

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Court of Common Pleas
Hon. R. Keith Kelly, Judge

Case No: 2016-cp-11-0142

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JUN 13 2016

SC Court of Appeals

State of South Carolina

Respondent

v.

Russell Darryl Moore

Appellant

QUESTION ON APPEAL

1.) Did Lower Court err in denying Appellant "IN FORMA PAUPERIS" with a State Habeas Corpus" Petition?

Argument

Appellant filed a State Habeas Corpus Petition with the Cherokee County Clerk of Court raising an issue of subject matter of jurisdiction. On May 5, 2016 Judge Kelly denied appellants "IN FORMA PAUPERIS" Motion and cited Gibson v. State, 329 SC 37 495 SE2d 429 (1998). Simpson v. State, 329, SC 43 495 SE2d 429 (1998). Judge Kelly, also wrote that "Appellants petition did not meet Habeas requirements."

Appellant objects to and appeals this Order and Opinion based upon the following...

The cases Judge Kelly cited concern issues which were raised in a habeas petition that could have and should have been raised in a post conviction relief application.

Appellant advised the Lower Court that he, appellant did not have that option. Appellant provided for the record within the petition a copy of the S.C. Supreme Court ORDER dated June 6, 2013 which denied appellant any further collateral attacks to his 1996 convictions. Therefore, appellant has exhausted all state remedies. Appellate case No: 2013-001175

Appellant asserted in his petition that he had exhausted his state remedies and that a state habeas corpus was his only option to have an issue of subject matter of jurisdiction reviewed. (see: Keeler v. Mauney, 330, SC 568, 500 SE2d 123 (1998)).

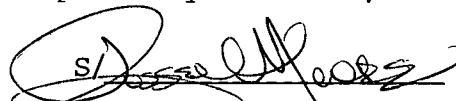
2.) In appellants petition, appellant provided the lower court with a sworn affidavit of indigence, an raised a meritorious issue as to whether or not the trial court had subject matter of jurisdiction over appellants 1996 indictments, conditional guilty plea and waivers of presentment. Petitioner asserts his waivers of presentment are not in accordance to the mandated provisions of S.C. CODE §17-23-120-150.

The issue of subject matter can be raised at anytime, petitioner respectfully requested that the Lower Court review his allegations and the record which supports these allegations and allow appellant to move forward to establish his claims. Appellant, an indigent inmate is being denied a fair opportunity to pursue a state habeas corpus petition. The Lower Court has disregarded a Standing Order of the S.C. Supreme Court further prejudicing appellant.

Relief Requested

Appellant prays this court will order lower court to observe the Supreme Courts Order and agree that appellant should be allowed to proceed in the Lower Court TO prove his allegations and claims and granted "IN FORMA PAUPERIS" .

Respectfully Submitted,


Russell Moore