

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

MR. CHRISTOPHER. POAGE APPELLANT

VS.

THE STATE, RESPONDENT

THE HONORABLE J. JUDGE COLE

YORK COUNTY

POST CONVICTION RELIEF: 2014 CP-46-1306

RECEIVED

MAY 30 2017

NOTICE WRITTEN EXPLANATION
PURSUANT TO RULE, 243 SCACR
S.C. SUPREME COURT

Appellant has attempted to appeal post conviction relief, please take notice applicant Christopher. poage SCDC # 347355 Currently proceeding without counsel (pro se) move before this Honorable Court and under the rules of Civil 2014 CP-46 1306.

To include the following additional grounds that my (PCR Attorney) could have raised.

On August 8, 2011 the applicant started trial for murder, Armed Robbery, Kidnapping, Burglary in the 1st degree, and Criminal Conspiracy, on August 10, 2011. The applicant was found guilty of "Burglary 1st degree, Kidnapping, and Criminal Conspiracy.

The applicant was represented by B. Rawlinson in trial. The Honorable Judge Hayes sentenced the applicant to Confinement of (30-years).

± The applicant can show Cause and Pursuant to written explanation, pursuant to Rule 243 of South Carolina appellate Court Rule. The applicant will show the Court, the following grounds the trial Lawyer failed to raise at trial to the Honorable Judge Hayes. Counsellor was unprepared to properly represent because he was retained just days before trial. was to begin Counsellor should have requested a continuance to better prepare for trial.

Avery vs. Alabama 308 US 444, 84L. Ed 377.
605. CT 321.

Counsellor was also ineffective because a failure to attempt to reach any type of plea before trial, and also not seeking reduced or lesser charges.

Counsellor was also ineffective because he failed to request a complete hearing before trial. (Matthews vs. state, 596. SE 2d 121, SC 1980.)

The applicant Christopher Poage vs. state of South Carolina, the applicant can show that trial counsellor prejudiced Applicant by failure

- to request a mental examination which might have formed the bases of insanity defense or a determination that he was not competent to stand trial.

where there is evidence that he was insane under the Law at the time of the crime, see similar to applicant case see Jeter vs. state SC. 1992) 308 S.C. 230, 417 S.E. 594.

on April 24, 2014 applicant filed a PCR and was represented by Counsellor J. Mobley. In applicants PCR applicants counsel — J. Mobley failed to raise all issues at ~~the~~ PCR hearing. Counsellor was ineffective because he wasn't prepared to proceed with PCR.

on January 20, 2015, the applicant proceeded to PCR hearing with Counsellor J. Mobley. Before PCR hearing Counsellor J. Mobley had met with applicant and told applicant every question that he asked, "say no" when trial Counsellor B. Rawlinson was on stand he did testify that he was ineffective to the applicant, and prejudiced that applicant by failing to request a mental examination which might have formed a bases of insanity defense or determination that he was not competent to stand trial.

Jeter vs. state, s.c. 1992, 308 s.c. 230
417. S.E. 2d 594.

In a post conviction relief (PCR) proceeding the burden is on the applicant to prove the allegation in his application and if there is any probative evidence to support the findings of the (PCR) judge, those findings must be upheld; like wise, A (PCR) judge's findings should ~~be~~ not be upheld if there is no probative evidence to support them, cite at: Thompson vs. state S.C. 2000) 340 S.C. 112 531 S.E 2d 294.

In applying this standard, our court has held that evidence which is sufficient to raise a strong suspicion of guilt of the accused is not sufficient to constitute any evidence for which the guilt of the accused may be fairly and logically deduced.

STATE VS. TOTHEROW, 263 S.C. 275, 210 S.E 2d 228, 230 (1974)

STATE VS. TURNER, 117 S.C. 470, 109 S.E. 119, 120 (1921)

The motion for a direct verdict should be granted, therefore, where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or speculate as to the accused's guilt. STATE VS. BROWN, 267 SC. 311, 227 SE. 2d 674, 677 (1976). Citing state vs. Matarazzo, 262 S.C. 662, 207 S.E 2d 93, Cert. denied, 420 U.S. 945 (1974)

If the evidence is consistent with both innocence and guilt, it can not support a conviction. United States vs. Varoz, 740 F.2d 772, 775 (10th CR 1984); United States vs. Ortiz, 445 F.2d 1100, 1103 (10th CR 1971). Guilt is only to be found when there is a "Rationally Supportable state of near certitude," Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th CR 1994). In this case Burglary requires that one enters with intent to commit a crime therein. Appellant did not enter to commit any crimes.

The trial Court erred in refusing to grant a direct verdict to the charges against appellant when the state failed to present any substantial evidence beyond a reasonable doubt, that the appellant had criminal intent to commit the crimes he was charged with. At the conclusion of the states case defense Counsel made motion for a direct verdict to the charges of murder, Armed Robbery, Kidnapping, Burglary in the 1st degree, and criminal conspiracy, because state failed to present any substantial evidence beyond a reasonable doubt that the appellant had criminal intent to commit the crimes he was being charged with.

• Due process as guaranteed by 14th amendment requires that no person shall be made suffer the onus of criminal conviction except upon sufficient proof. Defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the —

- existence of every element of the offense. " Jackson vs. Virginia 443 U.S. 307, 316, 99 Sct. 2781, 2787 (1979)

When a prisoner, either state or federal seeking post conviction relief, arrest with substantial fact to back up his allegation, that at time of trial he was not competent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted and sentenced, the protection of the 14th Amendment to the Constitution requires that such conviction and sentences be set aside unless upon adequate hearing it is shown that he was mentally competent to stand trial (386 Fed 105)

Applicant Forever prays

Office of Disciplinary Counsel
Post Office Box 12159
Columbia South Carolina 29211

Granted or Denied

Date _____ 2017

h

Clerk of Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Mr. Christopher Poage _____ Appellant

VS.

The State _____ Respondent

The Honorable J. Judge Cole
York County

Post Conviction Relief - 2014-CP-46-1306

CERTIFICATE OF SERVICE

I, Christopher Poage, pro se petitioner, hereby certifies that service of my pro se response to petition filed by my counsel, in reference to, Appellate Case No. 2016-001998 with attached certificate of service was made upon the following by placing same in U.S. mail, via MCCI mail room personnel, first-class postage having been prepaid this 24 day of May, 2017 and addressed as follows:

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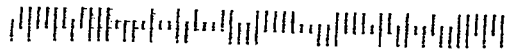
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24 DAY OF May, 2017

J. Franklin

NOTARY PUBLIC OF SOUTH CAROLINA

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