

THE SOUTH CAROLINA COURT OF APPEALS

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DEC 01 2016

SC Court of Appeals

Alfonso Ware, Jr.)
 Petitioner,)
 v.)
 State of South Carolina)
 Respondent.)
 _____)

PETITION FOR REHEARING

Appellate Case:
No. 2014-001470

Petitioner moves this Honorable Court pursuant to South Carolina Appellate court Rules, Rule 221(a) Rehear the decision that was denied by the South Carolina Court of Appeal entered on November 14, 2016. The matter was before the Court on Writ of Certiorari following the denial of Petitioner's Application for forensic DNA testing under the Access to Justice Post Conviction DNA Testing Act.

This Petition for Rehearing will show that the Court of Appeals overlooked some facts material to the Case as presented. And no issue raised herein is raised for the first time.

The Court of Appeals has overlooked Legal and Factual Matters when denying Petitioner's Application for DNA Testing.

It is clear from the Order issued by this Court that it has adopted the position of the Respondent's. This is evidenced by the lack of considered "decision". See Black's Law Dictionary page 407 (6th Ed. 1990) "decision defined as a determination arrived at after consideration of the facts and in legal context Law." Nowhere in the Court's decision does the Court address the Legal and factual Matter raised by the Petitioner. The adoption of one party's proposed findings and conclusions is a practice that is expressly disapproved See: Shaw v. Martin 733-F2d 304.

The Criterial of the Evidence Preservation Act S.C. Code Ann. 17-28-10 through 320 has not been followed. The procedure to be followed in addressing a Request under the Evidence Preservation Act has not been followed by any of the Custodians

of the Evidence involved in this Case and this is evident.

South Carolina Code Ann. 17-28-70(c) States: in part "provide the Appellant and the Solicitor with a copy of any document, note, log, report relating to the physical evidence" The custodian(s) of the evidence have failed to follow the requirement of the Statute. The Respondent nor the Custodian's of the evidence through their own readings prove that the S.C. Code Ann. 17-28-10 through 320 has not been followed.

By any standard the Petitioner was not given a fair opportunity under the criteria of the Evidence Preservation Act or the Application for DNA Testing. The South Carolina Court of Appeals erred when they denied his Appeal, in light of the facts presented by the Petitioner that Support the need for further investigation. The Court should have in the interest of Justice and Fairness allowed Petitioner's Appeal to prevail.

Conclusion

There is one thing that is clear: The Statute concerning the Preservation of Evidence Act was not followed. And as a result the Petitioner is being denied his fair opportunity in his request. A Review of the Record before this Court supports the Petitioner's Claim.

DATE: 11-28-16

Submitted by:

Alfonso Ware, Jr.
Alfonso Ware, Jr.
Petitioner

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Alfonso Ware, Jr.)
Petitioner,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

CERTIFICATE OF SERVICE

Appellate Case:
No. 2014-001470

Petitioner declared, under the Penalty of Perjury that he mailed a copy of his Petition for Rehearing to the parties listed below by placing in the U.S. Mail, clearly addressed as indicated:

- | | |
|-----------------------------------|--------------------------|
| 1. Office of the Attorney General | 2. S.C. Court of Appeals |
| Mr. Alan Wilson | Ms. J. Kitchings, Clerk |
| P.O. Box 11549 | P.O. Box 11629 |
| Columbia, SC 29211 | Columbia, SC 29211 |

Thank you,

Alfonso Ware, Jr.
Alfonso Ware, Jr.
Petitioner

DATE: 11-28-16

SCDC# 168464
BRCI
4460 Broad River Rd.
Columbia, SC 29210

Alfonso Ware #168464

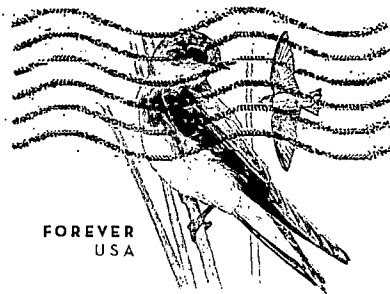
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Ms. J. Kitchings, Clerk

S.C. Court of Appeals

P.O. Box 11629

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