

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM SUMTER COUNTY

Maite Murphy, Circuit Court Judge

AUG 08 2017

SC Court of Appeals

Case No.: 2015-000884
Unpublished Opinion No. 2017-UP-311

The State,

Respondent,

v.

Robert Wazney,

Appellant.

MOTION FOR REHEARING

Robert Wazney
Convicted Felon

990 Wisacky Highway
Bishopville, SC 29010
Indigent Appellant

Date: August 4, 2017

DECLARATION

Robert Wazney, being duly sworn, deposes and states:

"MEMORANDUM

1. I am the Appellant in this case.
2. This is an action for Rehearing.
3. I am in receipt of the Court's order titled Appeal Dismissed filed July 26, 2017 which I received on August 1, 2017.
4. I, pursuant to Rule 221 SCACR, move the Court to reconsider its Appeal Dismissed opinion. In support of my Motion, I show the following to the Court:
 5. The Court has overlooked material facts in the record in the following respects:
 - (a). The trial transcripts are erroneous and I have timely challenged the errors and requested from the proper authorities to correct the material errors;
 - (b). My right to a speedy trial has been abridged;
 - (c). At trial, I was not permitted to attend the portion of the evidentiary hearing providing the primary evidence which was to be used for defense and which evidence I was not permitted to view or given knowledge of until after I was imprisoned;
 - (d). The Court improperly excluded critical exculpatory evidence;
 - (e). My right to remedy was violated when I was not permitted to contact an attorney after I became incarcerated;
 - (f). This Court has a duty to determine whether I was given a fair trial.
6. The material fact:
 - (a). The trial transcripts are erroneous which led the Court of Appeals to conclude in error, see U.S. v. Mageno, 786 F.3d 768 (2015), which "... transcript errors specifically prejudice my ability to perfect an appeal..." U.S. v. Brown, 202 F.3d 691 and there are material issues that depend on the transcript to show error, and I do not waive those issues.
 - (b). My right to a speedy trial has been abridged when the state withheld me from trial for over 470 (four hundred seventy) days.

(c). I was not permitted to attend the most important part of the evidentiary hearing at my trial providing the primary evidence which was to be used for defense and which evidence I had no knowledge of until after I was imprisoned and

(d) the Court improperly excluded critical exculpatory evidence violating my rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses in violation of the U.S. 14th Amendment and Due process at the State and Federal levels;

(e). After being incarcerated, I was not permitted to call an attorney for my defense, abridging my right to remedy and access to the courts;

(f). and when my prosecution and trial is observed in its entirety as a whole, its process is completely unfair to me, my judgment clouded from prolonged oppressive incarceration, expected to defend myself in such condition of drunkenness, without knowledge of what evidence was available to prove my innocence. Further, the exculpatory evidence was not shown to the first Judge in the Mistrial, and likely not shown to the convicting Judge who simply took the prosecution's word that the exculpatory evidence which I had no knowledge of was 'inadmissible' and the Prosecution knowing the evidence was exculpatory coupled with the victim's perjured statements makes their prosecution MALICIOUS, perverting the system of justice.

All of which require a different decision from that rendered by the Court of Appeals.

8. I or the Attorney General have not briefed or discussed Anders v. California, 386 U.S. 768 (1967) which has decided this appeal. Pursuant to Government Code 68081 'Rehearing shall be ordered' upon timely petition if supplemental briefing has not been requested.

9. Regarding any new matters I mentioned above '...where good cause appears for the consideration of such new matters, a court has discretion to do so for the first time on a petition for rehearing.' Mounts v. Uyeda, 227

Cal.App.3d 111, at p.121; Hunt v. County of Shasta, 225 Cal.App.3d 432 (1990).


10. The decision that should have been rendered is not for Appeal Dismissed.

CONCLUSION

WHEREFORE, I respectfully request the Court to reconsider its Appeal Dismissed opinion and Rule in favor of my Supplemental Brief of Appellant, Supplemental Brief of Appellant Addendum, Supplemental Pleading, and New Trial Motions, in the interest of justice."

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and understanding.

Executed on: **August 4, 2017**



Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent Appellant

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The State,

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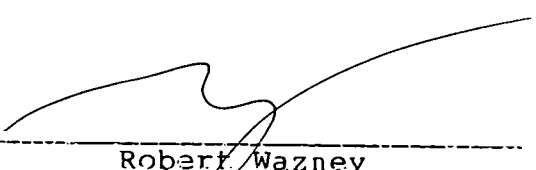
Robert Wazney,

Appellant.

Certificate of Service

I certify that I have served the MOTION FOR REHEARING
on J. Benjamin Aplin, esquire, Rembert Dennis Building, 1000
Assembly Street, Room 519, Columbia South Carolina 29201, by
depositing the same in the prison mail system, postage pre-paid on

August 7, 2017


Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent Appellant