

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
GENERAL SESSIONS COURT
PERRY M. BUCKNER CIRCUIT
COURT JUDGE

IND. NO. 1987-GS-15-00527-00528
AND 2015-CP-15-500-(2016)-001588

THE STATE,

v.

MICHAEL LINDER

RESPONDENT,

APPELLANT.

RECEIVED

FEB 15 2017

SC Court of Appeals

INITIAL BRIEF OF APPELLANT

MICHAEL LINDER
#147746, PAO-SE
ATTENDALE C.I.
P.O. BOX 1151
FAIRFAX S.C.
29827

LEGAL MAIL

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I. STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE LOWER COURT WAS IN ERROR FOR FAILING TO CONTINUE THE CASE SO COUNSEL FOR THE APPELLANT COULD HIRE AN EXPERT IN HANDWRITING ANALYSIS TO EXAMINE THE HANDWRITING TO DETERMINE IF IT WAS WRITTEN BY THE SAME PERSON OR WAS IT PLAIN ERROR OR ABUSE OF DISCRETION ON THE COURT FOR NOT ORDERING IT DONE.
2. WHETHER THE COURT WILL ORDER A REMAND FOR A HEARING SO APPELLANT CAN OBTAIN A HANDWRITING EXPERT WHICH DEFENDANT'S COUNSEL FAILED TO DO AT APPELLANT'S REQUEST PREJUDICING HIS CASE TO PROVE THE JUDGE'S SIGNATURE WAS NOT THE SAME AND THAT THE TRIAL COURT DID NOT MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE ISSUE OF THE JUDGE'S SIGNATURE.
3. WHETHER APPELLANT WAS VALIDLY COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ON AN UNSIGNED COMMITMENT ORDER THAT WAS TYPED AND WHETHER A FORGED SIGNATURE INVALIDATES THE ORDER AND APPELLANT'S SENTENCE WAS NOT FINAL AND WHETHER THE COURT WILL REVIEW FOR CLEAR ERROR AND ABUSE OF DISCRETION ON AN ISSUE OF FIRST IMPRESSION TO THE COURT.

II. STATEMENT OF CASE

APPELLANT MICHAEL LINDER WAS INDICTED BY THE GRAND JURY COLLETON COUNTY ON THE CHARGES OF ASSAULT AND BATTERY WITH INTENT TO KILL, ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE, SECOND DEGREE BURGLARY, AND KIDNAPPING ON THE NOVEMBER TERM OF GENERAL SESSIONS COURT 1987. ON JUNE 16, 1988 HE WAS FOUND GUILTY. APPELLANT FILED TIMELY NOTICE OF APPEAL AND THE SUPREME COURT AFFIRMED HIS CONVICTIONS MEMO. OPINION NO. 90-MO-084. APPELLANT FILED A PCR APPLICATION AND A HEARING WAS HELD MARCH 29, 1991. NUMEROUS ISSUES WERE RAISED INCLUDING A MISSING STATEMENT THE VICTIM GAVE DEFENSE COUNSEL STATING SHE WAS NOT KIDNAPPED BUT WAS GIVEN A RIDE BY HER THEN BOYFRIEND MICHAEL LINDER THE APPELLANT. BOTH PCR COUNSEL DISREGARDED THE ISSUE AND THE ATTORNEY FOR HIS WRIT OF CERTIORARI REFUSED TO ASK FOR A REMAND FOR FAILURE TO ADDRESS THE ISSUE OF THE MISSING STATEMENT. AFTER NUMEROUS YEARS APPELLANT HAD TO FILE TO REMOVE HIS STATUS AS A SEX OFFENDER BECAUSE IT WAS NOT A SEX CRIME. JUDGE J. ERNEST KINARD, JR. WROTE THE APPELLANT GRANTING HIS REQUEST. APPELLANT ORIGINALLY FILED HIS NEWLY DISCOVERED MOTION ON OCTOBER 9, 2013. AFTER RECEIVING THE NEW LETTER ON SEPTEMBER 12, 2015 APPELLANT AMENDED HIS MOTION FOR NEWLY DISCOVERED EVIDENCE LESS THAN A YEAR AFTER IT WAS DISCOVERED WELL WITHIN TIME LIMITS. DURING THIS TIME JUDGE KINARD PASSED AWAY BEFORE THE HEARING.

OFFICE, STATED AS DEFENDANT'S EXHIBIT - 4 AND ASKED THE COURT TO COMPARE THE SIGNATURE ON EXHIBIT - 4 WITH THE ORIGINAL SENTENCING SHEETS DATED JUNE 16, 1988.

ON JULY 25, 2016 APPELLATE RECEIVED THE FINAL ORDER OF THE COURT DENYING HIS CLAIMS STATING (1) THE COURT IS NOT AN EXPERT IN HANDWRITING TO DETERMINE IF DOCUMENTS ARE SIGNED BY THE SAME PERSON. THUS, THE COURT CANNOT EXPRESS AN OPINION ON THIS ISSUE. FURTHER, I FIND THAT MICHAEL LINDER WAS PROPERLY INDICTED ON NOV 9, 1987 BY THE GRAND JURY OF COLLETON COUNTY. AND THE COURT DENIED HIS REQUEST FOR A WRIT OF HABEAS CORPUS. THE COURT RULED THAT INSUFFICIENT EVIDENCE WAS PRESENTED TO PROVE THAT A VIOLATION OF MR. LINDER'S DUE PROCESS RIGHTS. APPELLANT COUNSEL FILED A NOTICE OF INTENT TO APPEAL ON JULY 27, 2016 TO CONTEST THE COURT'S RULINGS.

STATEMENT OF FACTS

APPELLANT CAME BEFORE THE COURT ON A MOTION FOR AFTER DISCOVERED EVIDENCE FILED ON OCTOBER 9, 2013 AND PETITION FOR WRIT OF MANDAMUS FILED ON MARCH 16, 2016 FILED BY MICHAEL LINDER, PRO-SE. AFTER RECEIPT OF THESE MOTIONS, THE COURT APPOINTED MATTHEW WALKER ASSISTANT PUBLIC DEFENDER TO REPRESENT THESE MATTERS IN AN ORDER DATED FEBRUARY 29, 2016. THIS HEARING WAS HELD ON JULY 14, 2016. THE STATE WAS REPRESENTED BY STEVEN H. KNEIGHT, ASSISTANT SOLICITOR FOR THE 14TH JUDICIAL CIRCUIT.

THE APPELLANT PRESENTED THE FOLLOWING THREE ISSUES TO BE ADDRESSED AT THE HEARING.

1. THE TRIAL JUDGE FAILED TO SIGN THE COURT ORDER TO VALIDATE HIS CONVICTION AND SENTENCE.
2. THE CONVICTION OBTAINED WAS BY ACTION OF A GRAND JURY WHICH WAS UNCONSTITUTIONALLY IMPANELED BY THE SOLICITOR OUTSIDE THE STATUTE OF THE S.C. CODE ANN. §19-5-800 SEC (3).
3. PETITION FOR WRIT OF MANDAMUS.

APPELLANT PRESENTED AT THE HEARING THE ORIGINAL SENTENCING SHEET AND COMMITMENT ORDER THAT WAS FILED WITH THE CLERK OF COURT, SHOWING A SIGNATURE SUPPOSITOIRLY MADE BY JUDGE J. ERNEST KINARD, JR. THE COMMITMENT ORDER HAD ^{Judge Kinard's name typed in place} ~~Judge Kinard's name~~ _{of Judge Kinard's actual signature.} AT THE HEARING APPELLATE OFFERED INTO EVIDENCE A LETTER DATED SEPTEMBER 12, 2015 FROM JUDGE KINARD TO JAMES BRENNAN, JR, ASSISTANT DIVISION DIRECTOR OF INMATE RECORDS,

ARGUMENT

1. WHETHER THE LOWER COURT WAS IN ERROR FOR FAILING TO CONTINUE THE CASE SO COUNSEL FOR THE APPELLANT COULD HIRE AN EXPERT IN HANDWRITING ANALYSIS TO EXAMINE THE HANDWRITING TO DETERMINE IF IT WAS WRITTEN BY THE SAME PERSON OR IT WAS PLAIN ERROR ON THE COURT FOR NOT ORDERING IT DONE.

Appellant's Counsel, Mr. Walker, told appellant in March, 2016 that he would hire a handwriting expert.

APPELLANT PRESENTED DOCUMENTS TO THE COURT TO DETERMINE IF THEY HAD BEEN FORGED AND NOT PROPERLY SIGNED. BEFORE THE HEARING APPELLANT REQUESTED THAT COUNSEL SHOULD HIRE A HANDWRITING EXPERT SINCE THAT WAS THE BASIS OF HIS ARGUMENT, COUNSEL DID NOT STATE TO APPELLANT THAT THE COURT COULD EASILY SEE THE SIGNATURES DO NOT MATCH.

APPELLANT INTRODUCED INTO EVIDENCE BOTH THE SENTENCING PAPER ORDER AND COMMITMENT ALONG WITH THE SIGNED LETTER BY JUDGE J. ERNEST KENARD, JR. AND HE ASKED THE COURT TO COMPARE THE SIGNATURES AND THAT THE OTHER COMMITMENT WAS TYPED IN BY A TYPEWRITER. THE BASIS OF THE CLAIM THAT THE COURT STATES IS THAT THE TYPED FORM WAS AN ELECTRONIC SIGNATURE AND THE OTHER ORDER WAS SIGNED STATING "SEE ATTACHED." FIRST, THE SIGNED SENTENCE SHEET WAS A SIGNATURE THAT DOES NOT MATCH THE LETTER AND A LAY PERSON COULD SEE THAT. SECOND, ELECTRONIC SIGNATURES WERE NOT INVENTED UNTIL 1993. APPELLANT CONTENDS THAT HE WAS NOT ALLOWED TO SPEAK AND HIS ATTORNEY WOULD NOT REQUEST A CONTINUANCE. APPELLANT WAS PREVENTED FROM ASKING HIMSELF THEREFOR,

DEPRIVING HIM OF A FAIR HEARING VIOLATING HIS DUE PROCESS RIGHTS TO PRESENT HIS NEWLY DISCOVERED EVIDENCE SCIENTIFICALLY AS ALLOWED BY THE COURT. APPELLANT CONTENDS THE COURT IS IN CLEAR ERROR FOR NOT ASKING COUNSEL WOULD HE LIKE TO CONTINUE TO HIRE AN EXPERT SINCE THE COURT LATER CLAIMED IT COULD NOT EXPRESS AN OPINION ON THE ISSUE.

APPELLANT CONTENDS THAT IF THE SIGNATURES DO NOT MATCH AND HE CAN SHOW THE COMMITMENT WAS ONLY TYPED THEN HE HAS A VALID CLAIM THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS HELD HIM WITHOUT A VALID COURT ORDER FOR ALMOST 30 YEARS DEPRIVING THEM OF JURISDICTION. The Supreme ruled in DAVIS v. SANDARS, 19 S.E. 138 and Re. SMITH, 579 S.E. 2d 584 that judges must sign all their own orders personally.

IN SCDL POLICY 09-21-09, THE JUDGE MUST PERSONALLY SIGN ALL ORDERS, 6-3.1. REVIEW EACH COMMITMENT ORDER FOR OFFENSE DATES, SENTENCES, SIGNATURES, INDICTMENT AND WARRANT NUMBERS, AND ANY SPECIAL CONDITIONS INDICATED BY THE COURT. THAT SCDL CANNOT TAKE CUSTODY OF AN INDIVIDUAL IF THE COMMITMENT ORDER IS NOT SIGNED. AS OF THIS DATE APPELLANT HAS MAX-OUT ALL SENTENCES EXCEPT THE KIDNAPPING CHARGE. SUBSEQUENTLY, THE KIDNAPPING STATUTE WAS REVISED §16-3-910(A)(B) TO REDUCE THE SENTENCE FROM LIFE TO A 30 YEAR SENTENCE. AT THIS DATE APPELLANT HAS BEEN HELD WITH AN INVALID COMMITMENT ORDER AND HIS SENTENCE IS NOT FINAL. APPELLANT CONTENDS THAT BECAUSE HIS SENTENCE IS NOT FINAL HE SHOULD BE ENTITLED TO

RESENTENCE UNDER THE (1991) REVISED SENTENCING LAW
UNDER THAT CHARGE, BASED ON THE COURTS FAILURE TO
PROPERLY ADDRESS THIS ISSUE OR ASK COUNSEL TO SEE
IF HE WANTED A CONTINUANCE TO HIRE AN EXPERT
IN HANDWRITING IS CLEAR ERROR BY THE COURT, THIS
COURT SHOULD GRANT A REMAND TO EXHAUST ALL POSSIBLE
CLAIMS AND THAT APPELLANTS DUE PROCESS RIGHTS ARE
PROTECTED UNDER THE 14TH AMENDMENT.

STATEMENT OF ISSUE ON APPEAL
ARGUMENT

2. WHETHER THE COURT WILL REMAND FOR A HEARING SO APPELLANT CAN OBTAIN A HANDWRITING EXPERT WHICH DEFENDANTS COUNSEL FAILED TO DO AT APPELLANTS REQUEST PREJUDICING HIS CASE TO PROVE THE JUDGE'S SIGNATURE WAS NOT THE SAME AND THAT THE TRIAL COURT DID NOT MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE ISSUE OF THE JUDGE'S SIGNATURE.

APPELLANT CONTENDS THAT HE WAS NOT ALLOWED TO REQUEST A HANDWRITING EXPERT TO PROVE THAT THE SIGNATURES DID NOT MATCH AND THAT THE JUDGE'S FAILURE TO INQUIRE IF APPELLANT WANTED ONE WAS AN ABUSE OF DISCRETION AND ERROR ON THE COURTS BEHALF. APPELLANT CONTENDS THAT THE FINAL ORDER ONLY CONTAINED A FINDING OF FACT BUT NO CONCLUSION OF LAW BASED ON THE EVIDENCE PRESENTED AT THE HEARING. ON THE FINAL ORDER IT STATES THAT MR. LINDER'S CONVICTION AND SENTENCE WAS VALID AND THAT INSUFFICIENT EVIDENCE WAS PRESENTED TO PROVE THAT A VIOLATION OF MR. LINDER'S DUE PROCESS RIGHTS OCCURRED. THE JUDGE FAILS TO EXPLAIN WHAT LAW UPHOLDS HIS FINDINGS AND THE FAILURE TO INQUIRE ABOUT AN EXPERT WITNESS SHOWS AN ABUSE OF DISCRETION ON THE COURTS

FAILURE TO EITHER ASK COUNSEL IF HE NEEDED A CONTINUANCE TO HIRE AN EXPERT TO COMPARE THE SIGNATURES.

PURSUANT TO S.C. CODE ANN. §17-27-80(2083) THAT A JUDGE MUST MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO EACH ISSUE PRESENTED. THE FAILURE TO SPECIFICALLY RULE ON THE ISSUES PRECLUDES APPELLATE REVIEW OF THE ISSUES. PRUITT V. STATE, 423 S.E.2d 127 (1992). OR FURTHER A COURT MAY GRANT A RULE 60(A) (B) (C) (3) MOTION WITHIN A YEAR TO CORRECT AN OVERSIGHT OR ADMISSION WHENEVER ONE IS FOUND IN A JUDGEMENT OR OR OTHER PART OF THE RECORDS.

APPELLANT ASKS FOR A REMAND TO SPECIFICALLY ADDRESS THIS ISSUE, TO DECIDE IF THE COURT WAS IN ERROR NOT TO TAKE NOTICE AND ORDER IT.

STATEMENT OF ISSUE ON APPEAL

ARGUMENT

3. WHETHER APPELLANT WAS VALIDLY COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ON AN UNSIGNED COMMITMENT ORDER THAT WAS TYPED AND WHETHER A FORGED SIGNATURE INVALIDATES THE ORDER AND APPELLANT'S SENTENCE WAS NOT FINAL AND WHETHER THE COURT WILL REVIEW FOR CLEAR ERROR AND ABUSE OF DISCRETION.

APPELLANT CONTENDS THAT HIS COMMITMENT ORDER WAS TYPED WITH THE JUDGE'S SIGNATURE AND THAT THE SENTENCING SHEET HAD A SIGNATURE THAT WAS SUPPOSED TO HAVE BEEN JUDGE KENARD'S SIGNATURE. APPELLANT WAS CONVICTED IN 1988. APPELLANT HAD NO REASON TO BELIEVE THE JUDGE HAD NOT SIGNED BOTH THE SENTENCING SHEET AND COMMITMENT. NOT UNTIL SEPTEMBER 12, 2015 DID APPELLANT DISCOVER THAT THE SIGNATURES DID NOT MATCH. UPON THIS APPELLANT DID AMEND HIS MOTION FOR NEWLY DISCOVERED EVIDENCE. DURING THIS TIME PERIOD JUDGE KENARD PASSED AWAY. UPON REVIEWING SCOC POLICY THEY CANNOT EXCEPT THE APPELLANT INTO CUSTODY WITHOUT A SIGNED COMMITMENT ORDER. BASED ON THE EVIDENCE SUBMITTED AT COURT APPELLANT PROVIDED EXHIBITS THAT CLEARLY SHOWS 2 DIFFERENT SIGNATURES, DURING

THE HEARING APPELLANT ASKED HIS COUNSEL WHY HE DID NOT HIRE A HANDWRITING EXPERT. COUNSEL STATED THEY WOULD NOT NEED ONE. APPELLANT TRIED TO REQUEST TO THE JUDGE THAT HE NEEDED AN EXPERT BUT BOTH THE PRESIDING JUDGE AND HIS COUNSEL REFUSED TO LET HIM SPEAK ON THE RECORD. APPELLANT WAS RUSHED OUT OF COURT AND WAS NOT ABLE TO REQUEST OR OBJECT TO NOT ALLOWING HIM TO OBTAIN AN EXPERT.

THE COURT RULED THAT THE COURT IS NOT AN EXPERT IN HAND WRITING TO DETERMINE IF DOCUMENTS ARE SIGNED BY THE SAME PERSON. THUS, THE COURT CANNOT EXPRESS AN OPINION ON THIS ISSUE.

APPELLANT CONTENDS THIS IS AN ABUSE OF DISCRETION BY THE COURT SINCE THE COURT KNEW IT COULD NOT RULE ON THE ISSUE WITHOUT A HANDWRITING EXPERT. BOTH COUNSEL AND THE COURT IMPEDED APPELLANT FROM REQUESTING AN EXPERT. THIS ISSUE PRESENTED IS OF FIRST IMPRESSION TO THE COURT AND CONSTITUTES A MAJOR DUE PROCESS VIOLATION THAT APPELLANT'S SENTENCE AND COMMITMENT HAVE NOT BEEN FINALIZED FOR OVER 30 YEARS. THAT THE COURT HAS ADDRESSED THE ISSUE OF THE JUDGE ALLOWING OFFICE PERSONNEL TO SIGN HIS NAME ON COURT ORDERS. IN RE SMITH 559 S.E.2d

SBY (2002), PUBLIC REPRIMAND WAS WARRANTED FOR JUDGE'S FAILURE TO PERSONALLY SIGN VARIOUS COURT ORDERS ISSUED IN HIS NAME AND FOR FAILURE TO DESIGNATE ANY FACTUAL BASES TO SUPPORT THE ISSUANCES OF THOSE ORDERS. APPELLATE COURT RULE 501, CODE OF JUDICIAL CONDUCT, ALSO AS STATED IN DUBOSE V. DUBOSE, 72 S.E.2d 645 (1911) "BUT IT HAS BEEN DECIDED (IN DAVIS) 19 S.E.2d 138 (1894) THAT WHEN AN OFFICER IS PERFORMING THE MINISTERIAL DUTY OF ISSUING A PAPER ON COMPLIANCE WITH A CERTAIN CONDITION PRESCRIBED BY LAW, HIS SIGNATURE AT THE FOOT OF THE PAPER HE INTENDED TO SIGN IS NECESSARY TO ITS VALIDITY."

IN STATE V. COURT, 628 S.E.2d 482 (CT. APP. 2006) THE SUPREME COURT RULE MUST PERSONALLY SIGN THEIR OWN COURT ORDER AND WITHOUT A PERSONAL SIGNATURE ON THESE COURT ORDERS IT WILL BE MERELY JUST BE A PIECE OF PAPER THAT CANNOT BE ENTER LOCUED IN THESE MATTERS, IT NULLIFIES THE SUBJECT MATTER JUDICIARY ACTION. THE HEART OF THE MATTER IS THAT IF THE SIGNATURE WAS SIGNED OR FORGED BY OFFICE STAFF THEN THE COMMITMENT AND SENTENCE SHEET BECOMES INVALID. THAT THE LAW CHANGED IN 1991 TO A 30 YEAR SENTENCE AND WOULD ALLOW APPELLANT TO BE SENTENCED AS HIS SENTENCE AND COMMITMENT WAS NOT FINAL. JUDGE KENARD PASSED AWAY BEFORE THE HEARING SO HE COULD NOT BE PERSONALLY SUBPENAED TO TESTIFY.

AS PREVIOUSLY STATED BY SDC POLICY 09-21-09 THEY CANNOT EXCEPT CUSTODY UNLESS THE ORDER WAS PERSONALLY SIGNED BY THE JUDGE. THE JUDGE'S SIGNATURE WAS TYPED BY A TYPEWRITE. ELECTRONIC SIGNATURE WAS NOT INVENTED UNTIL 1993, SO THERE WAS NO WAY IT COULD HAVE BEEN DONE IN 1988.

JUDGEMENT OF CIRCUIT COURT JUDGE CONCERNING CREDIBILITY AND WEIGHT OF NEWLY DISCOVERED EVIDENCE IN SUPPORT OF A NEW TRIAL WILL NOT BE DISTURBED EXCEPT FOR ERROR OF LAW OR ABUSE OF DISCRETION. STATE V. PARKER, 153 S.E.2d 183 (1967) RULE 29(B) STATE V. HARRIS, IN ORDER TO WARRANT THE GRANTING OF A NEW TRIAL ON THE GROUND OF AFTER DISCOVERED EVIDENCE, THE MOVEMENT MUST SHOW THE EVIDENCE (1) IS SUCH THAT WILL PROBABLY CHANGE THE RESULT IF A NEW TRIAL IS GRANTED (2) HAS BEEN DISCOVERED SINCE THE TRIAL (3) COULD NOT HAVE BEEN DISCOVERED BEFORE THE TRIAL BY THE EXERCISE OF DUE DILIGENCE (4) IS MATERIAL TO THE ISSUE AND (5) IS NOT MERELY CUMULATIVE OR IMPEACHING. RULES OF CRIMINAL PROCEDURE, RULE 29(B). APPELLANT CONTENDS THAT THE COURT ABUSED ITS DISCRETION BY NOT CORRECTING ITSELF BY ALLOWING HIM TIME FOR HIRING AN EXPERT SINCE THE ONLY WAY TO MAKE A CREDIBILITY DETERMINATION IS BY THE HANDWRITING EXPERT'S OPINION. A COURT OF APPEALS HAS DISCRETION TO CORRECT PAIN ERRORS, UNITED STATES V. ATKINSON, 56 S.Ct. 391-92. U.S. V. ALANO, 113 S.Ct. (13) 1770 (1993).

CONCLUSION

APPELLANT NOW MOVES THIS COURT TO REVIEW THE LOWER COURT RULINGS FOR CLEAR ERROR AND ABUSE OF DISCRETION AND TO REMAND TO THE LOWER COURT SO HE MAY OBTAIN AN EXPERT HAND-WRITING ANALYSIS EXPERT TO DETERMINE IF THE SIGNATURES ARE FORGED OR WRITTEN BY SOMEONE ELSE, BY THE COURT'S OWN ADMISSION IT COULD NOT RULE ON THE ISSUE OR ISSUE AN OPINION. PURSUANT TO THE RULES OF COURT APPELLANT IS ENTITLED TO SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EVERY ISSUE.

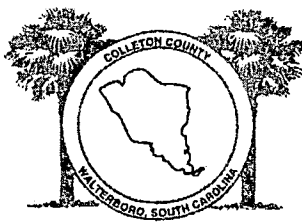
WHEREFORE, APPELLANT REQUESTS A REMAND OR ANY FURTHER RELIEF THE COURT DEEMS JUST AND PROPER.

2/13/2017
DATE:

RESPECTFULLY SUBMITTED,
Michael Linder
MICHAEL LINDER #147746
PRO-SE

ALLENDALE C.F.
P.O. BOX 1151
FAIRFAX S.C. 29827

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

Colleton County

October 14, 2013

Mr. Michael Linder 147746, F4-B18
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29872-1151

Re: SC State vs. Michael Linder
1987-GS-15-527; 528

COLLETON COUNTY
GENERAL SESSIONS COURT
2013 OCT 14 PM 10:09

Dear Mr. Linder:

You will please find enclosed a clocked copy of the Motion for After-Newly Discovered Evidence regarding the above referenced matters. I have also copied the Solicitor's office your Motion as well as the Public Defender's office.

If I can be of any further assistance, please let me know.

Sincerely,

General Sessions Clerk
Colleton County General Sessions

Enclosures: (as stated)

EXHIBIT - A

NOTICE OF INTENT TO APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Perry M. Buckner, Circuit Court Judge

Indictment No. 1987-GS-15-00527, 00528 and 2015-CP-15-500

STATE OF SOUTH CAROLINA,

Respondent,

v.

Michael Linder

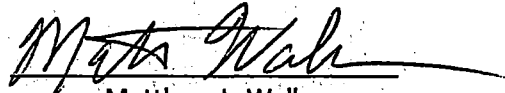
Appellant

NOTICE OF APPEAL

COLLETON COUNTY
GENERAL SESSIONS COURT
2016 JUL 28 AM 9:45

Appellant appeals the denial of his motions for a new trial and a Writ of Mandamus in this case. These motions were denied by the Honorable Perry M. Buckner on July, 14 2016.

July, 27 2016



Matthew L. Walker
Colleton County Public Defender
115 Benson Street
Walterboro, South Carolina 29488
843-549-1633
Attorney for Appellant

OTHER COUNSEL OF RECORD:

Steven H. Knight
Assistant Solicitor
101 Hampton Street
Walterboro, SC 29488
843-549-2192

EXHIBIT-B

EXHIBIT - C

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
Michael Linder, # 14-7746)
Plaintiff)
Vs)
Isaac McDuffie Stone, III, Solicitor)
Fourteenth Judicial Circuit)
Defendant)

IN THE COURT OF COMMON PLEA
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-15-500
In Re: Case #: 87-GS-15-528/529

ORDER

COLLETON COUNTY
GENERAL SESSIONS COURT
2016 JUL 26 AM 9:33

This matter came before the Court for hearing on the Motion for After Discovered Evidence filed on October 9, 2013, and Petition for Writ of Mandamus filed on March 16, 2016 filed by Michael Linder, Pro Se. After receipt of these motions, the Court appointed Matthew Walker, Assistant Public Defender to represent Michael Linder in these matters in an Order dated February 29, 2016. This hearing was held on July 14, 2016. The State was represented by Steven H. Knight, Assistant Solicitor for the 14th Judicial Circuit, and Matthew Walker, Assistant Public Defender, appeared on behalf of Mr. Linder.

Michael Linder presented the following three issues to be addressed at the hearing:

1. The Trial Judge failed to sign the Court Order to validate his conviction and sentence;
2. The conviction obtained was by action of a Grand Jury which was unconstitutionally impaneled by the Solicitor outside the Statute of S.C. Code Ann. §14-5-800 sec. (3);
3. Petition for Writ of Mandamus.

After hearing arguments of counsel and taking testimony, I find that the Original Sentence Sheets, dated June 16, 1988, filed with the Clerk of Court were signed by Judge J. Ernest Kinard, Jr. The Commitment Order has a typed electronic signature, as well as the words "see attached". The attached pages referenced are the sentencing sheets which do have an original signature.

At the hearing, counsel for Mr. Linder offered a letter dated September 12, 2015 from Judge Kinard to James E. Brennan, Jr., Assistant Division Director of Inmate Records Office, Defendant's Exhibit # 4, and asked the Court to compare the signature on Exhibit # 4 with the original signatures on the sentencing sheets dated June 16, 1988. The Court is not an expert in hand writing to determine if documents are signed by the same person. Thus, the Court cannot express an opinion on this issue.

Further, I find that Michael Linder was properly indicted on November 9, 1987 by the Grand Jury of Colleton County. Mr. Linder alleges that the Grand Jury and its actions were unconstitutional because it took place outside the statutory terms of court set forth in S.C. Code Ann. § 14-5-800(3). However, S.C. Code §14-5-800 provides that a common Pleas statutory

PATRICIA C. GRANT
CLERK
OF
COURT
CERTIFIED TRUE COPIES OF RECORDS
Patricia C. Grant
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
DATE: 7-26-2016

term of court can be transferred to a General Sessions term of court. At the hearing, the State entered into Evidence a record from the Clerk of Court's Office, *State's Exhibit # 1*, that provided that a Term of General Sessions for Colleton County was held on November 9, 1987, the date Mr. Linder was indicted. Furthermore, these statutory terms of court have not been followed since the adoption of the unified court system.

Finally, as to Mr. Linder's Petition for Writ of Mandamus, I find that the Applicant has failed to meet the necessary requirements. In order to obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. Pressley v. Lancaster Cty., 343 S.C. 696, 705, 542 S.E.2d 366, 370 (Ct. App. 2001) (citing Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999)).

Mr. Linder contends that the Solicitor has a duty to respond to his motion once filed and to schedule a hearing. There has been no testimony offered that the Solicitor has failed to keep a duty. This Court became aware of Mr. Linder's motion, which was the date Mr. Walker was appointed counsel, on February 29, 2016 and requested that a hearing be held on this matter in March of 2016. Mr. Walker asked the Court to continue the hearing, which was no fault of the State. There has been no evidence presented to convince this Court that the State failed to make a timely response to Mr. Linder's motion and schedule a hearing.

Mr. Linder has a duty to file a motion for a new trial brought on after discovered evidence within one year after the date of actual discovery of the evidence, or within one year after the date when evidence would have been ascertained by reasonable diligence. SCRCrIMP 29(b). Though no evidence from a medical expert was presented, Mr. Linder stated at the hearing that he had some medical issues that made him not realize and be aware of things that were going on around him. Mr. Linder contends that this is the reason for his delay in filing this motion.

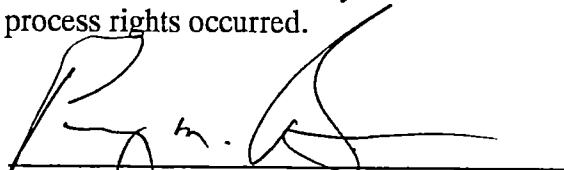
Mr. Linder was sentenced on June the 16th, 1988, and he filed his motion on October the 9th, 2013. This was after a full appeal of the issues of his trial. Therefore, as testified to at the hearing, Mr. Linder had record of the entire Appellate record between 1988 and 1990 when the Supreme Court issued its Opinion affirming his conviction.

Therefore, I find that insufficient evidence was presented to prove that a violation of Mr. Linder's due process rights occurred and DENY his request for a Writ of Mandamus.

It is further Ordered that Mr. Linder's conviction and sentence was valid; that the Grand Jury proceeding was proper; and that the Applicant failed to meet the necessary elements for Mandamus, and no violation of the Applicant's due process rights occurred.

IT IS SO ORDERED.

Date: July 25, 2016
Walterboro, South Carolina


Chief Administrative Judge
Perry M. Buckner

#2

STATE OF SOUTH CAROLINA

Exhibit - D

CASE NO. 87-GS-15-527

Colleton COUNTY

ACT-15R 5-16 11/03/16

The defendant Michael Linder is committed to the State Department of Corrections/County for a term of Life ~~months/years~~ and/or to pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution For physical injury \$ _____
Yes/No property damage \$ _____
to be paid _____

to clerk for _____ **

Other conditions _____

Date 6-16-88

[Signature]
Presiding Judge

*Costs and Assessments
Non-waivable \$ _____
Not waived \$ _____
Total \$ _____

[Signature]
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

ACI-1525-16 11/03/16

EXHIBIT E

Form 37-COMMITTING PRISONERS TO STATE PENITENTIARY

COMMITMENT

Colleton COUNTY SOUTH CAROLINA

The State vs.

Michael Linder

IN THE COURT OF GENERAL SESSIONS INDICTED FOR

87-GS-15-527 - Assault and Battery with Intent to Kill and Kidnapping (Section 16-3-910); 87-GS-15-528 - Burglary, 1 and Assault and Battery with Intent to Kill

GUILTY OF

Jury Verdict:

87-GS-15-527 - (1) Assault and Battery of a High & Aggravated Nature

(2) Kidnapping; 87-GS-15-528 - (1) Burglary, 2nd Degree (2) Assault and Battery with intent to Kill

SENTENCE

The sentence of the Court is: that you (see attached copies)

be confined upon the public works of County for a period of

at hard labor or for a like period in the State Penitentiary

June 16, 1988

Date Sentenced

S/ J. Ernest Kinard, Jr. Presiding Judge

I certify that the foregoing facts in this case are true according to the official records thereof.

Date June 16, 1988

Eva O. Reed Clerk of Court - Seal

When a prisoner is committed to the Penitentiary more than 10 days after sentence was imposed the reason therefor should be stated on the lines below or if he began to serve sentence in the county and is later transferred to the Penitentiary, that fact should, by all means, be entered on these lines left blank for such purposes.

Jail Time: 295 Days

CERTIFIED TRUE COPIES OF RECORDS

Patricia G. Grant CLERK OF COURT, GENERAL SESSIONS COURT COLLETON COUNTY, SOUTH CAROLINA

DATE: 11/18/05

Exhibit - F

ACI-0525-16

11/03/16



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

J. ERNEST KINARD, JR.
CHIEF ADMINISTRATIVE
JUDGE

1121 BROAD STREET- CNTY COURTHOUSE
POST OFFICE DRAWER 1707
CAMDEN, SOUTH CAROLINA 29020-1707
TELEPHONE: (803) 425-1500
FAX: (803) 425-5519
E-MAIL: ekinardj@scjd.state.sc.us

September 12, 2005

Mr. James E. Brennan, Jr.
Assistant Division Director
Inmate Records Office
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221

Dear Mr. Brennan:

A thorough investigation reveals that Michael Linder, #147746 sentenced for kidnapping arose out of an incident that was non-sexual in nature. Accordingly, the inmate's records should not list his kidnapping sentence as one that requires sex offender registration.

Thanks for your assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Ernest Kinard, Jr.", written in dark ink.

J. Ernest Kinard, Jr.
Chief Administrative Judge
Fifth Judicial Circuit

JEK/bmp

Enclosure

Cc: Mr. Michael Linder, #147746
Allendale Correctional Institution, F1-B16
Post Office Box 1151
Fairfield, South Carolina 29827

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT MICHAEL LINDER #147746
DID MAIL TO THE CLERK OF COURT SOUTH CAROLINA
COURT OF APPEALS, JENNY KETCHEN, AT P.O. BOX 11629
COLUMBIA S.C. 29211 HIS FINAL BRIEF, PLACED
IN THE MAIL ON THIS 13 DAY OF February, 2017,
~~ON~~ WITH POSTAGE PREPAID.

x Michael Linder
MICHAEL LINDER #147746
ALLENDALE C.I. PRO-SE
P.O. BOX 1151
FAIRFAX S.C. 29827

RECEIVED

FEB 15 2017

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
JERRY ABBOTT KITCHENS, CLERK
P.O. Box 11629
COLUMBIA S.C. 29211

RE: APPELLATE CASE
2016-001588

Clerk,

ENCLOSED IS MY INITIAL BRIEF WILL YOU FILE
MY APPEAL AND FILE THE PROPER AMOUNT OF
COPIES. I AM INDIGENT AND PLEASE SEND ME
A STAMPED CHECKED COPY SO I CAN SERVE THE
ATTORNEY GENERAL. IF NOT PLEASE SERVE THE
ATTORNEY GENERAL FOR ME BECAUSE SCOC DOES NOT
COPY HAND WRITTEN LEGAL PAPERS. AND I AM INDIGENT.

Sincerely,

2/13/17
DATE:

MICHAEL LINDER

#147796

1

RECEIVED

FEB 15 2017

SC Court of Appeals

Mr Michael Linder 147746, F3-B19
allendale Corr. Inst.

P.O. Box 1151

Fairfax, S.C. 29827-1151

RECEIVED

FEB 13 2017

MAILROOM
ACI

RECEIVED

FEB 15 2017

SC Court of Appeals

South Carolina Court of Appeals
Ms. Jenny Abbott Kitchens, clerk
P.O. Box 11629
Columbia, S.C. 29211