

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Frank R. Addy, Jr. Circuit Court Judge
C/A #:13-CP-36-00321

RECEIVED
DEC 08 2015
SC Court of Appeals

Anthony Derone Richardson,

Appellant,

V.

Jackie Swindler Chief of Police,
Newberry County Municipal Police,

Respondent.

APPELLANT REPLY BRIEF

Pro SE. Anthony Derone Richardson
P.O Box 221 Newberry, SC 29108

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MN: Thomson/West, 2003. Harris v. Younger, 281 F.Supp. 507 (C.D. Cal. 1968). In re Harris, 97 Cal.Rptr. 844 (Cal. App. 1971).

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Gidoen v. Wainwright 372 U.S. 335 (1963)

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Reply to Issue on appeal

In the case brought pursuant to 42 U.S.C. 1983 for alleged Civil Rights violations the trial court erred granted the respondent Motion for Summary Judgment pursuant Heck v. Humphrey, because the case is not governed under Heck its govern when two cases of the same is running parallel because under Humphrey this case provide no remedy for two case running parallel.....and when the genuine issue exist. Appellant argue the district court's abstention under the doctrine of Younger v. Harris, 401 U.S. 37 (1971). We exercise jurisdiction pursuant to 28 U.S.C. § 1291.....7 Genuine issue exist when any person is entitled to counsel under constitution and requested in writing to be represented by attorney and was not represented by counsel at trial. The respondent has not shown to the court that Appellant waive his right to be tried by judge and not a police or have court appointed counsel to represent him at trial. The magistrate or municipal must insure appellant has proper counsel, however the appellant pled guilty before the respondent which is not a judge in which he did not warn appellant the danger of self-incrimination or even assure appellant his rights to a direct appeal. The respondent did not secure appellant the right under the 14th constitution to confront witness after he request in writing to be tried by a jury and the respondent provided no proof I Appellant waive my rights and however the respondent is not even a judge but a police. The rights of appellant was not protected under article 1, section 12 in the s.c constitution and the judge responsible to protect the appellant right.

The trial court dismissed the appellant case rather than stay the case until it was resolved, and the same Judge Frank R, Addy heard arguments in the post-conviction hearing trial court erred in dismissing the suit rather than. The trial judge error in dismissal of suit when there is genuine issue exist in the suit, when the Appellant was tried by police rather than a judge

Stay.....10

The trial court erred in dismissing rather than staying the appellant case and the case cannot be cured because of the error, and summary judgment should be granted in favor of the Appellant, however the same judge Frank Addy heard the civil suit and the post-conviction relief. The trial judge error in denying the appellant the right to stay case because the appellant has the right to stay case until the post-conviction relief Frank Addy heard.

The trial court error because under Rodriguez the court failure to appoint attorney after requesting writing however because the appellant was convicted at trial under the respondent which is not a judge, and if the court would have gave the appointed attorney to the appellant the protection of the motion for direct appeal would have been imminent. Under criminal procedure 23) a) provides that a waiver must be in writing, however the respondent have not provide proof of a waiver.

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Reply to STATEMENT OF THE CASE

On or about February 2, 2013 the Appellant appeared before Judge Frank Partridge and pled not guilty to the offense of trespass after notice and requested a jury trial and to be appointed

attorney by the court. The Appellant receive letter to appear at the public safety complex on February 7, 2013 for jury selection. The appellant appeared and met with Chief Swindler and during the meeting in his office appellant signed a form pleading guilty and agreeing to pay the fine by March 15, 2013 and the Chief of police initial his name in which constitutes a bench trial, Swindler did threaten plaintiff if he does not pay the money before March 22, 2013 would result in a bench warrant. The plaintiff requested in writing to have a jury trial before a judge and not the Chief of police. However the Chief of police violated the code of law SECTION 24-26-10 which states only a trial judge can since according the sentencing guidelines. The defendant met with Chief Swindler and signed a form pleading guilty and agreeing to pay fine of 250.00 by march however this concludes to admit to a bench trial in front of a police officer rather than a judge which violates the appellant right to court appointed attorney, and clearly after the respondent violates the appellant right to jury because he is not a judge which is genuine issue exist. The respondent clearly violate code of law section 24-26-10 which only a trial judge can sentence is genuine issue exist. It was my attorney issue to assert the right to jury trial because on February 2, 2013 before judge Frank Partridge pled not guilty and request counsel and instead my attorney who the court appointed was not notified and the respondent proceed on with the bench trial and sign the sentence form and he is not a judge and he did not tell me my rights to appeal which I am entitle to.

Reply to Statements of case

On or about February 2, 2013 the Appellant appeared before Judge Frank Partridge and pled not guilty to the offense of trespass after notice and requested a jury trial and to be appointed attorney by the court. The Appellant receive letter to appear at the public safety complex on February 7, 2013 for jury selection. The appellant appeared and met with Chief Swindler and during the meeting in his office appellant signed a form pleading guilty and agreeing to pay the fine by March 15, 2013 and the Chief of police initial his name in which constitutes a bench trial, Swindler did threaten plaintiff if he does not pay the money before March 22, 2013 would result in a bench warrant. The plaintiff requested in writing to have a jury trial before a judge and not the Chief of police. However the Chief of police violated the code of law SECTION 24-26-10 which states only a trial judge can sentence a defendant according the sentencing guidelines

Reply to the Facts

The Appellant initiated this action pursuant to 42 U, S.C 1983 against Jackie Swindler former Chief of the city of Newbery, police department alleging Chief Swindler violated his constitution rights provided to him under 5, 6, and 4 amendments of the constitutional in which he clearly violated the laws of the state of SC code of law SECTION 24-26-10 which states only a trial judge can sentence according the sentencing guidelines. And the respondent acted as a judge in waiving my jury trial request, and initial his signature

which conclude a bench trial only a judge can preside and not police. I was not appointed attorney after requesting attorney before Judge Frank partridge and the chief police violated in sentenced me in which we agree to 200 and he sign the bench warrant to arrest. The respondent clearly conducted illegally bench trial under section 24-26-10 is genuine issue exist and the conviction would be clearly invalid under the SC constitution on the face. The failure to file direct appeal would not be in the Appellant duty after he requested counsel in front of Judge Frank Partridge, and because after the request the clerk or the judge never notified the counsel office in the criminal case he counsel Charles Verner had no knowledge of or even request from the courts.

Reply to ARGUMENTs

1. In the Case brought pursuant to 42 usc 1983 for alleged civil rights violations the trial court did not properly granted the respondents motion for summary judgment to heck because the case is govern under young v. Harris. The trial court error in that the Appellant had pled guilty to underlying criminal charges to the Chief of police rather than the municipal judge who supposed to advise the appellant his right to appeal. The respondent waive all my rights in not been judge in conducting a bench trial after requesting in writing to be represented by counsel in which I was entitle to and jury in which I did not waive. However, if the court decide the case is govern under Heck then the case would be already be invalidated because the sentence was done by respondent the police which conducted a bench trial and sentencing phase in his office rather than judge under south Carolina law. Appellant was deprived of a right to a jury and consequently that the conviction or sentence is clearly invalid under the SC code of law SECTION 24-26-10

Appellant ask the trial court to "stay" the litigation while my appeal the post-conviction action pending involving the same case, but he denied. Trial court granted respondent's summary judgment motion was biased against appellant; we first note that summary judgment under I.R.C.P. 56(c) is proper only when there is genuine issue however there was genuine issue. The trial court did prejudicially err in denying appellant summary judgment. "A trial court did not properly grants summary judgment where triable issue of material exist. Trial court erred in granting respondents' motion for summary judgment after appellants had filed appeal pending in the same case pending in post-conviction relief. 'Upon the proper exercise of that right, a trial court would thereafter lack jurisdiction to grant summary judgment if genuine issue exist. The appellant had a court appointed attorney representing me in the post-conviction relief. However, genuine issue do exist under rule 56(c) and the same Judge Frank R. Addy new he had appeal because he preside over the hearing at the post-conviction hearing held in Greenwood and he govern the case on the civil case. The violation of my constitution right to jury trial led to my conviction because the respondent failure to preserve appellant the right to be assisted by attorney and to preserve his right to be protected because the respondent acting as a judge. No, direct appeal was provide because on file the appellant requested attorney to represent him and the right of the appellant was violated. Court held that "settled doctrines" of federalism narrowly confined the availability of injunctive relief against state criminal prosecutions. Specifically, the Court found that a federal court could not properly enjoin enforcement of a statute "solely on the basis of

showing that the statute 'on its face' abridges First Amendment rights." The Court referred to "the basic doctrine of equity jurisprudence," under which federal courts were required to show proper respect for state functions and notions of comity. *Younger* held that a federal court could not enjoin an ongoing state criminal prosecution, even when the statute under which the prosecution was occurring violated federal constitutional rights. Instead, the federal court was required to "abstain" from hearing the case, and allow the constitutional issues to be addressed in the criminal proceeding. Subsequent cases have expanded the scope of this doctrine, generally called "Younger abstention."

THE TRIAL COURT DID NOT PROPERLY DISMISSED THE APPELLANT RATHER THAN GRANTING THE APPELLANT REQUEST THAT THE CASE BE STAYED

The trial court erred in denying Appellant request to stay this matter pending the outcome of his post-conviction relief pursuant to *Younger v. Harris* 401 us. 37 (1971) that the state refrain from interfering is a state criminal proceeding if there is an ongoing state judicial proceeding brought prior to substantial process in the federal proceeding, and however the same judge Frank R. Addy heard both cases pertain to this case in post-conviction relief is a conflict of interest. Appellant did not provide documents because he had attorney court appoint attorney representing the post-conviction relief case that was pending. I did not have adequate opportunity to raise constitution challenges 444 f.3d. 237, 241 because the same judge heard the same case in the motion for summary judgement and the post-conviction relief which was pending. The judge should have rescued himself because of the same judge that heard the same case twice but different court that was ongoing. Heck does not provide a remedy for ongoing cases running parallel at the same time and great damage and injury had occurred which affected the outcome of the post-conviction relief case because the same judge heard both cases. The trial court abuse its discretion on the ground instead of staying the case and the appellant had a right to stay the case until the outcome of the post-conviction refuse to and dismiss the case. The trial court abuse discretion occurs when the judge issuing the order was controlled by some error of law. This case is fully govern under *Young v. Harris* not *Heck*. District Court, enjoining appellant *Younger* from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances. We express no view about the circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun.

THE TRIAL COURT JUDGE ERRED IN DISMISSING RATHER THAN STAYING THE APPELLANT CASE AND THE CASE WAS APPEAL

At the time there was post-conviction relief filed at the same time the civil motion summary judgement and post-conviction was pending at the same time I was been represented by Carson law firm. And after the post-conviction was heard by the same judge and he denied it then I file appeal in the Supreme Court in which the Supreme Court denied it. A stay of the case should have been granted of the appellant should have been allowed to get documents from the attorney. *Younger* held that a federal court could not enjoin an *ongoing* state criminal .case

Instead, the federal court was required to “abstain” from hearing the case, and allow the constitutional issues to be addressed in the criminal proceeding. Subsequent cases have expanded the scope of this doctrine, generally called “Younger abstention.”

Trial Court error

Trial court error in deny that there was no genuine issue exist because the appellant request in writing for a jury trial, and request attorney in writing before Judge Frank Partridge, before was sentence by respondent in > The appellant was entitle to representation after requesting attorney and the respondent sentence appellant in spite of the Judge granting the order for jury trial and attorney to represent appellant and the police which the respondent waive the appellant right to a jury trial and the attorney in which the judge had appoint and all sentencing and jury trial supposed to handle by my attorney in which the court appointed which is Charles Verner.


CONCLUSION

The trial court did not properly granted summary judgement. The trial govern the case by error under heck, instead of young v. Harris. The trial court abuse his discretion in not staying this case pending tow case running parallel to each other.

For theses reason the Appellant ask the court to reverse the motion for summary judgement from the lower court and reverse the ruling of lower court judge.

Pro SE Anthony Derone Richardson

P.O Box 221 Newberry, SC 29108

.....date 12/7/2015

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APPELLANT REPLY TO RESPONDENT ~~Initial Brief~~

DESIGNATION

Appellant Designation of the matter to include in the record

Pursuant to SCACR 209 the Appellant hereby purposes and designates the following to be included in the record on appeal.

1. Transcript on record
2. Exhibits 1-7
3. Respondent initials
4. Plaintiff complaint


I certify that this designation contains no matter which is irrelevant to this appeal.

5. Respondent sentenced Appellant
6. Jury trial requested by appellant

7. Initial in which he conducted a bench trial
8. Waive appellant right to attorney after requesting writing
9. Counsel request
10. Post-conviction pending darning civil suit

Pro Se Anthony Derone Richardson

P.O. Box 221 Newberry, SC 29108


.....date 12/07/2015

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Certificate of service

Appellant does hereby certify that service of Reply to Respondent Initial brief and Appellant designation of matter to be included in the record was made upon the respondent by placing in the mail below at the indicated on the envelop this day 7, December 2015 address as follow:

Morrison Law Firm

7433 Irmo Drive Suite B

Cola, SC 29212



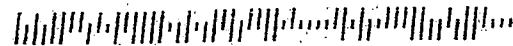
.....Date 12/07/2015

FROM:

Anthony Richardson

P.O. Box 221

NBY, S.C. 29108

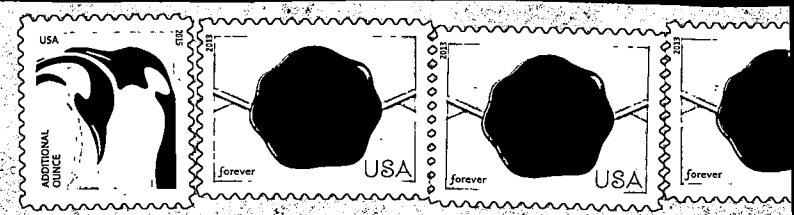


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