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NOV 13 2017

S.C. SUPREME COURT

Ms. Weather McBlaine 299002
G. C. L.
DS 406
4556 Broadmead Rd
Columbia 29910

1014 Supreme Court
Daniel Spearowski
P.O. Box 11330
Columbia 29911

RE: Appellate Case no. 2017-001915;
2013 CD150041H.

In accordance with 243(c)(5), SCACR, and
the Grants or Denials of Petitions for
Writ of Certiorari under 240, 243, 244
of the SCACR, 415 S.C. 438 (2016), this
Petition is for "De novo" Review of abuse of
discretion and whether PCB Judge found.

11-7-17

1st Weather McBlaine

1 v. 3-C 81

20 v. 5-C 81 (46)

cc Ruston Newry, Esq

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NOV 13 2017

State of South Carolina SC. SUPREME COURT
In the Supreme Court
Appeal from Colleton County
Court of Common Pleas

Perry M. Buchner, Circuit Court Judge
Appellate Case no: 2017-001915
Case no: 2013-CP-15-0214

Walter McQuinn Petitioner

v

State of South Carolina Respondent

~~2017~~ De novo Review Petition for Writ Certiorari

11-3-17

Date

1 U.S.C § 1

28 U.S.C § 1746

Walter McQuinn

P.O. Box 304

Altondale SC 29810

Attorney General, Preston Neely,
P.O. Box 11549
Columbia 29211

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Rule

Rule 243(a)(L), SCACR 10

Rule 15(a), SCACR 12

Questions Presented

1. Did the Honorable, Perry M. Buchner, committed fraud upon appellant and the Court when he "Signed" the Attorney General, Ruston Newby, Esquire's final Order of Dismissal?

2. Did the PCB Judge err when he abuse his discretion by failing to exercise his discretion to allow appellant to Amend under Rule 15(a), SCAP, Shirley v State and 15 day Continuance?

Statement of the Case

I filed the second PCR 2013-CP-15-0214 under Martinez v Ryan (March 20, 2014) 17-27-45(B). On March 17, 2014 I filed amendments; amending (3) Claims for Relief. On April 23, 2014 I filed an amendment erasing Martinez v Ryan, including all Claims under Martinez v Ryan and Amended Brannan v State, 548 SE 2d 866 (2001) 17-27-45(c); 17-27-90; U.S.C 1st Amendment. On October 23, 2014 the state made it's Return and Motion to Dismiss and Conditional Order of Dismissal. On December 17, 2014 the Honorable, Perry M. Buchner issued the Conditional Order of Dismissal. On March 24, 2016 the State Serve Affidavit of Personal Service. On April 16, 2016 applicant Objection to Conditional Order of Dismissal were filed. On November 24, 2016 Skyler Hutto, Clerk in time cancelled Summon. On December 9, 2016 applicant motion Request Status Conference. On December 18, 2016 Skyler Hutto alleged the state filed Dismissal in 2014. On April 13, 2017 Petition for appeal filed with the South Carolina Supreme Court. On April 19, 2017 Chief Justice Beatty sent Order (Appellate Case no: 2017-000897). On April 21, 2017 the state filed final Order of Dismissal. On May, 2017 applicant request Consent under Rule 60(b)(3)

to relieve final Order of Dismissal. On June 7, 2017, Perry M. Buchner held hearing to Relieve final Order of Dismissal. On August 7, 2017 the Judge Let me go forward on the merits of the original Petition. On September 8, 2017 Perry M. Buchner signed the Attorney General's final Order of Dismissal. On September 15, 2017 I receive served notice of the final Order of Dismissal. On September 19, 2017 notice of appeal filed. On October 2, 2018, alleged Counsel, David Matthew Fajiras provided his bad faith explanation.

1 U.S.C §1

/s/ Walter McCune

28 U.S.C §1746

facts

On August 7, 2017, the Honorable, Perry M. Buettner, initiated PCB proceedings by reading my Objections to Conditional Order of Dismissal "Procedural History" in the record for the record. The Attorney General, Preston Wexly, Esquire and alleged Counsel, David Mathew agreed to the Judge assertions. The Honorable, Perry M. Buettner, stated that he researched the Clerk of Court record and could not find any evidence, and that he want to permit me to go forward on the merits of the Original Petition. Alleged Counsel, David Mathew, stated, "The applicant want to raise the Claim that his Plea Counsel was ineffective assistance in failing to seek mental evaluation Prior to Plead of Guilty." The Judge stated, "Do you have a witness for that." David Mathew, stated, "Yes, the applicant will testify." Applicant, Walter McCune, were sworn into the testimony stand. Applicant, Walter McCune, presented testimonial Evidence in support of the Amendment that, "I told David Mathew to Amend my PCB application prior to the hearing and SUBPOENA Michelle B. Suggs, Esquires; Everett Bennett Jr., Esquires; Detective, Otis Rhodes and James Clites, and all the Mental Health doctors to testify to their

opine that they made in the Documents the Judge have in his hand. And that Counsel failed to do so and that I did not feel comfortable testifying to the issue that he [counsel] is trying to cross-examine me on. The Judge inquire Counsel, "Why didn't you amend the application?" Counsel stated, "That I was confused in the proceedings, I did not want to be ineffective, I did not know where we were at in the proceedings. Counsel inquire applicant, "What is the issue you wanted to Amend to the Application? Applicant, Walter McCune, stated, "That Plead Counsel, Everett Bennett Jr. was ineffective assistance in failing to inform me prior to the Plea of Guilty that the statements may have been made involuntary, and, if so, would be inadmissible at trial; there is a reasonable probability, but for Counsel deficient Performance, I would not have Plead Guilty, and would have insisted on going to trial to challenge the Charge grounded upon the allegedly involuntary statement Shirley v. State, 306 S.C. 241 (1991) violation of the 6th Amendment made applicable to the State by way of the 14th Amendment S.C. Const.

. Art. 1, Section 3, Due Process. The Judge yelled at the Attorney General, Ruston Welch, Esquires stating, "An you, you haven't said anything since you been in the Court room!!" Counsel inquire applicant, "What is the issue you raised in your Objections?" Applicant stated, "The Honorable, Carmen T. Mullin err August 8, 2007 when she did not Conduct an evidentiary hearing with me under oath to ascertain whether PCB 2004-CR 15-1008 was knowingly, voluntarily and intelligently being withdrawn/waive with Prejudice pursuant to Rule 11.1(f), SCACP, Brannon v State, 548 SE2d 866 (2001) in violation of S.C. Const. Art. 1, Section 3. The Judge told applicant, "to repeat it slow so that she can record what you said." I repeated it. Counsel inquire applicant, "How did you find out that your statement were Coerce?" Applicant stated, "My first PCB Counsel, Michelle B. Suggs, Esquires told me in my first application that she review the Video tape Confession that is in the evidence at the Walterboro Police Department an it look to her as though my Mother were Coercing me; And I took that information and what I know from experience and meditated and came to the rational Conclusion that Detective, Chris Madies and James Clifes Conspirid to implement my

Mother in the interrogation room to use her to apply improper psychological influence upon me to make me make statement. Counsel argue for the record, "Your Honor, had my Client been better informed prior to Plead of Guilty that the statement may have been made involuntary, and, if so, would be inadmissible at trial (Paraphrasing). Counsel inquire applicant, "is there anything else you would like to tell the Judge." Applicant stated, "No", and was removed from the testimony stand. The Judge inform Counsel, "You and the applicant got to figure out what you want to do; And you got to make it quick!" Counsel stood and stated, "Applicant would like to address the Court YOUR HONOR." The Attorney General, Pusto Wexley, Esquires stated, "Your Honor, there is no such thing as Hybrid Representation in the State of South Carolina." The Judge stated, "I abstain, "I want to hear what the applicant has to say." Applicant stated, "Your Honor, I ask to move this Court to Amend the PCR application under Rule 15(a) SCRPC, one (1) Claim for Relief under ineffective assistance Plead Counsel, Shirley v State, 306 S.C 241 (1991) and 15 day Continuance so that the States Attorney General, could obtain the appropriate evidence to properly

Challenge this Claim. The Judge yelled, "The applicant is moving to Amend under Rule 15(a)!!" The applicant is moving to Amend under Rule 15(a)!!" The Attorney General, Ruston Neely, Esquire objected and speaks for the record. The Honorable, Perry M. Buchner told the Attorney General, Ruston Neely, Esquire and alleged Counsel, David Matnew to, Submit Propose Orders and have it on his desk in ten (10) days. On September 8, 2017, the Honorable, Perry M. Buchner, signed the Attorney General, Ruston Neely, Esquire's final Order of Dismissal. On September 15, 2017 appellant receive notice.

1 U.S.C §1
28 U.S.C §1746

/s/ Walter McCarver

1st Argument

Honorable, Perry M. Buchner, Committed Fraud upon Appellate and the Court when he "signed" the Attorney General, Ruston Newby, Esquire's final Order of Dismissal.

The Honorable, Perry M. Buchner, Committed Fraud upon me and the Court when he "signed" the Attorney General, Ruston Newby, Esquire's final Order of Dismissal intentionally disregarding the fact that he read my "Procedural History" to the Objections to the Conditional Order of Dismissal in the record for the record and stated that he researched the Clerk's record and could not find any evidence and want to permit me to go forward on the merits of the Original Petition as allowed me to speak, over the Attorney General Objections, and I move to Amend under Rule 15(a) SCRC, *Shirby v State*, 306 S.C. 241 (1991) and 15 day Continuance so that the Attorney General could obtain the appropriate evidence to properly challenge this claim; And subverted the integrity of the Court when he knew he read my "Procedural History" to the Objections to the Conditional Order of Dismissal in the record for the record and stated

he research the Clerk of Court's record and could not find any evidence and want to permit me to go forward on the merits of the Original Petition and allowed me to speak, over the Attorney General's Objection; and I ask to Amend the PCR under Rule 15(a), SCAP, one (1) Claim for Relief, ineffective, Pled Counsel Shirley v State, 306 S.C. 211 (1991) and 15 day Continuance so that the state, Attorney General, could obtain the appropriate evidence to properly challenge this Claim and harm the Public at Large, when he "signed" the Attorney General, Preston Wexly, Esquire's final Order of Dismissal, dumping me the opportunity to be heard on the merits, violation of his Oath in Office and SC Const. Art. 1, Section 3; Rule 243(a)(1), SCACR.

"Extrinsic fraud," is used in reference to judicial proceedings, is fraud collateral or external to the matter tried. MaG v Mrs G, 320 S.C. 305 (1995) Extrinsic fraud, is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting

and trying his Case, there has never been a
real Contest before the Court on the Subject
matter of the action "294 S.C. 9, 11 (1987).

1 U.S.C. 81
28 U.S.C. 1746

/s/ Walter McDave

2nd Argument

The PCR Judge erred when he abused his discretion by failing to exercise his discretion to allow appellant to amend under Rule 15(a), SCBCP.

Shirley v State and 15 day Continuance.

While on cross-examination, I presented testimonial evidence in support of the ~~pleading~~ fact that I told David Matthews, Esquires to amend the PCR application to reflect the Pleading Shirley v State, 306 S.C. 241 (1991). Counsel, applicant and the Honorable, Perry M. Buchner, discussed extensively this issue; Attorney General, Ruston Neely, Esquires implied consented by failing to object to the presented testimonial evidence 368 S.C. 16 (2006) (If a party don't object to the evidence when presented at trial, the issue is considered tried by consent); 352 S.C. 420 (2002) (In order to be tried by implied consent, an issue not presented in the pleadings must have been discussed extensively at trial)

The Honorable, Perry M. Buchner, Permitted applicant (appellant) to speak orally presenting request for the open record; I ask the Court to allow me to amend under Rule 15(a), SCBCP, one (1) Claim for Relief ineffective assistance of counsel

under *Shirley v State*, 306 S.C. 241 (1991) and 15 day continuance so that the State, Attorney General, can obtain the appropriate evidence to properly challenge this claim. Attorney General, Ruston Neely, Esquires Objected; Yet fail to state Prejudice for the record.

The Attorney General, Ruston Neely, Esquires did not orally present that he was not put on Notice prior to the hearing that applicant was going to try the issue or that it lack the opportunity to refute it.

The amendment on the merits states an ineffective assistance Pleural Counsel Claim under *Shirley v State Id.*, and would not require Ruston Neely, Esquires to introduce additional or different evidence to prevail 341 S.C. 261 (2000) (Courts will not find implied consent to try an issue if all of the parties did not recognize it as an issue during trial, even though there is evidence in the record introduced as relevant to some other issue which would support the amendment.)

6th Am. Civ. Div. Pleading § 309 at 322 (1981) (The Court should grant a Continuance "if prejudice can be eliminated or substantially minimized by a Continuance so that the opposing party can meet the evidence. An amendment to conform to proof provide the opposing Party with no just cause to complain if the Party is afforded full opportunity to introduce testimony bearing on the subject of the amendment").

In Mangal v State (July 19, 2017) 2017 WL 3045812
at *7, there are situations where the interest of Justice require Post-Conviction Relief (PCR) Courts to be flexible with procedural requirement before PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure. 9

Foot note 9: see 4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman Federal Practice and Procedure § 1029 (4th ed 2015) "The federal rules are designed to discourage battles over mere form and to sweep away needless procedural controversies that either delay a trial or the

merits or deny a party his day in Court because of technical deficiencies." Maybach v. BBST Corp., 416 S.C. 541, 565 (2016) ("In construing the South Carolina Rules of Court Procedure, our Court looks for guidance in cases interpreting the Federal Rule.") 3 Cyclopedic of Federal Procedure § 8.2 (3d ed. rev. 2017) ("The spirit of the Rule is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid, if possible, depriving a litigant of a chance to bring a case to trial").

These considerations should guide PCR Courts when struggling to balance procedural requirements against the importance of the issue at stake in PCR proceedings. We encourage trial Courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways - within the flexibility of our rules - to reach the merits of substantial issues. at *7.

Patton v Miller (July 26, 2017) 2017WL3161174 *7
Rule 15(a) SCBCP provides that when a party
ask to amend his pleading, "Leave shall be
freely given when Justice so requires and
does not prejudice any other party." Rule
15(a), SCBCP, This rule strongly favors amend-
ments and the Court is encouraged to freely
grant Leave to amend. Parlier v Spartanburg,
362 S.C. 276 (ct. App. 2005) (citing 294 S.C.
183 (ct. App. 1981) "Rule 15(a) is substantially
the same as the federal rule," Rule 15(a) SCBCP
notes, and the Supreme Court of the United
States has referred to the rule's "freely given"
provision as a "Mandate" that is to be "heeded"
Foman v Davis, 371 U.S. 178, 182 (1962); cf.
Gimpson v Moore, 367 S.C. 587 (2006) at *7

1 U.S.C. § 1
28 U.S.C. § 1746

/s/ Walter McDone

In Mangal v State Bd, Questions of Law are reviewed De novo, and we will reverse the PCB Court's decision when it is controlled by an error of Law H16 S.C. at 610 (citing 410 S.C. 456 (2014)). On review of a PCB Court resolution of procedural questions arising under the PCB Act or the South Carolina Rules of Civil Procedure, we apply an abuse of discretion standard 418 S.C. 643 (applying an abuse of discretion standard to the trial Court's decision on a motion for a continuance) 255 S.C. 293 (1971) (same)

Our standard of review in PCB cases depends on the specific issue before us. We defer to PCB Court's finding of facts and will uphold them if there is any evidence in the record to support them. H16 S.C. 606 (2016) (citing 406 S.C. 443 (2013)). We do not defer to a PCB Court's ruling on questions of Law. at *2

Conclusion

For the reason stated, Appellant asks
this Court to grant the Petition for a
Writ of Certiorari Re novo Previews

11-8-17
Date
1 U.S.C. 91
28 U.S.C. 31746

Respectfully Submitted
/s/ Walter McDermott
Walter McDermott 299800
P.O. Box 304
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The State of South Carolina
In the Supreme Court
Appeal from Colleton County
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge
Appellate Case no: 2017-001915
Case no 2013-CP-15-0214

Walter McNamee Petitioner

State of South Carolina Respondent

PROOF OF SERVICE

I Certify that I have served the above Petitioner
Petition for Writ Certiorari: upon Attorney
General by depositing it in the U.S. mail
Prepaid Postage address as follows:

Triston Newby, Esq.
P.O. Box 11579
Columbia SC 29211

11-2-17

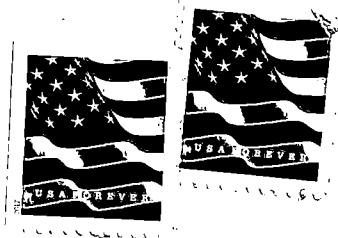
/s/ Walter McNamee

1 U.S.C. § 1

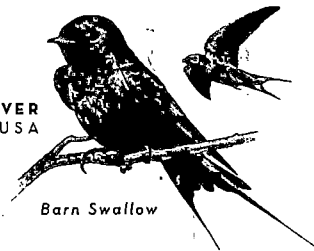
28 U.S.C. § 1746

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FOREVER
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