

IN THE STATE OF SOUTH CAROLINA APPEALS COURT

Jerry M. Simpson, pro se
Appellant

Case(s):
2016-002199

-vs-

State of South Carolina

MOTION FOR APPOINTMENT OF NEW COUNSEL

Comes now the Appellant, Jerry Simpson, hereby pro se, humbly before the Honorable Court of Appeal to request for new counsel to be appointed to assist with perfecting the herein arguments. The petitioner is a layman at the laws and does not have access to the State of South Carolina laws, rules and procedures and is unable to perfect the arguments attached herein with State laws and rulings. However, the Court is allowed to appoint new counsel to assist with the Appeal proceeding and therefore, in the interest of fundamental fairness the petitioner prays that the Court grants new Counsel to assist and perfect the herein arguments.

Date: 12/ 29/2016
cc file: pf/JS

s/ Jerry Simpson, pro se
Name: Jerry M. Simpson
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Butner, NC 27509

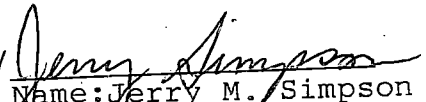
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JAN 03 2017

SC Court of Appeals

Proof of Service

I, Jerry M. Simpson, do hereby swear under the penalty of perjury that a copy of the Motion requesting New Counsel has been sent to the State of South Carolina Appeal Court via US Postal Mail on this 29 day of Dec., 2016 from FCI Butner II.

s/ 
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IN THE STATE OF SOUTH CAROLINA APPELLANT COURT

Jerry M. Simpson, pro se

-vs-

State of South Carolina

Case(s) 2016-002199

2016GS4201687,

2016GS4204459

APPELLANT'S PRO SE SUPPLEMENTAL BRIEF TO BE HEARD ON MERITS

Comes not the Appellant, Jerry Simpson, hereby pro se, humbly before the Appellant Court to submit his Informal Pro Se brief submission in a timely manner. The petitioner was given an Extension until Jan. 3rd, 2017 to file the brief and therefore, has filed within the timely manner to obtain the relief being sought.

Respectfully submitted on this 29 day of Dec., 2016, by,

cc file: pf/JS

s/ Jerry Simpson, pro se
Jerry M. Simpson
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STATEMENT FOR REVIEW

The petitioner's counsel provided inaccurate advice that led to the plea acceptance. Therefore, the petitioner moves the Court to Vacate the Plea and to set the matter for Trial.

Note: The Petitioner invites the oral arguments, but believes that the matter is best resolved on the merits of the briefs. However, if the parties agree to oral arguments, then the petitioner will need for this Court to order the US Marshall to bring the petitioner before the Court for the oral arguments.

[Issue I]

The petitioner moves to vacate the plea and to set the matter for trial.

Before entering or accepting a plea, the court must first determine that there is a "true factual basis" for the plea to be valid. In this case, the tenuous and recanted testimonies are insufficient to support the conspiracy conviction.

The police report shows that there was no cocaine found in the petitioner possession. There was no drug buy money found in the petitioner's possession. There were no buys from the petitioner. The only drugs found in the petitioner's possession was 6 grams of marijuana, which cannot support a cocaine conviction. There was no recorded phone calls and there was no evidence prior to the officers searching/ going through the phone of cocaine, and even when the officers illegally went through the phone there was only marijuana. In this case, the counselor was ineffective for advising the petitioner to plea guilty to cocaine charges when the drugs were marijuana. (US v Cordero-Rosario. (14-1007)..the searches violated the 4th Amendment and the evidence cannot be used by the government); Riley v California 134 S.Ct 2173 (Sp. Ct. 2014)

In this case, the fact that the petitioner had a prior.... conviction for drugs and also being associated with others who were per say actively found to be involved with the CI..buys, is not enough to produce a conviction against Simpson for the cocaine.

(US v Scotfield 433 F.3d 580 (8th Cir. 2006)..mere proximity is insufficient evidence to produce a conviction)

Under the Due process Clauses of both the 5th and 14th Amendments, the prosecution is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. The government cannot charge one crime while only having evidence of another and use the later to produce the plea or conviction. In this case, that is exactly what has occurred. (US v Abernathy 16-5314 (the connection between the small amount of marijuana recovered is too logically attenuated to create a fair probability & inference)

The Supreme Court has ruled that the government must prove every element and have a proper support ground even in a plea. (In re Winship 397 US 358, 364 (1970) and US v O'Brien 130 S.Ct 2169, 2174 (2010) distinguishing between elements of a crime that must be charged in a indictment and proved to a jury beyond a reasonable doubt and sentencing factors). Moreover, the Winship Rule, of beyond a reasonable doubt standard, applies in both State and Federal Courts alike.

When looking at the Winship Rule, the Courts have found that the Winship Standard protects 3-4 interest. (Sullivan v LA 508 US 275, 278 91993). First, it protects the defendants liberty interest. (see Winship 397 US at 363). Second, it protects the defendants from the "stigma of conviction". Third, it encourages community confidence in criminal law by giving "concrete substance" to presumption

of innocence.(id at 363-64). Finally, as Justice Harlan noted,the standard is founded on a "fundamental value" determination of our society that it is "far worst to convict an innocent man", than to let a guilty man go free(id at 372)

Here, the defendant accepted his plea out of fear and the "stigma" of his prior drug conviction being used to establish a connection when in fact it cannot be used to determine guilt. Thus, the lawyers "bad advice lead to the guilty plea of cocaine charges", when in fact, the petitioner was only connected to marijuana. By the counsel encouraging a "quick fix" plea it has caused the petitioner to be convicted of the cocaine charges. (US v Martinez-Molina 64 F.3d 719 (1st Cir. 1995) ; US v Kummer 89 F.3d 1536 (11th Cir. 1996)..defendants who pleaded guilty to accepting a gratuity under plea agreements could have withdrwan there pleas when they were sentenced under bribery")

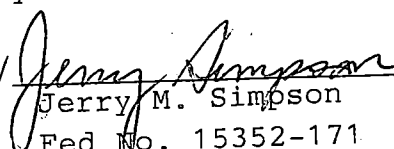
Both State and Federal law conclusively, show that a defendant who may associate with individuals or is in the mere proximity when certain actions may have occured, is not guilty of a conspiracy nor can it be inferred. (US v Brown 117 F.3d 471 (11th Cir. 1997)..mis-information given to the defendant made his plea involuntary; US v Gobert 139 F.3d 436 95th (5th Cir. 1998)..insufficient factual basis existed for defendants guilty plea; US v Toler 144 F.3d 1423 (11th Cir. 1998)..insufficient evidence that the defendant participated)

Hence, because the petitioner cannot be liable for the acts of others (US v Bad Wound 203 F. 3d 1072 (8th Cir. 2000), and there was no cocaine found in the petitioner's possession (US v Torres-Ramirez 213 F.3d 978 (7th Cir. 2000) and the petitioner's mere presence cannot be used to establish guilt beyond a reasonable doubt (US v Estrada-Macia 218 F.3d 1064 (9th Cir. 2000) nor was there any finger print found on any bag of cocaine sold by the others (US v Tran 568 F.3d 1156 (9th Cir. 2009), the petitioner moves to vacate the plea based upon the herein arguments and the counselors ineffectiveness in rendering the bad legal advice to accept the cocaine plea charges , and to set the matter for trial. (US v Gounta 89-5245 (4th Cir. 1991)..the governments evidence of alleged agreement was either non-existent or tenuous and is insufficient to support his convictions for conspiracy)

Conclusion

The petitioner's plea was not knowingly and intelligently entered and was based upon the misadvisement of the elements to be proved from the counselor and therefore, the petitioner moves to vacate the plea and to set this matter for trial and for the court to appoint new counsel.

Respectfully submitted on this 29 day of Dec., 2016 , by,

s/  pro se
Jerry M. Simpson
Fed No. 15352-171

The South Carolina Court of Appeals

The State, Respondent,

v.

Jerry Mandell Simpson, Appellant.

Appellate Case No. 2016-002199

The Honorable J. Derham Cole
Spartanburg County

Trial Court Case No. 2016GS4201687, 2016GS4204459

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ORDER

The request for an extension to provide a sufficient guilty plea explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, is granted and extended until January 3, 2017. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Jerry Mandell Simpson
Joseph J. Watson, Esquire
Robert Michael Dudek, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

FILED
November 29, 2016

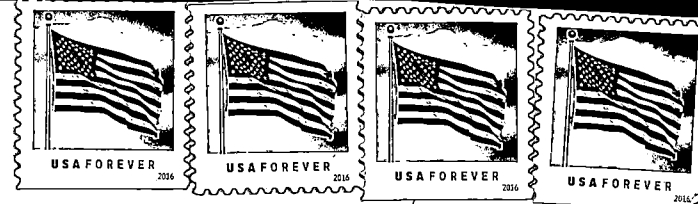
Proof of Service

I, Jerry M. Simpson, do hereby swear under the penalty of perjury that a copy of the Pro Se Appellant Brief has been sent via US Postal Mail to the South Carolina Court of Appeals on this ___ day of Dec., 2016.

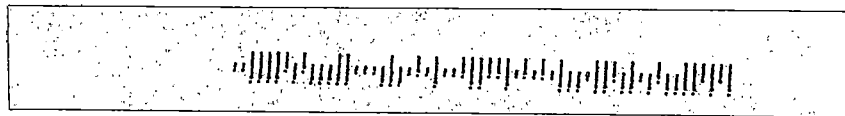
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