

PETITION FOR A WRIT OF CERTIORARI
IN POST-CONVICTION RELIEF ACTION

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

Joseph Derham Cole, Sr.; Circuit Court Judge

Case No: 2016-CP-42-03626

William Leon Burnett Petitioner,
v.
State of South Carolina Respondent,

PETITION FOR A WRIT OF CERTIORARI

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Argument

I: Court of Common Pleas failed to authentically examine the Grand Jury proceedings term for the month of April to see if, indeed, there was a term. (4)

II: Court of Common Pleas erred in its decision to ^{not} accept the Petitioner's Rule 59(e), (SCRCP), when presented *via* correspondence as exhibits weren't considered as a preponderance of the evidence of after discovered material. (4)

III: Court of Common Pleas failed to hold evidentiary hearing in a Pro Se Prisoner litigation that under circumstances that would have granted relief based on Nolle Prosequi Indictment. (4)

Conclusion. (4)

Questions Presented:

- 1: Was there a grand jury seating held for the month of April 9, 2012 term?
- 2: Does the August 5, 2016 letter from the General Sessions Clerk qualify as after discovered evidence confirming dismissal of Case No: 2012-GS-42-01465?
- 3: Based on exhibits sent to the judge along with the 59(e)(a) warrant an evidentiary hearing when Petitioner would have been allowed to present his case as Pro Se litigant?

Statement of the Case:

On October 4, 2012, Petitioner was convicted under the North Carolina Alford plea on CSC 1st Degree and Neglect and sentenced to 15 years and 10 years ran concurrent respectively. On January 16, 2016 an evidentiary hearing

under the Honorable Farrell Cochran (2013-CP-42-02653). After more thorough investigative research of conviction, Petition Filed 2ND P.C.R. on October 4, 2016 that was dismissed on August 15, 2017. Petitioner filed the applicable Rule 59(e), (SCRPC), on September 6, 2017 to Alter or Amend Judgment to reflect that the relief would have vacated the CSC 1st Degree conviction for failure to prosecute under due diligence in compliance with Rule 3.8 Special Responsibilities of a Prosecutor under Rule 407 "Professional Conduct" of the South Carolina Appellate Court Rules (SCACR) Moreover, Petitioner was served by the Allendale Correctional Institution Notary Ms. Crystal English with final judgment/order on August 29, 2017.

He alleges:
[Set fact of this circuit court denied the PCR application upon its final order/judgment on August 15, 2017 in which there was not a grand jury in the April 9, 2012 term to indict and amend indictment of both CSCM 1st Degree and CSC 1st Degree respectively. Notwithstanding, that indictment was multiplicitous in nature and successive in punishment since the Honorable William J. Wyle, Jr. on May 24, 2012 found no preponderance of the evidence for Child Neglect and found guilt of CSCM 1st Degree based on coercive statement given inappropriately. Both indictments were True Billed and signed fraudulently outside of grand jury terms. Prosecutor Hillary Welburn was on maternity leave and her assistant Ms. Christi Brall took the case and presented it on October 4, 2012 without proving probable cause of aggravating factors as alleged in the body of indictment. On rehearing under Rule 29(b), (SCRCrimP), the inadequate mitigating factors were presented by William Hodge, attorney for defendant. The Court ruled in favor of defendant on March 7, 2013. The original sentence of 15 yrs and 10 yrs ran concurrent was suspended to 7.5 years ran with 5 years probation concurrent. Not in either case or proceeding did Honorable Mark Hayes, II inform defendant on the record of his right to appeal.

ARGUMENT

Court of Common Pleas failed to authentically examine the Grand Jury proceedings term for the month of April 9, 2012 to see if, indeed, there was a term.

Consequently, there was not an April 2012 term to hear bills of indictments. Court of Common Pleas erred in its decision to not accept Petitioner's Rule 59(e), (SORCP), when presented via a correspondence as exhibits weren't considered as a perponderance of after discovered material.

Upon good cause shown why judgment should be altered / amended, Petitioner met the standard by supporting documentation, even though denied an evidentiary hearing by opposing counsel. Court of Common Pleas fail to hold evidentiary hearing in a ProSe Prisoner litigation under circumstances that would have granted relief based on Nolle Prosequed Indictment.

Yes, the Court did err in failing to hold an evidentiary hearing because ProSe Prisoner / litigant(s) have a 14th Amendment to the United States Constitution Due Process Clause to be heard when there are NOVEL issues that cannot be decided otherwise. In instance case, the ruling would have been definitely different because Petitioner met burden of proof.

CONCLUSION

For the reasons stated, ask the Court to grant the petition for writ of Certiorari.

March 1, 2018

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