THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-158 (SC Ct. App. filed April 6, 2016)

Donnie Myers, Solicitor, Lexington County, Tracey Carroll, Asst. Solicitor, Lexington County, Brian Buck, Irmo Police Department, Scott Franklin, Irmo Police Department, Timothy E. Stephenson, SC Law Enforcement Division, (SLED), The Estate of George D. White, Ex father in law, Tammy Carter (AKA: Tammy Kidd, (AKA: Tammy Scrogham) Ex Wife, Barbara Keadle (AKA: Diane Hinkle) Investigator, LCDSS, Francis Ross, LCDSS, Paulette Jolly, Guardian Ad Litem,

Respondents,

v.

Raymond W. Carter,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Raymond W. Carter
2219 Leesburg Road
Columbia, SC 29209

Petitioner Pro Se

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CERTIFICATE OF PETITIONER

Petitioner is Pro Se and certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 18, 2016.

QUESTIONS PRESENTED

1. DID THE TRIAL COURT ERR BY DISMISSING ALL OR PART OF THE COMPLAINT DUE TO THE STATUTE OF LIMITATIONS HAD EXPIRED?

2. DID THE TRIAL COURT ERR IN FAILING TO PROPERLY RECOGNIZE THE STATUTE OF LIMIATIONS TOLLED AFTER JUDGMENT OR ORDER ISSUED?

STATEMENT OF THE CASE

On June 22, 2012, Petitioner brought this action for relief pursuant to SCRCP Rule 60(b) claiming newly discovered evidence, since the Writ of Coram Nobis has been abolished in the South Carolina, for relief sought after being released from an institution or correction or mental health.

On February 7, 2013, a motions hearing was conducted before the Honorable Frank R. Addy, Jr., in Lexington County Court of Common Pleas, where the judge dismissed the case due to the statute of limitations had expired and ruling that the argument for claiming said statute of limitations expiring was not as the Petitioner had believed according to SCRCP Rule 60(b).

ARGUMENT

1. THE TRIAL COURT ERR BY DISMISSING ALL OR PART OF THE COMPLAINT DUE TO THE STATUTE OF LIMITATIONS HAD NOT EXPIRED

The Court of Appeals should have granted the appeal and granted a trial.

The Petitioner in this case has claimed his innocence since the case's induction in October of 1999. He told the five (5) attorneys that were appointed to him through the entire process of pretrial, post-conviction, pre adjudication and post adjudication, filing PCR's and appeals as far as it would take in effort to try to exhaust administrative remedies.

When released in July of 2011 from the SC Department of Mental Health (SCDMH), Petitioner currently had an appeal in progress. Upon release the appeal became moot therefore and also no further means of seeking a remedy with the court was available. Even a Writ for Habeas Corpus went by the wayside with his release. Petitioner was release due in fact that the State of South Carolina could not argue in court the continuance of the Petitioner in the SC SCDMH commitment that it was correct by law to have him there in the first place due in nature to the alleged offense that brought forward the commitment. The Petitioner denied the allegation because he had been release from the punishment of incarceration and believed that going along further with the fabrication would only put him in jeopardy of being committed. The state's psychiatrist said in front of a jury that the Petitioner was in denial, when in fact innocent, and the jury determined that such denial required needed treatment in the SCDMH for long term care and control.

Upon being release, Petitioner sought to find out what information available could help prove his innocence now he was free. He contacted the Irmo Police Department (IPD), South Carolina Law Enforcement Division (SLED) and the Lexington County Sheriff's Department (LCSD) seeking such exculpatory evidence to at least prove that what he had told these attorneys

stood true and that 1: he couldn't have committed the offense, 2: the time and dates are incorrect, 3: that law enforcement knew his estranged wife and they were the ones who coerced Petitioner after almost 6 hours into a statement/confession that was false and 4: there was no physical evidence to corroborate any of the state's case against the Petitioner. Petitioner believed that he would be allowed to file a complaint against the Respondents in this case as a matter of material issue of innocence.

Petition finally received information from SLED about the coerced polygraph/interrogation session which led to the coerced/false statement/confession and proceeded with his claim that he believe would be one (1) year after such a discovery had been made.

> SCRCP Rule 60(b) clearly states:
> 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:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, misrepresentation, or other misconduct of an adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.
>
> Specifically:
> 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.

Attorney for Respondents motioned to Honorable Frank R. Addy, Jr., "that (Respondents) believe that (Respondents) are entitled to have those (counts against them)

dismissed because based on the pleadings, the statute has run. This happened in 1999. It's been 13 years." (TR:// 9: 19-22; R.p. ....).

By Judge Addy's decision there exist no outcome-determinative, even when exculpatory documentary and testimonial evidence was concealed from Petitioner from 1999 until after July 1, 2011, including during Petitioner's plea 2003, PCR 2004 and adjudication trial 2008. Petitioner additionally contends that had this evidence been available before the plea, or had it not been concealed by IPD and Lexington County Solicitor's Office, the case would have resulted in acquittal of all charges had the case went to trial. As Petitioner I also alleged that this evidence established my innocence of all charges, but for the State's concealment of the foregoing exculpatory evidence, I would have continued insisting on a trial if nothing but for an evidentiary hearing because the attorney thought I was making up that the polygraph and interrogation session that produced said false statement was coerced and had been made to cover up looking as if I had failed the polygraph and confessed within 30 minutes of taking said polygraph when it fact it was the course of almost 6 hours by three police officers who knew my estranged wife and her family.

The Petitioner filed his complaint for a post judgement relief on the grounds of fraudulent concealment of outcome determinative exculpatory evidence by the State and newly discovered evidence of Petitioner's factual and legal innocence. Respondents suppressed this newly discovered evidence during the case from October 29, 1999 – April 30, 2012 when finally Petitioner was able to secure the record from SLED. The plea was solely on the basis of the false statement and did not even line up with what the one (1) alleged victim had stated from what the mother had told her to say in a divorce/child custody battle. There is new evidence still in a statement from the one (1) alleged victim claiming her mother lied about the case because she

was scared she would lose custody of the children (which by the statement included more charges against all three children). She has admitted that this whole case is a lie on paper and her sisters have no clue as to what exactly was supposed to happen or when I would have ever done anything to them. All three children have made statements in my possession and are willing to testify in court to these facts. They all to would like to take a polygraph to verify their testimony is truthful.

Respondents' suppressed this newly discovered evidence during all phases of the case and would establish that by doing so, Respondent's wrongfully induced or coerced Petitioner's plea by promise and threat that deprived the plea of its voluntary character. The State's wrongful inducement or coercion consisted of deluding or misleading Petitioner as to what the facts and issues in the case really were, in that they suppressed (or withheld) before and during my plea these items under a evidence motion pursuant to Brady (Brady v. Maryland, 373 U.S. 83 (1963)), contrary to their statutory and constitutional duty to disclose materially favorable evidence to Petitioner to assure an informed plea, as well as the truth-seeking functions such as evidentiary hearing on the voluntariness of a confession, of the trial process and the rudimentary demands of justice, while promising Petitioner, outside the presence of counsel, a lesser sentence in prison in exchange for a fifth (5^{th}) plea offer. The Respondent also threatened Petitioner, outside the presence of counsel, with lifelong imprisonment if he did not accept this last offer with them and threatened to coerce my children to testify against me.

This wrongful inducement or coercion by the State was unknowingly corroborated by Petitioner's appointed counsel because of the State's foregoing suppression these items of Brady.

The foregoing conduct by the State effectually constituted their fraudulent concealment of the newly discovered evidence of Petitioner's actual innocence until discovery on April 30,

2012. As Petitioner's complaint was filed on June 22, 2013, or within a year, it is timely as to it's actual innocence grounds and should not have been dismissed at the trial level and a trial should have been allowed.

Since PCR under SCCA § 17-27-20(A) nor Writ of Coram Nobis or Habeas Corpus were available to the Petitioner he filed a complaint under SCRCP 60(b).

Still under SCCA § 17-27-20(A)(4) (2014). The PCR Act; affords "any person" the ability to seek post-conviction relief on the basis of newly discovered evidence—not just individuals convicted and sentenced following trial. relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. There is evidence in the record to support that Petitioner could not have discovered this evidence prior to pleading guilty. It is also apparent that if the PCR Act nor Writs of Coram Nobis or Habeas Corpus aren't available to the Petitioner, then a complaint based on the newly discovered evidence is the only available course to take after discovering the new evidence. Petitioner filed his complaint based on that knowledge, filed in a timely manner under SCRCP Rule 60(b) and the judge erroneously dismissed the case as statute of limitation had expired. The SC Court of Appeals affirmed and then affirmed the motion for a rehearing.

In Clark v State, 315 S.C. 385, 434 S.E. 2d 266 (1993):

> To obtain a new trial based on after discovered evidence, the party must show that the evidence:
> (1) would probably change the result if a new trial is had;
> (2) has been discovered since trial;

(3) could not have been discovered before trial;
(4) is material to the issue of guilt or innocence; and
(5) is not merely cumulative or impeaching.

The trial court judge nor the appellate court should not have dismissed nor affirmed this case. This case, by all means should be afforded a trial as that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.

2. THE TRIAL COURT ERR IN FAILING TO PROPERLY RECOGNIZE THE STATUTE OF LIMIATIONS TOLLED AFTER JUDGMENT OR ORDER ISSUED.

The trial court erred in fact that the statute of limitation in newly discovered evidence is filed and motion shall be made within a reasonable time, not more than one year after the judgment, order or proceeding was entered or taken even though Petitioner did file less than one year after a judgment order was entered, but an inmate, regardless of how many years it's been since such a judgement has been entered according to SCCA § 17-27-45(C) (2003), provides that if a:

> PCR applicant discovers "material facts not previously presented and heard that require vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

This easily states that an inmate, again, regardless of how many years after a judgment order has been entered, can file for PCR if he/she discovers facts that require vacation of their sentence. It indicates clearly that the inmate can file "within one year after the date of actual discovery...".

There has to be an avenue in the State of South Carolina for a released person to file such a claim, the example lies too in "cold case files". In those cases if evidence is brought to light years after a crime has been committed, from the date of discovery they too can file a criminal complaint against a perpetrator alleging some crime. So it would seem by dismissing at trial level and then again affirming that decision on the Appellate level there is no action one can take after they have been released to prove their innocence in the State of South Carolina.

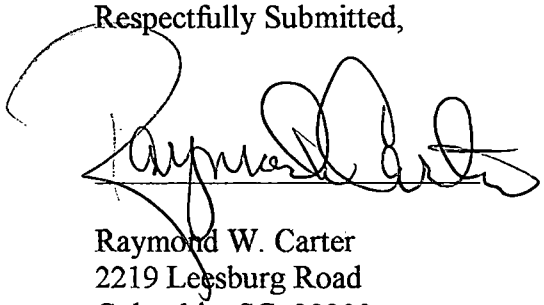
However, this Petitioner believe that all laws are effective in some category that reflects the same disadvantage or injustice and the ability to overcome said disadvantages or injustice and that is to file the complaint which he has.

In dismissing the case at trial level the court did err in failing to properly recognize the statute of limitations from bringing forward newly discovered evidence that is material to the accused's guilt or innocence. See, e.g., State v. South, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993).

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the Petition for a Writ of Certiorari.

Respectfully Submitted,



September 14, 2016

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PROOF OF SERVICE

I, Raymond W. Carter, the Petitioner, hereby certify that I have served this Petitioner for Writ of Certiorari and Appendix on this 14th day of September, 2016, by depositing a copy of it in the United States Mail, postage paid, addressed to:

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

Jenny A. Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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September 14, 2016
Columbia, SC

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PETITIONER PRO SE

Cc: File

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September 14, 2016

Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, SC 29201

RE: Petitioner for Writ of Certiorari: Carter V. Myers, et. al., C/A 2013-000449

Dear Honorable Clerk,

Pursuant to an order of this Court dated August 18, 2016, the Appellant has now filed with your office and the SC Supreme Court Clerk Daniel Shearouse my Petition for Writ of Certiorari pursuant to SCRAP 242 .

Based on the order of August 18, 2016, filing shall be within thirty (30) days from that date rehearing has been denied. Appellant has complied with that order.

Please let me know what the filing fee for your office in this matter is.

Thank you for your continued assistance in this matter!

Sincerely,

Raymond W. Carter
Appellant, Pro Se

Cc: File

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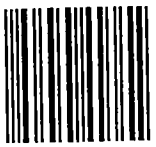

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