. He began by saying that he did not want to get the agent in any trouble, which implied that he was trying to shield the agent from admitting that the conversation had occurred as Mr. Williams originally reported it. However, the court wanted to hear from the agent himself to see if the agent knew of any impropriety or newly-discovered evidence. When it became apparent that the agent was going to tell the court his version of what occurred, Mr. Williams admitted that he had lied under oath. He tried to claim at times that he said things differently, but it is indisputable that Mr. Williams lied and that he only admitted to his deceit when the court brought the SLED agent to testify.

FILED
2019 AUG 19 PM 2:56
JIM A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

WPA
#5

The SLED agent was placed under oath and stated that he was at the prison working on another case. He said that he had grown up with the defendant and simply wanted to pay Mr. Williams a friendly visit while at the location, completely unrelated to work. He credibly and emphatically denied having ever told Mr. Williams that he had kept up with the case, that he viewed anything about the evidence as being insufficient to support a murder conviction, or that he knew of anything that had been done improperly in the case. When questioned, the agent testified that he did not know of any evidence that might benefit Mr. Williams and that he did not know of any impropriety in the prosecution.

WJH
#6
Having given Mr. Williams several hours to think about his claims and to give the court any indication that there might be some after-discovered evidence claim that should be explored, it was apparent that he has no such information. At best, he wants to reopen the case and conduct a fishing expedition.

Throughout the proceedings, Mr. Williams maintained that he is innocent. He asserted that the plea was coerced – that "they" threatened his children. When asked to explain how he was threatened or coerced, and how the children were threatened, he said that the children were going to have to testify. As indicated above, the children were present when the events took place. They were material witnesses. The fact that Mr. Williams might want to spare his children from having to testify is not evidence of any threat or coercion.

Mr. Williams claimed that he was never told about certain rights, including his right against self-incrimination. The transcript of the guilty plea completely refutes his assertions in this regard. When he persisted in this claim, the court read to him out

FILED
2013 JUN 19 PM 2:56
BETH A. CARRIGG
CLERK OF COURT
JULIA K. STONIS

loud, the portions of the transcript where the judge covered his rights and asked the defendant to explain how he has any claim of not knowing his rights. He had no specific response, other than to keep asserting denials. It is clear that the judge covered those issues adequately. Further, Mr. Williams has had two PCR cases, and he did not prevail. He did not pursue federal habeas corpus relief against his PCR counsel.

Mr. Williams was asked about his assertion of actual innocence. He has no indication that he knows of any evidence that can be explored that would go to actual innocence. The only thing he has in that regard is his general assertion of innocence.

Finally, Mr. Williams became emotional and crying at the end of the proceeding. It was difficult to understand him, but it is clear that he said that he effectively has a life sentence because of his age and that he has tried repeatedly to have someone help him, without success. He said over and over again that he is as innocent of this crime as everyone else in the courtroom. Then, he accused Judge Westbrook, his former attorney Mr. Gorski, and the Solicitor's office of tricking him and promising him that if he pleaded guilty, he would be able to have the conviction overturned on PCR. He claims that promise happened in the courtroom. It is a preposterous assertion. There is nothing in the record to support that claim. Judge Westbrook is now deceased and unable to refute that claim. There is nothing to indicate that it warrants further exploration.

To justify allowing further pursuit of the motion for a new trial based on after-discovered evidence, the defendant would have to possess information that he could share with the court to show that evidence might reasonably be developed to support the following elements: (1) that there is evidence that would probably change the result

if a new trial were granted; (2) which was discovered since the plea; (3) which would not in the exercise of due diligence have been discovered prior to the plea; (4) that is material; (5) and, is not merely cumulative or impeaching. There is nothing in this record to indicate that the defendant has knowledge of anything that might lead to the development of admissible evidence on these points.

The court has also reviewed Rule 29(b), SCRCrP, which reads, as follows:

(b) New Trials Based on After-Discovered Evidence. A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.

WPK
#8

The pending motion was filed July 23, 2012. So, if Mr. Williams just discovered this evidence, the motion was made within one year of the discovery. However, having now given the defendant the opportunity to explain his assertion, he has not produced any indication that further discovery is likely to lead to admissible evidence showing that SLED reports contained information establishing that the shooting of his wife was accidental, which would exonerate him on the murder charge. Both reports were in his file, disclosed by the State, and in existence at the time that his case was called for trial. He had forms dealing with gunshot residue testing. He cannot establish that those reports were withheld by the prosecution or that they somehow constitute newly-discovered evidence of an accidental shooting. As for mechanical problems with the

weapon, the only indication is that Mr. Williams knew of problems with the mechanism of the weapon all along.

As noted in a previous order, in addition to the claim related to the SLED report, which appears to be one that was initially properly stated on its face, there are other assertions of fraud and misconduct by various officials, including the prosecutor and the defense attorney. Mr. Williams cites a civil rule, Rule 60(b)(3), SCRCP. Rule 60 reads, in part:

**RULE 60
RELIEF FROM JUDGMENT OR ORDER**

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. 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: . . .

(3) fraud, misrepresentation, or other misconduct of an adverse party; . . .

WPK
#9

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

There is no indication that Mr. Williams can produce any evidence of fraud or misconduct by anyone associated with his case. In fact, the only indication that the

court has of such impropriety occurred when Mr. Williams came into court on June 20, 2013, and admittedly lied under oath.

The court has gotten a motion from the defendant seeking to relieve counsel. Prior to that, the court received a copy of a petition for a writ of mandamus that the defendant presumably sent to the Supreme Court of South Carolina seeking to require the court to rule on the motion for a new trial. Mr. Williams may be able to assert a motion for a new trial in the Supreme Court of South Carolina, but the copy of the document that this court was provided merely asked to have this court rule upon his motion.

WPM
#10
Having given the defendant every opportunity reasonably justified, including appointing an attorney to investigate his claims, there is no evidence and no indication that there are matters that further investigation might uncover that might warrant the relief being sought. Moreover, almost all of his claims would be procedurally barred since he has been given PCR hearings and appeals. The court dismisses this motion and relieves the attorney, though the attorney may submit a notice of intent to appeal, if Mr. Williams desires.

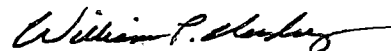
THEREFORE, IT IS ORDERED that the motion for new trial based on after-discovered evidence is dismissed, there being no indication of any evidence that might be developed to support such relief.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this order to David Mauldin of the Public Defender's office, the Solicitor's office of the Eleventh Judicial Circuit, and the South Carolina Attorney General's office.

FILED
20 AUG 19 PM 2:56
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

IT IS FURTHER ORDERED that a copy of this order be sent by the Clerk of Court to Mr. Williams at the following address: (James C. Williams, #282929, Kershaw Correctional Institution, PB#60, 4848 Goldmine Highway, Kershaw, SC 29067).

AND IT IS SO ORDERED.



William P. Keesley
Chief Judge for Administrative Purposes
General Sessions

Lexington, South Carolina

August 16, 2013

#11

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2013 AUG 19 PM 2:57

FILED

JAMES L. Williams 282929
Kershaw Corr-Inst MA 04
4848 Goldmine HWY
Kershaw South Carolina 29067

RECEIVED

OCT 16 2015

SC Court of Appeals

South Carolina Court of Appeal
Jenny Abbott Kitchings Clerk
Post Office Box 11629
Columbia South Carolina 29211