

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2017-002488

Patrick P. Bryant, SDC No. 215212, Appellant,

v.

State of South Carolina, . . . Respondent.

BRIEF OF APPELLANT

Patrick P. Bryant
SDC No. 215212
Perry Correctional Institution
430 Oaklawn Road-02A
Pelzer S.C. 29669
Pro Se

Other Counsel of Record

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SC Court of Appeals

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S.C. Code Ann. § 17-25-45 (H)

STATEMENT OF ISSUE ON APPEAL

I. DID THE COURT OF COMMON PLEAS JUDGE ERR IN DISMISSING THE APPELLANT'S WRIT OF MANDAMUS ALLEGING A MISCARRIAGE OF JUSTICE CLAIM DUE TO HIS INABILITY TO PAY A FILING FEE?

STATEMENT OF THE CASE

The appellant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Georgetown County. He was indicted in March 2006 for Criminal Sexual Conduct, first degree (2005-GS-22-753¹). He was later indicted in July 2007 for CSC with a minor in the second degree (2007-GS-22-667). Both indictments dealt with the same incident, but the State alleged that its CSC first-degree indictment charged an aggravated force, while its second-degree indictment alleged the fifteen-years (15) old victim's age.

On July 23-26, 07, the appellant went to trial before the Honorable J. Michael Baxley, Judge, and Jury. Prior to his trial, the State served him its "Notice to seek a life sentence" for him upon his conviction for his CSC, first-degree offense¹. The Jury found the appellant not guilty of "first-degree CSC" offense, but did find him guilty of his "second-degree CSC offense". Consequently, Judge Baxley sentenced the appellant to a "Life Sentence without parole"

¹ The State's "Notice" to seek the appellant's life sentence was based upon his prior "armed robbery" conviction (1994-GS-26-93) pursuant to S.C. Code, §17-25-45(A). See Record on Appeal.

Even though the appellant was never served any "notice" to seek his life sentence upon his "second degree CSC conviction."

ARGUMENT

I. THE COURT OF COMMON PLEAS ERRED IN DISMISSING THE INDIGENT APPELLANT'S WRIT OF MANDAMUS DUE TO HIS INABILITY TO PAY A FILING FEE.

In this case, the appellant filed a writ of mandamus alleging that he was entitled to review on the merits of his claim that he had suffered a gross miscarriage of justice when he was convicted of a CSC, second-degree, offense and sentenced to life without parole when he was never served any "notice" to seek such a sentence pursuant to S.C. Code of Law, §17-2545(A).²

For the Court's consideration of this claim, the appellant, who is an indigent prisoner, filed a writ of mandamus in the Circuit Court challenging his illegal life sentence. The appellant also filed a "motion to proceed without prepayment of cost" with his writ of mandamus due to his inability to pay the filing fee assessed by the Circuit Judge. Hon. J. Michael Baxley.

With regard to the Circuit Judge's denial of the appellant's access to the Court of Common Pleas to review his claim of a miscarriage of justice as an indigent prisoner, this Court has held that "anytime criminal procedures dis-

2. See Record on Appeal.

criminate discriminate against an appellant/petitioner by reason of his indigent status such procedures violate the guarantee of equal protection.

This Court has further held that where the indigent appellant/petitioner is subjected to a process which is not required of a nonindigent appellant/petitioner, then the process becomes invidiously discriminatory and violative of the the equal protection clauses of the State and U.S. Constitutions. See Ex Parte Lexington County, 442 S.E.2d 589, 594 (S.C. 1994).

In conjunction, the U.S. Supreme Court has held that fundamental fairness entitles an indigent appellant/petitioner to an adequate opportunity to present his claims fairly within the adversary system. Long v. Iowa, 375 U.S. 362 (1966).

CONCLUSION

Finally, in reliance on the above decisions by the courts, this Court should reverse the Circuit Court's decision for a review on the merits of the appellant's miscarriage of Justice claim set forth in his writ of mandamus.

Respectfully Submitted,

/s/ Patrick P. Bryant

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COURT OF COMMON PLEAS

J. Michael Baxley, Circuit Court Judge

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Patrick A. Bryant, SCDC No. 215212, Appellant,

vs.

State of South Carolina, Respondent.

PROOF OF SERVICE

The appellant do hereby certify that he served true copies of his Brief of Appellant, Designation of Matters to be included in the Record on Appeal, and Record on Appeal by placing same in the U. S. Mail, postage prepaid, addressed to Respondent's Attorney:

Allen Wilson
S.C. Attorney General
P.O. Box 115419
Columbia, S.C. 29211

Date: 1-22, 2018

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P.C.I. MAILROOM

SOUTH CAROLINA Court of Appeals
Jenny Abbott Kitchings, Clerk
Post office BOX 11629
Columbia, S.C. 29211

Re: Patrick P. Bryant, SDC No. 215 212
Appellate Case No. 2017-002488

Dear Hon. Kitchings:

Enclosed please find my Brief of Appellant,
Designation of Matters to Be Included in the Record
on Appeal, Record on Appeal, and Proof of Service for
Same.

Also, find enclosed my Motion for Appointment
of Counsel, and Affidavit in Support of My Motion
for Appointment of Counsel.

Sincerely,

Patrick P. Bryant
Patrick P. Bryant
SDC No. 215 212
Perry Correctional Institution
430 Oaklawn Road-324/
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Pro Se

Date: 1-22, 2018

cc: Alan Wilson, Esquire

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MR. Patrick Bryant # 215212

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