

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appellate Case No. 2014-001470

Alfonso Ware Jr.
Petitioner

v.

State of South Carolina
Respondent.

RECEIVED

MAR - 3 2017

S.C. SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Alfonso Ware Jr.
4460 Broad River Rd.
Columbia, SC 29210

Pro se

INDEX

- 1. Index**
- 2. Certificate of Counsel**
- 3. Questions Presented**
- 4. Argument**
- 5. Conclusion**

CERTIFICATE OF COUNSEL

Appellant Certifies that the South Carolina Court of Appeals issued an Order denying Appellant's Petition for Rehearing on January 23, 2017 and received by Appellant on January 27, 2017.

QUESTIONS PRESENTED

Did the Court of Appeals Error when the Court denied Appellant's Request for DNA Testing, when the facts before the Court Prove that the Custodian of the Evidence did not follow the Mandates set out in South Carolina Code Ann. 17-28-320 (A) and 17-28-320 (C) ?

STATEMENT OF THE CASE

The Appellant is presently confined in the South Carolina Dept. of Corr. pursuant to Order of Commitment of the Clerk of Court Lexington County. The Appellant was indicted at the January 1990 term of the Grand Jury for Lexington County for Murder (90-GS-32-0056) Appellant was represented by Thomas Bellinger, on June 25-27, 1990, Appellant went to trial by Jury, was found guilty as indicted. Appellant was sentenced by the Honorable Hubert E. Long to Life.

A timely Notice of Appeal was filed on Appellant's behalf and an Appeal was perfected by Robert M. Dudek of the South Carolina Office of Appellate Defense. The South Carolina Supreme Court Affirmed Appellant's Conviction and Sentence. State v. Ware OP.NO. 92-M0-17 (S.Ct.App. filed February 24, 1992.

The Appellate Subsequently filed an Application for PCR on August 21, 1992. The State filed its Return on October 9, 1995, an Evidentiary hearing was held before the Honorable Daniel E. Martin at which the Appellate was present and was represented by Wayne Floyd. By Order dated June 16, 1995, Judge Martin denied and dismissed the Appellant's Application.

A timely Notice of Appeal was filed and a Petition for Writ of Certiorari was submitted by Wayne Floyd. On November 8, 1996, the S.C. Supreme Court denied the Petition. A Petition for Rehearing was denied on December 16, 1996.

The Appellant filed a Petition for Writ of Habeas Corpus in the U.S. District Court. This Petition was denied by written Order of the Honorable Charles E. Simons Jr. on January 14, 1998. The Appellant appealed this decision to the Court of Appeals for the 4th Circuit. The dismissal of the Appellant's Petition was Affirmed on June 2, 1998.

The Appellant filed another P.C.R. Application on February 10, 2000. An Evidentiary hearing was held on June 14, 2001, the Honorable J.C. Nicholson denied the Respondent's Motion

to Dismiss and allowed Appellant to submit another Application for P.C.R. An Evidentiary hearing was held on August 27, 2001, before the Honorable Thomas G. Cooper. Judge Cooper denied the Application the Appellant filed another P.C.R. Application on December 6, 2001, an Evidentiary hearing was held on January 6, 2003, the Honorable Marc Westbrook denied the Application. Appellant filed P.C.R. Applications on August 14, 2003, and April 7, 2004.

By Order of the Court, the Clerk of Court filed this Application for DNA Testing on July 26, 2013. On October 22, 2013, the Solicitor's Office filed a Response and Motion for Summary Dismissal. On June 16, 2014, Appellant Received from the Honorable William P. Keesley, Order of Intention to Summarily Dismiss the Application for DNA Testing. Appellant filed a timely Response to the Order of the Court.

ARGUMENT

Did the Court of Appeals Error when the Court denied Appellate's Request for DNA Testing, when the facts before the Court Prove that the Custodian of the Evidence did not follow the Mandates set out in South Carolina Code Ann. 17-28-320 (A) and 17-28-320 (C) ?

South Carolina Code Annotated 17-28-320 (A) states: A Custodian of the Evidence Must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at lease one of the following offenses: Murder

FACT: Defendant was convicted of Murder.

17-28-320 (C) states: The physical evidence and biological material Must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in sub-section (A).

FACT: Defendant has been incarcerated since 1990.

17-28-320 (C) states: For physical evidence or biological material that the CUstodian of the Evidence asserts has been lost or destroyed, the Court shall Order a Custodian of Evidence to locate and provide the Applicant and the Solicitor of Attorney General as applicable, with a copy of any document, note, log, report relating to the physical evidence or biological material.

The Solicitor's Office determined that:

1. The weapon and clothing are not available for testing.
2. The evidence from the trial was released by the Clerk of Court, pursuant to an Order of Lexington County Court of General Sessions or Common Pleas, dated August 24, 1998. However, no Reports on Number one or two has been produced.

Who was this Evidence released to?

Why was it released, when Defendant was still in Litigation and incarcerated?

S.L.E.D. does not have any evidence from the trial, as the weapon and evidence tested were returned to the Lexington County Sheriff's Department on January 23, 1990. Which was prior to the trial.

Who at the Lexington County Sheriff's Dept. took Custody of this Evidence and the results of S.L.E.D. testing?

Where is the documentation from that exchange, Chain of Custody?

While the S.C. Code Ann. 17-28-300, took effect in 2009, A look at the history of this act shows that in 1990 South Carolina had a Preservation of Evidence Act in place.

This Court is presented with the question of what was the results of the test done by S.L.E.D. in 1990?

Looking at the Response of the Lexington County Solicitor's Office, there are questions that are not answered. There are Reports and Test results not made available, Evidence turned over by S.L.E.D. to the Lexington County Sheriff's Dept. that are not accounted for. Who was this or any evidence turned over to?

The State has a duty to take affirmative steps to preserve evidence. The Defendant has a protected privilege to Request and obtain from the State evidence that is material to the guilt of the Defendant.

The Honorable William P. Keesley Chief Judge for Administrative Purposes General Session 11th Judicial Circuit in his proposed Order of dismissal states: that in the abstract is is conceivable that the absence of blood on Mr. Ware is very important to the doubt as to support Mr. Ware's version of the event see R.O.A. P.29

The South Carolina Court of Appeals Erred when they denied Appellant's Application for DNA Testing in light of the facts presented by the Appellant that support the need for further investigation. As well as documented fact that the Custodian of the Evidence and the Respondent did not do a thorough investigation or follow mandatory criteria set out in the statute (17-28-10-through 320)

CONCLUSION

There is one thing that is clear and not denied by the Respondent The Statue concerning the Preservation of the Evidence Act was not followed. The Appellant as a result is being denied his fair opportunity in this matter, despite the facts and the Evidence presented by the Appellant, the South Carolina Court of Appeals has reached a decision to deny Appellant's Application This is a clear Error and this Court must exercise its power and correct what the record demonstrates that is before this Court now.

For the reasons stated above, Appellant moves this Honorable Court to grant Appellant Petition for Writ of Certiorari.

Alfonso Ware Jr.

Alfonso Ware Jr.
4460 Broad River Rd.
Columbia, SC 29210-4012

February 27, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appellate Case No. 2014-001470

Alfonso Ware, Jr.
Petitioner

v.

CERTIFICATE OF SERVICE

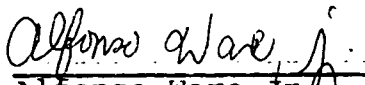
State of South Carolina
Respondent.

Petitioner Alfonso Ware Jr., declared under the penalty of perjury that he mailed a copy of his Petition for Writ of Certiorari With record on Appeal and the Appendix to the parties listed below by placing them in the U.S. Mail:

Clerk of the Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Alan M. Wilson Esq.
P.O. Box 11549
Columbia, SC 29211

Respectfully,



Alfonso Ware Jr.
BRCI
4460 Broad River Rd.
Columbia, SC 29210-

DATE: February 27, 2017