

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case Number: 2016-000661

RECEIVED

JUN 3 2016

SC SUPREME COURT

ERIC L. SPANN ..... Petitioner,

-v-

STATE OF SOUTH CAROLINA ..... Respondent.

Motion for Reconsideration/Rehearing

The Court issued an Order Dismissing the within appeal on May 19, 2016. The Order finds that the Rule 243 ( c) explanation provided failed to show an arguable basis for asserting that the determination by the lower court was improper. Petitioner requests that this Court reconsider this dismissal. As previously stated, Petitioner contends that the lower Court's determination that the PCR in question was barred as successive and/or untimely is improper. Petitioner entered a plea to murder and assault and battery of a high and aggravated nature in 1997. (See Order of Dismissal on appeal). As the sentence sheet reflects, at that time he was only 18 years old. Petitioner had no knowledge of what SLED reports are generated as a result of testing and even though he received a copy of his criminal file during his incarceration and pursued PCR issues in the past, Petitioner never knew of or received a copy of the SLED report indicating the presence of no DNA evidence. Petitioner had no reason to even know that such a report existed. Petitioner wrote SLED on at least two occasions during his incarceration attempting to receive information regarding whatever evidence existed and was tested. Those letters were in 2001 and again in 2012. Attached are the return correspondences from SLED indicating that the only information SLED has is related to testing of a rock substance (crack) and another correspondence indicating that SLED has no other information to give Petitioner. (See attached letters dated October 15, 2001, and March 23, 2012).

As previously explained, Petitioner filed a DNA PCR on October 9, 2012. A Hearing on the DNA PCR was held before the lower Court on August 27, 2014. It was determined as a part


of that action, that the SLED reports at the time of Petitioner's original plea indicated the presence of no blood and no DNA. This was the first time that Petitioner became aware of this fact. Importantly, the attorney for Petitioner at the time of the original plea was contacted and stated that she could not recall if she had shared the SLED DNA results with Petitioner.

The Order in the DNA PCR on was entered on September 22, 2014. That Order indicates that Petitioner is withdrawing the DNA PCR after colloquy with the Court since there was no remedy available without the presence of DNA. The Order further states that Petitioner would pursue the matter as a PCR regarding the failure of counsel at the time of the plea to provide Petitioner with the DNA test results, or the lack of a result. The relevant portion of this hearing transcript is attached hereto. (See attached Transcript section dated August 27, 2014).

This PCR was filed on November 6, 2014, and was Dismissed by the Court in Orders dated January 19, 2016, and again on February 22, 2016. Since the lack of blood or DNA evidence was revealed as a part of the recent DNA PCR, Petitioner contends he would have never entered a plea in this criminal matter had his counsel at the time informed him of this information. This PCR is neither successive nor untimely.

Petitioner requests that this Court reconsider the Dismissal entered on May 19, 2016, and allow this appeal to proceed.

Respectfully submitted this 3 day of June, 2016.



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P. Andrew Anderson  
Anderson & Anderson, LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
803.648.6000 - phone  
Attorney for Petitioner

State of South Carolina  
County of Aiken

Court of Common Pleas

Eric Spann )  
 )  
 ) Petitioner, ) Transcript of Record  
 v. ) 1996-GS-02-1545  
 )  
 State of South Carolina )  
 )  
 ) Respondent.)  

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August 27, 2014  
Lexington, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Andy Anderson, Esquire  
Attorney for the Petitioner

David Miller, Esquire  
Attorney for the Respondent

Bethanie K. Creppon  
Circuit Court Reporter

1           would play out.  What if I granted your motion here  
2           and let them do DNA?  Where are we going to go with  
3           that?

4           MR. ANDERSON:  Well, I guess we'd have to wait  
5           to see what the result is.

6           THE COURT:  Well, it can't be any better than  
7           what you already got, can it?

8           MR. ANDERSON:  It was pretty good then at the  
9           time, he just didn't know about it.  And he'd like  
10          to take advantage of the absence of DNA to try to  
11          help himself out.  And if he wasn't aware of it at  
12          the time, the Judge --

13          THE COURT:  Then doesn't he make a motion?  
14          Isn't that sort of like newly discovered evidence?  
15          I don't know.

16          MR. ANDERSON:  Yes, sir.  I found --

17          THE COURT:  I'm not going to give him advice,  
18          but --

19          MR. ANDERSON:  We found Ms. Poteat, who was his  
20          defense counsel, and I asked her, did you show him  
21          the DNA results?  She did not remember whether she  
22          had or not.  She informed me that would be her  
23          normal practice, but she had no independent  
24          recollection of showing Eric Spann his results.

25          I've also talked to the victim of that second

1           stabbing who really, I don't think, would be an  
2           adversary. I think he's moved on beyond that  
3           incident, so I don't think he would be a hurdle to  
4           our evidence.

5           THE COURT: Well, I'm willing to help your  
6           client in any way I can. And if you want me to have  
7           the DNA test that we know what the results are, it  
8           seems like to me the avenue to help would be a  
9           motion on newly discovered evidence, or at least to  
10          him, and maybe if he had had that, his decision to  
11          plead guilty would have been different. I don't  
12          know. Maybe an amended PCR based on the fact that  
13          you got newly discovered material after filing this.  
14          I don't know.

15          MR. ANDERSON: Well, if Your Honor would be  
16          kind enough to entertain such -- we were thinking  
17          about, perhaps, another PCR. But he's already lost  
18          a PCR.

19          THE COURT: Well, what they're going to do is  
20          they're going to say it's excessive. So you're  
21          going to have to come up with some idea that the new  
22          PCR would address the issue that this DNA was not --  
23          the results of this serum test was not made known to  
24          him that would have helped him to make a more  
25          intelligent decision. I think most judges would let

1           him have a second PCR on that small window. I  
2           would. And if you want to do the petition and file  
3           it before me, I'll be glad to look at it. But  
4           that's a PCR.

5           MR. ANDERSON: Can I just have a quick  
6           conference with my client?

7           THE COURT: Sure. I would think he was  
8           entitled to know that DNA result before he pled. If  
9           he wasn't given that, I think that might be further  
10          ground to look at it, at least to determine whether  
11          or not counsel was ineffective in not telling him  
12          anything.

13          MR. ANDERSON: Judge, we're going to pursue  
14          that PCR.

15          THE COURT: Does he want to withdraw his motion  
16          to recuse me?

17          MR. ANDERSON: Yes, Your Honor.

18          THE COURT: I would think so. Thank you.

19                       -- END OF TRANSCRIPT OF RECORD --

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## C E R T I F I C A T E

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 captioned cause, relative to appeal in the Common Pleas Court for Aiken County, South Carolina, on the 27th of August, 2014.

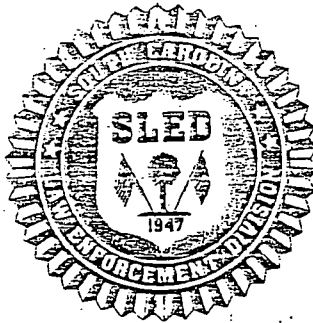
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 20, 2014

/s/Bethanie K. Creppon  
Circuit Court Reporter

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM H. HODGES  
Governor



ROBERT M. STEWART  
Chief

October 15, 2001

Mr. Eric L Spann, #245840  
McCormick C. I., F-4A/197-B  
Route 2, Box 100  
McCormick, SC 29899

Dear Mr. Spann:

I am forwarding to you the only information I could locate concerning your case.

Sincerely,

Michael J. Brown, Lieutenant  
Supervisory Special Agent  
FOIA / Subpoena Compliance Coordinator

MJB/mcp/FOI#2001-560



SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
FORENSIC SERVICES LABORATORY REPORT

DAVID M. BEASLEY  
GOVERNOR



ROBERT M. STEWART  
CHIEF

DRUG ANALYSIS DEPARTMENT

March 15, 1996  
SLED Lab No: L96-01421  
Your Case No: 96004569  
Incident Date: January 20, 1996  
(S) Spann, Eric

Joan D. Hampton  
Sumter Police Department  
107 East Hampton Avenue  
Sumter, SC 29150

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This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case has been or will be conducted by any other Laboratory or agency.

Robert M. Stewart, Chief  
South Carolina Law Enforcement Division

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ITEMS OF EVIDENCE:

Item 1: Rock substance

RESULTS:

Cocaine (crack) found 1.01 grams (15.58 grains), C-II

I am a Chemist employed and certified by the South Carolina State Law Enforcement Division (SLED) to perform Chemical and physical examination(s) on evidence submitted by Law Enforcement Agencies in criminal cases, and have been qualified in courts of record in the State of South Carolina to testify on such examination(s).

On JANUARY 30, 1996, SLED Drug Box submitted the below item(s) to me for examination(s) in SLED DRUG ANALYSIS SECURITY ENVELOPE(S), Control Number(s) B059362 . I tested this (these) item(s) submitted to me using accepted reliable forensic procedures approved by SLED and the above results reflect my conclusions based on my examination(s).

Chemical Test  
Gas Chromatography  
Mass Spectroscopy

Chemical Analyst(s)

Sworn to me this 18 day of

Jerry L. Trantham  
Jerry L. Trantham

Mar, 1996

3/18/96  
Date

  
Notary Public

SLED  
Location

My commission expires 9.30.2001

cc: Sumter County Solicitor's Office

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY  
*Governor*



MARK A. KEEL  
*Chief*

March 23, 2012


Eric L. Spann, #245840  
Evans CVF-2-A #1751  
610 Hwy 9 West  
Bennettsville, SC 29512

RE: Freedom of Information Act Request

Mr. Spann:

A thorough search of our database using the information provided in your letter received March 6, 2012, revealed no additional information found under the names Eric L. Spann or John Edward Williams. We advise you to contact the Aiken County Sheriff's Office for any information they may have concerning this matter.

Sincerely,

  
FOIA Request Processing  
Office of General Counsel

FOIA2012-103



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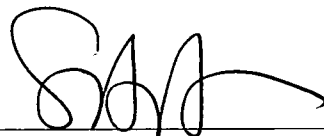
**CERTIFICATE OF SERVICE**

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This is to certify that I have this day served counsel for the Respondent State of South Carolina in the foregoing matter, Daniel Francis Gourley II, Esquire, with a copy of the foregoing MOTION FOR RECONSIDERATION, by depositing in the United States Mail, a copy of the same in a properly addressed envelope with adequate postage addressed as follows:

Daniel Francis Gourley II, Esquire  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549

THIS 3 DAY OF JUNE, 2016.



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P. ANDREW ANDERSON  
ANDERSON & ANDERSON, LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
803.648.6000 - phone  
Attorney for Petitioner