

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HONORABLE J. CORDELL, MADDOX

CASE NO. 2016-001124

RECEIVED

MAR 22 2017

SC Court of Appeals

DAN TEMPLE JR #254316

APPELLANT

V.

OCONEE COUNTY SHERIFF'S DEPARTMENT

RESPONDENT

FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HONORABLE J. CORDELL, MADDOX

CASE NO. 2016-001124

DAN TEMPLE

APPELLANT

V.

OCONEE COUNTY SHERIFF DEPARTMENT

RESPONDENT

FINAL BRIEF

X

PRO. SE, DAN TEMPLE, JR
P.O. BOX 901
FULTONDALE, AL35068
03/15/2017

CC: ATTORNEY RECORD
JAMES VICTOR McDADE, ESQ
P.O. BOX 2125
ANDERSON, SC 29622

CC: THE SOUTH CAROLINA COURT OF APPEALS
ATTORNEY: JENNY ABBOTT KITCHING, CLERK
P.O. BOX 11629
COLUMBIA, SC 29211

Table of Contents

Table of Cases.....	2-3
Statement of the Case.....	4
Issues on Appeal.....	5-7
Arguments.....	8
Conclusion.....	9

Table of Cases

<u>U.S. Const. Amends. V. the Fourteenth Amendment</u>	5
<u>Klopper v. N.C.</u> , 386 U.S. 213,222-23 (1967).....	5
<u>U.S. v. DeLeo</u> , 422 F.2d 487, 495 (1 st Cir. 1970).....	5
<u>Mathies v. U.S.</u> , 374 F.2d 312, 314-15 (D.C. Cir. 1967).....	5
<u>U.S. v. Marion</u> , 404 U.S. 307, 322 (1971).....	6
<u>U.S. v. Daley</u> , 454 F.2d 505, 508 (1 st Cir, 1972).....	6
<u>U.S. v. Vispi</u> , 545 F.2d 328, 331 (2 ^d Cir. 1976).....	6
<u>U.S. v. Otto</u> , 742 F.2d 104, 107 (3 rd Cir. 1984).....	6
<u>U.S. v. Crouch</u> , 84 F.3d 1497, 1513 n.17 (5 th Cir. 1996).....	6
<u>U.S. v. McMutory</u> , 217 F.3d 477, 481 (7 th Cir. 2000).....	6
<u>U.S. v. Weaver</u> , 562 F.2d 129, 131 (8 th Cir. 1977).....	6
<u>U.S. v. Weinstein</u> , 762 F.2d 1522, 1542 (11 th Cir. 1985).....	6
<u>Stovall v. Dummo</u>	6
<u>U.S. v DeTienne</u> , 468 F.2d 151, 155 (7 th Cir. 1972).....	6
<u>U.S. v. Lovasco</u> , 431 U.S. 783, 789 (1977).....	6
<u>U.S. v. Bater</u> , 594 F.3d 51, 54 (1 st Cir. 2010)	

<u>U.S. v. LeQuire</u> , 943 F.2d 1554m 1560 (11 th Cir. 1991).....	7
<u>Doggett v. U.S.</u> , 505 U.S. 647, 651-52 (1992).....	7
<u>U.S. v. Munoz-Franco</u> , 487 F.3d 25, 60 (1 st Cir. 2007).....	7
<u>U.S. v. Blanco</u> , 861 F.2d 773, 777-78 (2d Cir. 1988).....	7
<u>U.S. v. Battis</u> , 589 F.3d 673, 678 (3d Cir. 2009).....	7
<u>U.S. v. Hall</u> , 551 F.3d 257, 272 (4 th Cir. 2009).....	7
<u>U.S. v. Green</u> , 508 F.3d 195, 202 (5 th Cir. 2007).....	7
<u>U.S. v Gardner</u> , 488 F.3d 700, 719 (6 th Cir. 2007).....	7
<u>U.S. v. Loera</u> , 565 F. 3d 406, 412 (7 th Cir. 2009).....	7
<u>U.S. v. Jenkins-Watts</u> , 574 F. 3d 950, 966 (8 th Cir. 2009).....	7
<u>U.S. v Mendoza</u> , 530 F. 3d 758, 762 (9 th Cir. 2008).....	7
<u>U.S. v. Seltzer</u> , 595 F. 3d 1170, 1176 (10 th Cir. 2010).....	7
<u>U.S. v. Knight</u> , 562 F.3d 1314, 1323 (11 th Cir. 2009).....	7
<u>U.S. v Tehibassa</u> , 452 F.3d 918, 923 (D.C. Cir. 2006).....	7
<u>United States v. Agurs</u> , 427 U.S. 97, 103, 96, s.ct. 2392, 2397, 49 L.Ed.2d (1976).....	8
<u>State v. Funderbush</u> , 259 S.C. 256, 191 S.E.2d 520 (1972).....	8
<u>Mourse v. Blackdrum</u> , 748 F. 2d 958. (5 th Cir. 1984), Cert Denied, 476 U.S. 1145 (1986).....	8
<u>Rule of Brady v. Maryland</u> , 373 U.S. 83 (1963).....	8
<u>Patterson v. Coughlin</u> , 905 F.2d 564, 570 (2d Cir. 1990).....	9

Statement of Case

The records will show in 1997, the defendant used a Confidential Informant, who brought Crack Cocaine to my Home, for the Defendant. The Confidential Informant, was Faced with 40 year sentence for the sale of Crack Cocaine, the records will show the Deputy Sheriff did not Record a Buy on his Recording at the time of the Informant Transaction, the Confidential Informant was allowed to Carry a Black Box on him, the deputy failed to search him.

The Defendant failed to turnover a Search Warrant at the time of Pretrial Stages of the Case, the Court Record will show No Preliminary Hearing, in Oconee County, a letter to Ken Washington from Mr. Robinson, requested a Copy of the tape to be Blown Up, Frames to reveal what the Box showed at the time of the Alleged Buy. It was Never Presented, as the Defendant could not or would not produce the Make, Model and Serial Numbers of all, Audio Visual Surveillance Equipment used by the Confidential Informant.

The Defendant has failed to meet the burden of the Constitution; the constitution requires a Discovery in each case. When there's a void in constitution, which requires due process of law.

Due process is a sharing of information from one party to another. When there's a failure to turn information over to the other party that void constitutes a Constitutional Error. No matter the length of time that constitutional error cannot be overridden, because the constitution requires a full discovery of the information. The Defendant has a duty to turn over that information in order to fulfill the due process.

Issues on Appeal

1) Weather the Constitution Safeguards against Post Accusations Delay

The Due Process Clause and Federal statutes of limitations protect defendants from intentional and prejudicial preaccusation delay.

See 1245.

The Due Process Clause of the Fifth Amendment provides in pertinent part that "No Person shall ... be deprived of life, liberty, or property without due process of law." U.S. Const. Amends. V. the Fourteenth Amendment imposes this same limitation on the states. See U.S. Const. amend. XIV.

See 1246.

The Sixth Amendment provides in pertinent part that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amends. VI. The Sixth Amendment speedy trial guarantee is binding on the states through the Due Process Clause of the Fourteenth Amendment. See *Klopfer v. N.C.*, 386 U.S. 213,222-23 (1967) (state is responsible for speedy trial even where defendant is in Federal Prison)

See 1247.

18 U.S.C 3161-3174 (Specifying time limits between arrest, indictment, and trial, and permissible delays within each period).

See 1248

Fed. R. Crim. P. 48(b) (authorizing courts to dismiss indictments for government's unnecessary preindictment or post-indictment delay). *U.S. v. DeLeo*, 422 F.2d 487, 495 (1st Cir. 1970) (noting that Rule 48(b) imposes a stricter prosecution speed standard than the 6th Amendment); *Mathies v. U.S.*, 374 F.2d 312, 314-15 (D.C. Cir. 1967)(same)

See 1250

U.S. v. Marion, 404 U.S. 307, 322 (1971); see, e.g., U.S. v. Daley, 454 F.2d 505, 508 (1st Cir. 1972) (statute of limitations provides primary protection against prosecutorial delay); U.S. v. Vispi, 545 F.2d 328, 331 (2d Cir. 1976) (Same) ; U.S. v. Otto, 742 F.2d 104, 107 (3rd Cir. 1984) (same); U.S. v. Crouch, 84 F.3d 1497, 1513 n.17 (5th Cir. 1996) (same); U.S. v. McMurtary, 217 F.3d 477, 481 (7th Cir. 2000) (same); U.S. v. Weaver, 562 F.2d 129, 131 (8th Cir. 1977) (same); U.S. v. Weinstein, 762 F.2d 1522, 1542 (11th Cir. 1985) (same)

- 2) Weather, the Defendant must Rely on due process principles, to challenge unnecessarily suggestive that occurred at Non Critical Pretrial Stages, in the Case of Stovall v. Dummo

See 1252

However, the Due Process Clause may be violated even if an indictment is brought within the prescribed statute of limitations.

See, e.g., U.S. v DeTienne, 468 F.2d 151, 155 (7th Cir. 1972) (arrest for one charge does not implicate right to a speedy trial for other chargeable offenses).

See 1253

To establish a due process violation based on preaccusation delay, a defendant must show that the governments delay was an intentional device employed to gain a tactical advantage or to harass the defendant, and that the delay resulted in actual and substantial prejudice.

See U.S. v. Lovasco, 431 U.S. 783, 789 (1977) (Statutes of Limitations do not "fully define" defendants' preindictment rights; Due Process Clause has "limited role to play in protecting against oppressive delay")

See 1254. *Id.* At 789-90 (noting that government delay intended to harass or gain tactical advantage would violate due process. Courts sometimes consider whether the defendant has been prejudiced.

See, e.g., *U.S. v. Bater*, 594 F.3d 51, 54 (1st Cir. 2010) (claim that 4-year delay resulted in prejudice invalid because it rested solely on conjecture about availability of witnesses).

U.S. v. LeQuire, 943 F.2d 1554m 1560 (11th Cir. 1991)(claim that 5-year delay violated due process invalid because delay based on defense counsels inability to recall details of 1984 plea bargain already fully represented in record).

3) Weather, the statute of limitations, void the constitution that requires due process of law

See 1263. *Id.* At 530; see also *Doggett v. U.S.*, 505 U.S. 647, 651-52 (1992) (defendant cannot complain that government denied speedy trial if it prosecuted case with "customary promptness"); see, e.g. *U.S. v. Munoz-Franco*, 487 F.3d 25, 60 (1st Cir. 2007) (length of delay must be presumptively prejudicial to trigger examination of all Barker factors); *U.S. v. Blanco*, 861 F.2d 773, 777-78 (2d Cir. 1988) (same); *U.S. v. Battis*, 589 F.3d 673, 678 (3d Cir. 2009) (same); *U.S. v. Hall*, 551 F.3d 257, 272 (4th Cir. 2009)(same); *U.S. v. Green*, 508 F.3d 195, 202 (5th Cir. 2007)(same); *U.S. v Gardner*, 488 F.3d 700, 719 (6th Cir. 2007)(same); *U.S. v. Loera*, 565 F. 3d 406, 412 (7th Cir. 2009)(same); *U U.S. v. Jenkins-Watts*, 574 F. 3d 950, 966 (8th Cir. 2009)(same); *U.S. v Mendoza*, 530 F. 3d 758, 762 (9th Cir. 2008)(same); *U.S. v. Seltzer*, 595 F. 3d 1170, 1176 (10th Cir. 2010)(same); *U.S. v. Knight*, 562 F.3d 1314, 1323 (11th Cir. 2009)(same); *U.S. v Tehibassa*, 452 F.3d 918, 923 (D.C. Cir. 2006)(same).

Argument

The Respondent knowingly used perjury testimony or failed to correct what he subsequently learned was false testimony. *United States v. Agurs*, 427 U.S. 97, 103, 96, s.ct. 2392, 2397, 49 L.Ed.2d (1976). The materiality prong is easier to establish with the Giglio claims that with the Brady Claim for Giglio purpose that the false testimony could have affected the judgment of the jury. *Alzate*, 47 F. 3d at 1110, quoting *Agurs*, 427 U.S. at 103, 96. Petitioner is being held unlawfully and seized in violations of his 4th, 5th, 8th, and 14th Amendment rights, and that the lower court was without jurisdiction to impose sentence. Lack subject matter jurisdiction can be raised at any time including for the first time on appeal or PCR. *State v. Funderbush*, 259 S.C. 256, 191 S.E.2d 520 (1972)

This court must notice that from the court records, it is clearly established that proper procedures has been totally disregarded by the lower court and that this case has essentially sat stagnant before the tenth circuit for in excess of three or five years. It is also clearly demonstrated that several judges, numerous members of the South Carolina bar, and office of the attorney general have failed to resolve the problem or to even seriously address them. After three to five years this neither case, nor tits issues have had the meaningful hearing. This petitioner has with all due diligence sought to have had. The meaningful hearing. This petitioner has with all due diligence sought to have his case heard, but has been stimed by the negligence and/or deliberate indifference of the entire South Carolina Judicial Process. Such flagrant and obvious failure of any semblance of due process must be reasonably and logically viewed as intentional, willful, and unlawful violations of the petitioner's rights under the South Carolina and United States Constitution. This petitioner will not bore this court with what could be and endless display of citations of Law. It is evident from the records that in the present case the States PCR process have been ineffective, thus conclusively demonstrating exhaustion by the petitioner and gross default by the state.

See *Mourse v. Blackdrum*, 748 F. 2d 958. (5th Cir. 1984), Cert Denied, 476 U.S. 1145 (1986), Rule of Brady v. Maryland, 373 U.S. 83 (1963), Exculpatory Evidence. This clearly shows the public importance of the fairness of due process 28 usc 2101 (e) before any ruling is made in this case the respondents must turn over the devices that were used to get the conviction. In order to meet the United States Constitution the introduction of false evidence in itself violates the due process clause.

Conclusion

For the foregoing reasons, the court should grant partial summary judgment on liability to the plaintiff on his due process claims. The amount of damages due to the plaintiff must be determined at trial. *Patterson v. Coughlin*, 905 F.2d 564, 570 (2d Cir. 1990).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HONORABLE J. CORDELL, MADDOX

CASE NO. 2016-001124

RECEIVED

MAR 22 2017

SC Court of Appeals

DAN TEMPLE

APPELLANT

V.

OCONEE COUNTY SHERIFF DEPARTMENT

RESPONDENT

CERTIFICATE OF PRO.SE COUNSEL

X Dan Temple JR

PRO.SE, DAN TEMPLE, JR
P.O. BOX 901
FULTONDALE, AL35068
03/15/2017

SWORN & Subscribed Before Me,

This March, Day of 15, 2017

Daniel Francis Blazich

Notary Republic State of Alabama

My Commission Expires 06/18/2019

