

MAY 31, 2017

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JUN 06 2017

Daniel E. Shearouse, Clerk of Court
In the Supreme Court of South Carolina
Post Office Box 11330
Columbia, So. Car. 29211

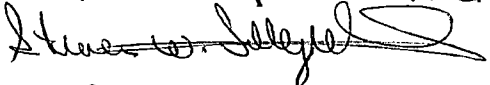
S.C. SUPREME COURT

Re: STEVEN W. LITTLEJOHN V. STATE OF SOUTH CAROLINA
APPELLATE CASE NO. 2017-001054
LOWER CASE NO. 2015-CP-11-0242

Dear Clerk,

Please find enclosed the original copy of the "Motion
To Reconsider" with exhibits and proof of service on the
Attorney General's Office.

Also enclosed is a self addressed envelope (stamped)
containing the cover letter and proof of service in the above
captioned case to be "clocked-date-stamped", filed by
your office and a clocked in copy of the same returned
to me pursuant to rule 602 SCACR, as soon as feasible.

Respectfully Submitted,

SCDC NO. 321946

CC: Valerie G. Giovanoli
Brandy McBee

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|--|--------------------------------------|--------------------|
| State of South Carolina | In The Supreme Court | JUN 06 2017 |
| Stevan W. Littlejohn, Appellant, | Appellate Case No. 2017-001054 | S.C. SUPREME COURT |
| v. | Lower Court Case No. 2015-CP-11-0242 | |
| State of South Carolina Respondent, | Motion TO Reconsider | |

TO: Valerie G. Giovanoli, Esquire, Assistant Attorney General

You will please take notice that the undersigned will move the Court to reconsider its order dated May 17, 2017 for the following reasons:

I.

The (A) originally received the order denying his motion to reconsider dated April 7, 2017 and filed in the Clerk's Office April 12, 2017 on April 17, 2017. April 26, 2017 (A) timely exercised Protected Conduct to file a request to the lower court judge who had jurisdiction pursuant to Rule 52(b) of the South Carolina Rules of Civil Procedure regarding the correction and amendment of two order errors:

1. Motion to Reconsider (Erroneous date)
2. Conditional Order of Dismissal, Dated Sept. 23, 2015 and filed the same (B) erroneously alleged that the Applicant used SCACR Rule 224 while in reserve page 50F9 (See exhibit No. 1, 1A)

April 26, 2017, (A) Filed his Notice of Appeal and asked for leave to correct these obvious errors. May 9, 2017, (A) received copy of letter to Valerie Giovanoli Esq. from Judge J. Mark Hayes, II regarding the (A)'s request and requested a response. May 9, 2017, (A) received copy of the letter to Judge Hayes from Valerie Giovanoli Esq. stating that the lower court did not have jurisdiction, this matter was pending in the Supreme Court and the request lacked merit.

May 11, 2017, (A) argued to J. Mark Hayes that according to the South Carolina Rules of Civil Procedure Rule 52(b), amendments were allowed for timely filed motions and because this proceeding was not final, based on the rules, the lower court did have jurisdiction. The evidence presented was valid to support this request because these were substantial errors of material fact and failure to address these errors will deprive the (A) of a mode of trial to which the (A) is entitled to as a matter of right to protect his due process.

May 11, 2017, (A) made another request for leave to the Supreme Court.

May 19, 2017, to protect his rights to appeal (A) timely filed his explanation brief and raised the issue of the matters still pending in the lower court. May 22, 2017, (A) received the order denying his South Carolina Rules of Civil Procedure Rule 52 (see exhibit no. 2).

II.

(A) submits that this order denying his motion

Under South Carolina Rules of Civil Procedure Rule 52(b) violated his substantive due process rights because (A) timely exercised protected conduct to request corrections of two plain obvious errors in the order's mentioned pursuant to the rules as the proceeding was not final and the lower court still had jurisdiction; just because the (A) filed his notice of appeal at the same time he asked for leave did not negate his right to this mode of trial to have these timely corrections ruled on. (A) has not violated any rules by this procedure nor was his explanatory brief submitted or finalized.

This order and the failure of the lower court to address them deprives the (A) of a mode of trial to which he is entitled as a matter of right, the order is immediately appealable. Cobb v. South Carolina Dept. of Trans 365 S.C. 360 and is prejudicial.

III.

Secondly, this order only address one of the two issues raised in the (A) motion for corrections. (B) acknowledges that the order denying the "motion to reconsider" does have the wrong date and because this is so obvious, it was unnecessary for it to be remanded to the circuit court to correct this clerical error under Rule 60(A), SCRPC (based on the evidence presented by the (A))

This is prejudicial because the order fails to address

the issue regarding the Conditional Order of Dismissal where the (A) presented the same substantial evidence to support his claim of error, the court turned its head to this Conditional Order of Dismissal that was just as obvious as the first issue addressed by the court.

Here, the (A) filed his application with supporting documents stating that the (R) used a SCACR Court Rule 224 that was placed in reserve by the South Carolina Supreme Court. (A) raised this claim throughout this proceeding. (A) provided the following irrefutable evidence to support his claim.

1. Documents that support the (A) position that on MAY 3, 2007 the South Carolina Supreme Court placed SCACR rule 224 in reserve from SCDC General Counsel Chris Florian (see exhibit no. 3)
2. Copy of the (R) motion to correct the record and file a supplemental appendix. Filed pursuant to SCACR Rule 224 of the South Carolina Appellate Court Rules dated Sept. 9, 2009 (27 months after removal by the So. Car. Supreme Court (see exhibit no. 4, 4A, 4B))

The (R) filed their Conditional Order of Dismissal

Allegation that it was the Applicant who inappropriately used SCACR Rule 224 while in reserve but have provided no proof or evidence. (See exhibits NO. 1, 1A - Page 5 of 9).

Most importantly, this allegation could not be true because the Applicant was represented by his Appellate Counsel on Appeal and Hybrid representation is not allowed. This obvious plain error must be corrected and the Court's failure to address this matter is prejudicial, violating the (A) Substantive Due Process rights.

- Conclusion -

Pursuant to the holdings in *Matthew V. Evans* and the Procedural Irregularities that occurred in the denial of (A)'s 52(b) Motion request (A mode of trial the (A) is entitled to as a matter of right) and the A's Due Process right to have his issue heard and ruled on in the lower court regarding the obvious plain error in the Conditional Order of Dismissal, this order is flawed.

(A) Prays that this Court will reverse its order or any other remedy that the Court deems just and proper. (A) has provided irrefutable evidence and has not violated any rules. (A)'s Due Process rights should be protected. (See exhibit NO. 5).

Respectfully submitted,

~~Shawn W. Jolley~~

State OF South Carolina
IN The Supreme Court

Appeal From Cherokee County
The Hon. J. MARK HAYES, II
Appellate Case NO. 2017-001054
Lower Case NO. 2015-CP-11-0242

Steven W. Littlejohn
Appellant,
v.

State of South Carolina,
Respondent,

Proof of Service

I, Steven W. Littlejohn do Certify that I have served my "Motion TO Reconsider" with exhibits on Respondent's Counsel of Record: South Carolina Attorney General's Office, Mrs. Valerie G. Giovannoli, Esquire, Post Office Box 11549, Columbia, S.C. 29211 by depositing the same in the United States Mail, Postage Prepaid on this:

This 31, day of May 2017

Steven W. Littlejohn

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FURBEVILLE, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS)
FOR THE SEVENTH JUDICIAL CIRCUIT)

Steven W. Littlejohn, # 321946,)

2015-CP-11-0242)

Applicant,)

v.)

~~CONDITIONAL ORDER OF DISMISSAL~~)

State of South Carolina,)

Respondent.)

FILED IN THE OFFICE)
CLERK OF COURT)
5 SEP 23 P 6:11)
RANDY W. MORRE)
CHEROKEE COUNTY, SC)

This matter comes before this Court on an application for post-conviction relief (PCR) filed by Steven W. Littlejohn (Applicant) on March 17, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed for failure to file within the time period mandated by the statute of limitations; and because it is barred by the doctrine of *laches*.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was indicted at the May 2006 term of the Cherokee County Grand Jury for two counts of Possession with Intent to Distribute (PWID) Cocaine near School and/or Playground (06-GS-11-412; -414), one count of Possession with Intent to Distribute Crack Cocaine (06-GS-11-415 and one count of Trafficking in Cocaine, 28-100 g, third offense (06-GS-11-416). He was represented on the charges by Roger J. Poole, Esquire. On May 21, 2007, Applicant pleaded guilty to two counts of PWID cocaine near School and/or Playground, PWID Cocaine, and Trafficking in Cocaine, second offense. He was sentenced by the Honorable J. Derham Cole to confinement for a period of ten (10) years on each count of the PWID Cocaine near School or Playground, fifteen (15)

RKK

Exhibit NO: 1

- i. Applicant inappropriately used a rule of Appellate procedures that was no longer applicable and was reserved by the Supreme Court; being rule 224 SCACR, thus prejudicing Applicant and defaulting his claim.
2. Ineffective assistance of appellate counsel.

Before this Court are the Cherokee County Clerk of Court records regarding the subject guilty plea, records from the South Carolina Department of Corrections, records from Applicant's prior PCR proceedings, and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds the present application for post-conviction relief should be summarily dismissed because it successive to Applicant's previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2014). Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application

RKK

The Supreme Court of South Carolina

Steven W. Littlejohn, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001054

Lower Court Case No. 2015CP1100242\

ORDER

The request for leave to file a motion under Rule 52 of the South Carolina Rules of Civil Procedure with the circuit court is denied.¹



FOR THE COURT C.J.

Columbia, South Carolina
May 17, 2017

cc: Valerie Garcia Giovanoli, Esquire
Steven W. Littlejohn, 321946
The Honorable Brandy W. McBee

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COLUMBIA

¹ It does appear that the order denying the motion to reconsider does erroneously refer to the final order as being dated December 29, 2015. Instead, the final order is dated December 29, 2016, and was filed with the clerk of the circuit court on January 3, 2017. Because this error is so obvious, it is unnecessary for this Court to remand this case to the circuit court to correct this clerical error under Rule 60(a), SCRPC.

exhibit 3

Mary McCabe

From: Chris Florian
Sent: Wednesday, May 23, 2012 9:32 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Reserved means that there is no Rule 224, they are keeping it as a placeholder. This was done by way of Supreme Court Order dated 5/3/2007.

Chris

-----Original Message-----
From: Mary McCabe
Sent: Tuesday, May 22, 2012 6:14 PM
To: Chris Florian
Subject: RE: Scan from a Xerox WorkCentre

We need to know what this means: "Reserved" in 2009, And what month did it take effect? mhm

-----Original Message-----
From: Chris Florian
Sent: Tuesday, May 22, 2012 9:02 AM
To: Mary McCabe
Subject: RE: Scan from a Xerox WorkCentre

Rule 224 was marked "RESERVED" in 2009.

Chris

-----Original Message-----
From: Mary McCabe
Sent: Monday, May 21, 2012 6:07 PM
To: Chris Florian
Subject: FW: Scan from a Xerox WorkCentre

Mr. Florian, here's another I need answered. Thanks in advance. mhm

-----Original Message-----
From: DoNotReply@doc.state.sc.us [mailto:DoNotReply@doc.state.sc.us]
Sent: Monday, May 21, 2012 7:09 PM
To: Mary McCabe
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Tyger River CI UY Education (DC016106) 896-3527

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAR 17 AM 11 20
BRANDY W. MOBEE

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CHEROKEE COUNTY, S.C.
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BRANDY W. MOBEE

25 OF 29
~~25 OF 29~~

~~35 OF 40~~

EXHIBIT NO. 3

10

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas

The Honorable Kenneth G. Goode, Circuit Court Judge
2007-CP-11-495

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
MAR 17 PM 11:20
2007
BRANDY W. NCBE
MAR 23 AM 11:16
BRANDY W. NCBE

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Steven Wayne Littlejohn, 321946..... Petitioner,
v.
State of South Carolina..... Respondent.

MOTION TO CORRECT THE RECORD AND FILE A SUPPLEMENTAL APPENDIX

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow the Respondent to correct the record and file a supplemental Appendix in this case. It has come to the Respondent's attention that the guilty plea transcript found in the appellate record contains a material typographical error.

The Petitioner claims he was not informed of a five-year plea deal prior to his pleading. This claim is based on the appearance of the word "five" on page 3 of his guilty plea transcript. (App. p. 109). The court reporter has sworn by an attached affidavit that the word "five" should actually be the word "fifteen." Page 109 of the Appendix reflects page 3 of the guilty plea transcript. Lines 15-17 currently read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of five years to run concurrent on all of these charges." These lines should be corrected to read, "The state and his attorney, Mr. Roger Poole, have negotiated a sentence of fifteen years to run concurrent on all of these charges."

The Petitioner did not raise his allegation of a five-year plea offer in his post-conviction relief

1
26 OF 29
~~26 OF 29~~

~~ATTACHMENT 76~~
~~36 OF 40~~

~~GROUND 2~~

Exhibit NO. 4

application. He briefly raised it at his post-conviction relief hearing, noting that he had not heard anything about a five-year offer until he read his guilty plea transcript. Though the Petitioner mentioned it in his testimony, the record indicates it was not the focus of the PCR hearing. It was not until his Petition for Writ of Certiorari that the Petitioner made substantial argument on the appearance of the word "five" in his guilty plea transcript.

The Petitioner enumerated 31 allegations in his post-conviction relief application, but none of them related to the typographical error discussed herein. The Respondent did not investigate the appearance of the word "five" in the transcript prior to the post-conviction relief hearing because the Petitioner failed to notify the Respondent he intended to raise this issue. At the time of the PCR hearing, the Respondent believed the brief mention of a five-year negotiation was a misstatement by the solicitor. It was clear in following paragraphs that all parties appearing in the record understood the plea negotiation to be for fifteen years rather than five years.

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CLERK OF COURT
GENERAL COUNTY, S.C.
2011 MAR 11 PM 11 20
BRANDY M. MBBE

The claim regarding the five years was merely mentioned by the Petitioner and was not the focus of his PCR claim. Further, the PCR Court did not make a finding on this issue and the Petitioner failed to request a finding on this issue through a 59 (e) motion. Rather, the Petitioner raised the issue for the first time in a significant way during his Petition for Writ of Certiorari.

In preparing the State's response to the petition, the Respondent realized the guilty plea transcript possibly contained a significant typographical error. After speaking with the court reporter, Linda Moffitt, it became clear that where the record reflects the solicitor mentioning a five-year negotiation, the solicitor actually stated it was a fifteen-year negotiation. Linda Moffitt was able to conclusively determine a typographical error had been made and the record is erroneous.

The Respondent requests this Court hold time in abeyance to allow for the correction of the error in the record. The Respondent moves to correct the record and supplement the appendix.

An accurate transcript is required for a full and fair review of the lower court's findings. Inasmuch as

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27 OF 29
~~37 OF 40~~

EXHIBIT NO. 4A

the above records are relevant and pertinent material under Rule 227(e), SCACR that should be included in the Appendix, counsel moves this Court to allow the Respondent to include a corrected guilty plea transcript in a Supplemental Appendix.

WHEREFORE, as the Appendix is incorrect, counsel for Respondent requests this Court: (1) grant the motion to allow the Respondent to correct and supplement the Appendix and (2) hold time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAR 17 AM 11 20
BRANDY W. MCBEE

By: Michelle Parsons Kelley
ATTORNEYS FOR RESPONDENT

September 9, 2009.

3 28 OF 29
38 OF 40

Exhibit 4B

March 18, 2016

Brandy McBee
Clerk of Court, Cherokee County
Post Office Drawer 2289
Gaffney, So. Car. 29342

FILED IN THE OFFICE
CLERK OF COURT
2016 MAR 28 P 12:59
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

RE: CASE STATUS CHECK

Dear Clerk,

Please provide me with the current to date status of these two Court of Common Pleas cases listed below:

1. STEVEN W. LITTLEJOHN V. STATE OF SOUTH CAROLINA
013CP-110192 - Filed March 22, 2013
Dismissed 5/12/15 Re-consider order affirmed Appeals 7/17/15
original dismissal 6/29/15
 2. STEVEN W. LITTLEJOHN V. STATE OF SOUTH CAROLINA
2015-CP-11-0242 - Filed March 7, 2015
Conditional order of Dismissal filed 9/23/2015
Rule 59E sent to AG on 10/21/15 - this will be scheduled.
- Your assistance in this matter is greatly appreciated by the AG's office.

Respectfully Submitted,
Steven W. Littlejohn
STEVEN W. LITTLEJOHN

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cc: File

Exhibit NO. 5

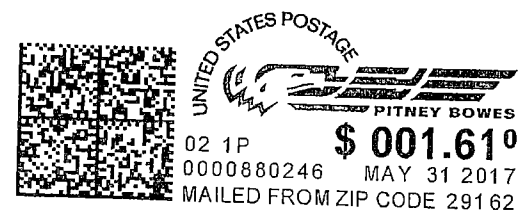
John No. 321946

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