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S.C. SUPREME COURT

Bryan Byrd # 305294
Broad River Court
4460 Broad River Rd
Columbia, S.C. 29210

Brenda F. Shealy
Chief Deputy Clerk
P.O. Box 11550
Columbia, S.C. 29211

Appellate Case # 2016-002425

Mrs Shealy,

As you can see - the document stapled to this is a print out from the mail room here, which shows or rather doesn't show me having received my Appendix to my case. I did get the letter notifying of my 45 day to turn in my Writ of Certiorari, but even that was late and was the bases to me getting a print out for all my legal mail this year.

Somehow my Appendix got lost and was brought to my room by the mailman a few weeks back. I asked to sign for it, but he said I didn't need to.

I know that this submission is very late but there is no actual record of me having received my Appendix when I was supposed to have gotten it.

Hopefully, this will still be accepted. I did the best I could from inside my room. I have been on lock down repeatedly hindering any access to the law library

Thanks

Bryan Byrd

From: Broad River Correctional Institution, Mail Room

To: Whom it may concern

Subj: Legal Mail, I/M Bryan Byrd (305294)

I/M Byrd received mail for 2017 on the following dates:

Received 2/16/17 Delivered 2/17/17

From: SC Commissioned on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia SC 29211

Received 3/7/17 Delivered 3/13/17

From: US District Court

901 Richland St.

Columbia SC 29201

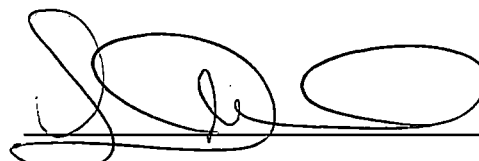
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STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
John C. Hayes, Circuit Court Judge

BRYAN BYRD, #305294

PETITIONER

V.

STATE OF SOUTH CAROLINA,
RESPONDANT

APPELLATE CASE # 2016-002425
LOWER CASE # 2011-65-23-03835

PETITION FOR WRIT OF CERTIORARI
PRO-SE

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QUESTIONS PRESENTED

1. Whether the PCR Court erred in concluding that the 911 Call issue (which mainly is based on whether or not the 911 call in Petitioner's case was an edited version of the original) was not proven.
2. Whether the PCR Court erred in concluding that counsel was not ineffective for failing to get a picture of the victim's arm into evidence after having the victim identify it during cross examination.
3. Whether PCR Court erred in concluding that counsel was not ineffective for not investigating the circumstances concerning Officer James McKeath, and not objecting to his false testimony.
4. Whether PCR Court erred in not ruling on Petitioner's Probation Revocation issue; which he presented at his PCR Hearing.

STATEMENT OF THE CASE:

Petitioner, Bryan Keith Byrd #305294, was convicted per jury trial of First Degree Burglary during the November 2012 term of the Greenville County General Sessions Court before Judge Letitia H Verdin, and sentenced to imprisonment for a period of twenty years (App p. 1 p. 346)

Petitioner was represented at trial by Randall Chambers, and Assistant Solicitor Jeff Weston appeared on behalf of the state.

With petitioner knowing that there was no real issues properly preserved to argue on direct appeal, Petitioner, represented by Kay J Anthony, dismissed his own direct appeal to move on to PER.

Petitioner filed a PER application with the Greenville County Clerk of Court on September 8, 2014 (App p. 347 - p. 388) A return was filed by the Respondant on February 12, 2015 (App p. 389 - p. 394) A PER hearing was convened on October 25, 2016 at the Greenville Court Courthouse before Judge John Hayes.

①

Six to eight months prior to his PER hearing on October 25, 2016, petitioner was notified of an

③

upcoming PER hearing date.

Petitioner, (legally conscious as to the seriousness of his 911 call issue) had his family find out who the judge was on the docket (John C Hayes) - as well as his address, and wrote him concerning the issue as a whole, requesting that he make his PER counsel and the State's attorney find out the facts of the issue before any PER hearing.

This likely is why in the PER hearings opening (App. p. 398 line 15-16) Judge Hayes says:

"All right, this is one a the ones that has a great number of, uh, allegations."

Petitioner contends that this could only be said by having some kind of prior knowledge of his issues, and is unsure as to whether or not that knowledge would affect his eligibility to hear the case.

Petitioner was present at the PER hearing and represented by Brian P Johnson, and Assistant Attorney General, Patrick L Schmeckpeper appeared on behalf of the state.

On October 31, 2016, Judge Hayes signed an order denying petitioners issues (App. p 489-493)

Petitioner, who instructed his PCR counsel to file a 59(e) motion if his issues were denied, didn't find out about the judges decision until Dec 2016. Confident in the proof presented to his issues, Petitioner attempted to file his own Prose 59(e) and relief of counsel motion. The return from Judge Hayes (which will be sent with this since it is not in Petitioners appendix) said that these motions would not be possible since Petitioners case had already moved onto the court of appeals.

PETITIONER IS APPEALING THE LOWER COURTS DECISION: THE PETITION IS AS FOLLOWS:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Bryan Keith Byrd, #305294)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No.: 2014-CP-23-4924

ORDER

Applicant has made several motions in the above captioned matter addressing the Court's Order dated October 31, 2016, dismissing Applicant's Post-Conviction Relief (PCR) application. Applicant also requests that the Court relieve his PCR counsel, Brian Johnson.


In spite of the fact that since the motion is made by the Applicant rather than trial counsel, the Court will address herein the motion. The Court takes this unusual procedure based on the inherent power of the Court in spite of the fact that Applicant is not entitled to hybrid representation.

Applicant's motion to reconsider is denied. The undersigned finds the Order of October 31, 2016, adequately addresses all issues raised by Applicant in his PCR application and at his hearing.

Applicant's motion to relieve counsel is moot as this Order addresses Applicant's concerns.

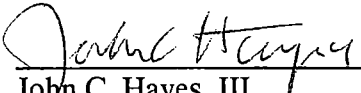
Applicant's attention is directed to the Order of October 31, 2016, for directions regarding any appeal from the Court's Order herein and the Court's Order of October 31, 2016.

Applicant's motions are denied.



IT IS SO ORDERED.

December 13th, 2016
York, South Carolina



John C. Hayes, III
Presiding Judge #2

STATEMENTS OF FACTS PRESENTED AT TRIAL AND PER HEARING

On 4-16-2011 Petitioner allegedly burglarized a residence knowing that it was occupied since the victim and witness's statements and testimony (App. p. 50 line 3-20) is that he knocked on the door then walked back and forth through the victims backyard at which point the victim dialed 911.

After busting out a patio glass with a fire iron (that tested negative for petitioners prints) Petitioner made threats to "Give it up" and that he had friends outside the house as well (App. p. 63 line 2-12)

Petitioner then rushed inside the home where a fussle followed between petitioner, the victim and the witness who also was inside the home (App. p. 66 line 15 - p. 67 line 8) The victim, who attested to being defense trainer/martial arts expert (App. p. 44 line 16-23) And witness who is a 300lb man (App. p 33 line 7-9) testimony varied as to exactly how long the fight lasted. But (Defense exhibit 3) (App. p 229 line 16 - p. 230 line 9) which is a picture of petitioners mugshot showed

his face to have barely a scratch.

When the officers arrived on the scene - Petitioner was said to be uncooperative to officer Metcalf's (who claims to be the first officer on the scene) demands (App. p 167 line 3 - p 169 line 12) Petitioner was then tased twice while laying in a pool of blood and kerosene.

Although officer Metcalf used a second cartridge to tase petitioner the second time (App. p, 168 line 19-23) he only turned in one taser cartridge (S/N C310074NW - PER Ex #8) instead of two.

Petitioner was then transported to the Greenville Memorial Hospital where he received 32 staples to his head. Afterward he was taken to the Greenville County Det Center and charged with 1st Deg Burglary.

The 911 call (11-052639 4-16-11) was made by the victim while viewing or having viewed petitioner outside his home (App. p, 52 line 7-20)

The call^① was made 'before' anything happened, yet both the victim and witness said in their statements that they called 911 'After' the alleged incident. (App. p, 256 line 21 - p, 258 line 30)

① The caller/victim who resided at the home

struggled to get the address right. When asked if by the dispatcher the caller replied by saying 'McDowell's' at which point the dispatcher asked which one likely because she thought he had said McDonald's. The dispatcher then asked for the address again and the victim said the homes number and street name followed by the word 'Ave' - as if located on an Avenue. The dispatcher then asked what it turned off of and then suggested that it was that address but instead on a 'Lane', at which point the caller confirmed it as correct.

The victim attested to not knowing petitioner, but petitioner attested to being somewhat familiar with the victim because the house was a gambling spot. While in the Greenville County Det Center, Petitioner drew out a detailed blue print of the residence (Defense Ex #1) and the victim confirmed it as being pretty accurate (App. p. 83 line 24 - p. 84 line 21)

Petitioner's first lawyer was one named Michael Cullinan (who was removed from his case for reasons that petitioner does not know) and Randall Chambers was his trial lawyer.

Argument #1

Whether the PCR Court erred in concluding that the 911 call issue (which mainly is based on whether or not the 911 call in Petitioner's case was an edited version of the original) was not proven.

Background:

- The 911 tape used as demonstrative evidence in Petitioner's trial was introduced into evidence through the victim's testimony (App. p. 53 line 1-19)
- Petitioner learned the contents of the recording through former counsel Michael Cullinan while preparing for trial, and never studied it with trial lawyer Randall Chambers
- When the recording started, Petitioner made Chambers aware that what he was hearing was an edited version of the original, but was ignored. Eventually when he was given a chance to speak, Petitioner made the trial judge aware of this but was not believed (App. p. 332 line 5 - p. 333 line 19)
- Since coming to SEDC Petitioner has done everything in his power to bring attention to this 911 call issue, writing letters to various lawyers, agencies, solicitor Walt Watkins and even having the Disciplinary Counsel of the Supreme Court

Investigate it (12-DE-C-1519, 12-DE-C-1520)

Judge Stayas denied petitioners 911 call issue by saying he presented "no credible evidence" (App. p. 491) Petitioner contends this is untrue

SC Code of Law 17-27-80 states:

"The court shall make specific findings of fact and state expressly its conclusion of law relating to each issue presented"

At Petitioners PER hearing he mathematically proved that the recording (11-052639) used as demonstrative evidence during his trial was in fact an edited version of the original (App. p 402 line 3 - p, 423 line 5)

Petitioner did this by using the Incident Recall sheet in his case (PER ex A-3) which shows that this call begin at 3:23 a.m. The incident recall also shows that the confirmation of the address being "OFF CRESTFIELD" happened at 3:23 as well. According to the timing of events in the recording played the confirmation of the address being "OFF CRESTFIELD" came in at around .52 seconds into the call. Since the call begin at 3:23 a.m. and the address confirmation also was at 3:23 - then call would've had to have started within the first 10-15 seconds of the minute 3:23

The recording (11-052639) used by Petitioner (which he got from the Greeneville County Sheriff's Office) was the same version used during his trial. It was the same version of the recording downloaded onto Petitioner's PCR counsel computer.

The recording is 2:06 in its entirety.

PCR (ex A-4) is the Incident Detail to Petitioner's case. It shows on the second page that the call ended at 3:25:52. Simple mathematics proves that if the call began within the first 10-15 seconds of the minute 3:23, and ended at 3:25:52 then this call was almost three minutes long and not 2:04.

This proof was not challenged or in anyway disproven by any evidence presented by the State.

Judge Hayes did not make specific findings of fact and said that (in his order) he was denying my issues because I presented "no credible evidence". But everything Petitioner used came from agencies of the Law.

17-27-20 (4) SC Code of Laws states that PCR's are about presenting "evidence of material fact that requires vacation of a conviction."

Petitioner contends that the mathematical

~~proof~~ do the 911 call presented at this trial is material fact requiring vacation of his conviction.

SC Rules of evidence 901 - requires that evidence used in court be the original. If not there has to be a pretrial motion over why an altered version of the original is needed.

There were no pretrial motions concerning this 911 call in petitioners case, and the 911 recording used was in fact an edited version of the original.

The presentment of that recording violates this rule as well as Petitioners right to due process.

The 2:06 recording used for demonstrative purposes during Petitioners PER hearing came from the Greenville County Sheriffs Office. It is the same version used during his trial which would mean the sheriffs office is backing that recording as the original.

Since this is so Petitioner contends that there are several questions as to the Who, What, When, Where and Why behind the making of this edited version that legally need to be answered.

Again Petitioner's 911 call issue was a combination of several ineffective assistance of counsel issues which were not addressed by Judge Blayes order

Petitioner is unsure as to whether or not that would make his writ of certiorari ineligible for review

Argument #2 Whether PER court erred in concluding that counsel was not ineffective for not getting picture of victims arm into evidence.

Background:

When Petitioner allegedly burst into this residence he hit the victim in the arm with a fire iron. (App'de line 1-13)

The picture taken that night showed no bruise or any kind of mark to the victims arm. When Petitioner's counsel attempted to get the picture into evidence the solicitor objected cause of the other pictures that were on the same sheet (App p. 92 line 19 - p. 93, line 17)

Petitioner didn't cut out the picture showing no marks to the victims arm, and left the jurors to believe it may have been bruised.

Judge Hayes denied Petitioner's issue by saying that Petitioner's trial counsel would've put the picture into evidence had there been one showing no marks to his arm - This is untrue

SC Code of Law 17-27-80 states:

"The court shall make specific findings of fact and state expressly its conclusions of law relating to each issue presented."

Petitioner is unsure as to how the solicitor in his case objected to (what may have or may not have) been on the page that petitioners counsel attempted to introduce into evidence because the picture or pictures were not a pre registered trial exhibit

Petitioner contends that counsel had a duty to make sure the jurors knew ~~the~~ the victim had not a scratch to his arm

Judge Hayes erred in denying this issue simply by taking Petitioner's counsel's word when PCR ex 7 showed no mark to the victims arm

Argument # 3

Whether PCR court erred in concluding that counsel was not ineffective for not investigating the circumstances concerning officer James McTealt, and not objecting to his false testimony

Judge Hayes order says that Petitioner did not prove his issue concerning the truthfulness to officer James Metcalf's testimony. Petitioner contends this is untrue.

Section of Laws 17-27-80 states:
"The court shall make specific findings of fact and state expressly its conclusion of law relating to each issue presented."

Background:

Officer Metcalf trial testimony and statement (PERex# 8) is that he was the first responder on the night in question. He also said that Petitioner admitted guilt, yet the vic or witness did not hear this.

By using Petitioner's (PERex# 8) the Incident Recall he proved that Officer Metcalf was not the first officer on the scene, but rather an officer named Zach Hinton. The "08" over his name means "On scene" meaning there. This proves that Officer Metcalf's statement and trial testimony was a lie.

Judge Hayes erred in deny Petitioners issue.

Argument # 4

Whether PER Court erred in not ruling on Petitioners Probation revocation issue which he presented at his PER hearing (App p. 475 line 1-15)

SC Code of Law 17-27-80 states

"The court shall make specific finding of fact and state expressly its conclusion of law relating to each issue presented"

Background:

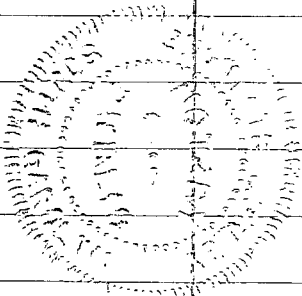
Petitioners Probation was violated two years after his conviction. He was taken back to Breunville County three years ago and was sentenced without a lawyer.

Judge Hayes erred in not address Petitioner probation violation issues.

Conclusion

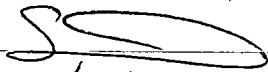
Based on the foregoing arguments, Petitioner requests that either Judge Hayes be made to rule on his issues based on the factual evidence presented, or the Supreme

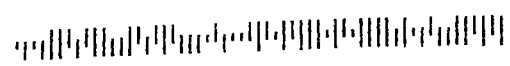
Court grant his petition for writ of certiorari
and allow full briefing on the issues raised



Signed Byran Byrd

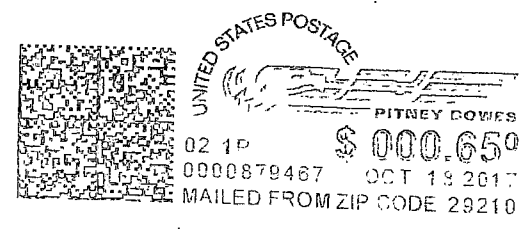
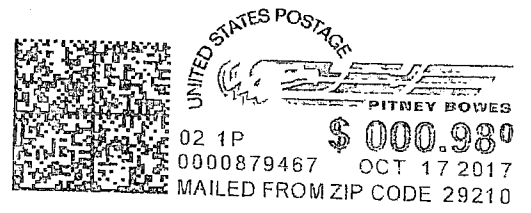
Susan Weber me 10/16/17


9/16/2022



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