

IN FORMA PAUPERIS AFFIDAVIT

RECEIVED

APR 27 2018

Court of Appeals
(Insert name of Court)

S.C. SUPREME COURT

Terrence Wright El)
Petitioner/Defendant,)
v.)
STATE OF SOUTH CAROLINA)
Respondent/State.)

AFFIDAVIT IN SUPPORT
OF REQUEST TO PROCEED
IN FORMA PAUPERIS

I, Terrence Wright El, being first duly sworn, depose and say that I am the Petitioner/Defendant in the above-entitled case; that in support of my Motion to proceed without being required to prepay fees, costs, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefore; and that I believe I am entitled to relief. I further swear that responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes () No (✓) If the answer is "yes," state the amount of your wages per month and give the name and address of your employer.

If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received then.

25 yrs. Ago.

2. Within the past twelve (12) months have you received any money from any of the following sources?

- | | | | |
|----|--|---------|--------|
| a. | Business, profession or form of self-employment? | Yes () | No (✓) |
| b. | Rent payments, interest or dividends? | Yes () | No (✓) |
| c. | Pensions, annuities or life insurance payments? | Yes () | No (✓) |
| d. | Gifts of inheritances? | Yes () | No (✓) |
| e. | Any other sources? | Yes () | No (✓) |

If the answer of any of the above is "yes," describe each source of money and state the amount received from each during the past twelve (12) months.

3. Do you own or have money in a checking or savings account (include any funds in inmate accounts?) Yes () No (X) If "yes," state the total value.

4. Do you own real estate, stocks, bonds, notes, automobiles or other valuable property? Yes () No (✓)

5. List any persons who are dependent upon you for support. State your relationship to those persons and indicate how much you contribute to their support.

- My daughter & two (2) grand kids. It's moral & whatever advice I'm able at that time

I declare under penalty of perjury that the foregoing is true and correct

Executed ON 24 April 2018

Signed *J. J. [Signature]*

Notary: *JoAnn Mason*
Com Exp: *4/24/19*
2/28/19

Jo-Ann Mason
NOTARY PUBLIC
Nash County, North Carolina

No. 2018-000711

District _____

IN THE GENERAL COURT OF JUSTICE
STATE OF SOUTH CAROLINA
APPELLATE DIVISION

RECEIVED

APR 27 2018

S.C. SUPREME COURT

Court of Appeals

(Select "Court of Appeals" or "Supreme Court")

| | | | |
|---------------------------|---|---------------------------------|--------|
| <u>Terrence Wright El</u> |) | From <u>Charleston</u> | County |
| Petitioner, |) | | |
| |) | File No. <u>2015-CP-10-2332</u> | |
| v. |) | | |
| |) | PETITION FOR WRIT | |
| STATE OF SOUTH CAROLINA, |) | OF CERTIORARI | |
| Respondent. |) | | |

To the Honorable Judges of the above-named Appellate Court:

Now comes Terrence Wright El, Petitioner *pro se*, and NUNC PRO TUNC respectfully petitions this Court to issue its Writ of Certiorari pursuant to G.S. _____ and Rule _____ of the S.C. Rules of Appellate Procedure, to review the Order of the Honorable

Superior Court Judge Kristi Harrington, dated 11 April 2018 denying Petitioner's Post Conviction Relief. In support, Petitioner shows the following:

(1)

Petitioner is incarcerated in the N.C. Department of Correction under active sentence(s) which Petitioner seeks to challenge. The conviction sought to be challenged is:

Date of conviction(s): 4 March 99

Presiding Judge: Paul Short Jr.

Plea (guilty or not guilty): Not Guilty

Offense(s) convicted of: Murder, Burglary, G.L.M.V., CSC

Sentence(s): Life life, five, thirty

(2)

On 23 April 2015 (date), Petitioner mailed a Post Conviction Relief to the Clerk of said county court, alleging errors in the criminal proceedings against him/her, and a right to relief from his/her conviction and/or sentence(s).

(3)

On 11 April 2018 (date), the Court below entered an Order denying the Post Conviction Relief. A copy of the Order is attached to this petition. Petitioner contends that the Order is in error and Petitioner is entitled to the relief sought for the reasons stated in the Motion for Appropriate Relief.

(4)

Attached to this petition and incorporated by references herein are the following items (check the ones that are attached):

- Appendix A Order denying the Post Conviction Relief (MUST be attached) page 17-23
- Appendix B Post Conviction Relief (strongly advise that this be attached) page 24-30
- Appendix B Other (specify) Post Conviction Relief Amended Arguments. pg 31-60
- Appendix C Other (specify) Objection to Conditional dismissal. page 65-71
- Exhibit-A Other, Transcript(s) exhibit-2 page 13 (exhibit 4 pages) (2,3,4, & 9)

(5)

The following are additional facts and arguments that Petitioner submits in support of this petition (attach additional pages, if necessary):

- A) Violation of Due Process of law with unreasonable post accusational delay to a Speedy trial.
U.S. Const. Amend. 5th, 6th, 7th, 8th, 9th & 14th
- B) Unconstitutional tactical tactics of delayed hearrings and violation of equal protection clause of due process
U.S. Const. Amend. 5th, 6th, 7th & 14th

Procedural History

- 8-12-93 Direct Indictment - Burglary 93-GS-10-006254
- 8-17-93 Arrest Warrant D-413508 - Kidnapping 93-GS-10-006252
- 8-18-93 Arrest Warrant D-687216 - Murder 93-GS-10-006252
- 8-18-93 Arrest Warrant D-687217 - C.S.C. 93-GS-10-006253
- 1994 Arrest Warrant D-687218 - G.L.M.V. 94-GS-10-004868
- 3-4-99 Sentenced Murder - Life
Kidnapping - Subsumed by Statute by Murder Sentence
Burglary - Life (concurrent with Murder Sentence)
G.L.M.V. - 5 yr (concurrent with Murder Sentence)
C.S.C. - 30 yr (consecutive with Murder Sentence)
- 3-15-99 S.C.O.A.D. Requested Transcript
- 3-17-99 Wright Requested Transcript
- 6-21-99 Wright told to Submit \$400⁰⁰ for copy of Transcript
- 4-27-00 S.C.O.A.D. tells Wright they are still waiting for Transcript
- 5-22-00 Wright filed Motion for Dismissal No evidence of a response
- 6-1-00 Wright filed Motion to Proceed Pro Se in Appeallet defense
This was second such motion. S.C.S.C. had informed Wright after first Motion that he was represented by S.C.O.A.D. and any Motions concerning his Appeal would need to be filed by S.C.O.A.D.
- 8-7-00 Wright filed P.C.R. 2000-CP-10-4736
- 4-17-01 State file Return and Motion To Dismiss
- 12-21-01 S.C.S.C. Dismiss without Prejudice because case still under Direct Appeal
- P.C.R. Dismissed on procedural grounds - Merits never ruled on

2-22-02 S.C.S.C. issues Remittitur Affirming conviction

5-2-03 Wright files P.C.R. 2003-CP-10-1894

5-27-03 Court assigns Brown as attorney

5-5-04 State file Return and Motion To Dismiss

Request Summary Judgment due to one year time limit to file past Dismissed on procedural grounds - Merits not ruled on

Request Summary Judgment on 6th Amendment violation due to State law not allowing for hybrid representation Dismissed on procedural grounds - Merits not ruled on

Request Summary Judgment on charge of UNreasonable delay due to this issue being required to be argued on direct Appeal Dismissed on procedural grounds - Merits not ruled on

Request Summary Judgment on charge of Prosecution tactic as this is required to be argued on direct appeal Dismissed on procedural grounds - Merits not ruled on

6-15-04 Hearing held in regards to P.C.R. 2003-CP-10-1894. State requested matter be dismissed as State was under no obligation to ensure Wright be present in court when he was not in S.C. custody

9-23-04 Court dismissed without prejudice P.C.R. 2003-CP-10-1894 with leave for Wright to refile upon returning to the State Dismissed on procedural grounds - Merits not ruled on

7-18-04 Wright requested from Office of Disciplinary Council the Attorney response to grievances. he filed

- 8-2-04 Office of Disciplinary Counsel responded that under S.C. Law information requested is exempt from disclosure
- 8-12-04 S.C. Bar issues 2nd letter to Attorney Brown, informing him about his duty to communicate with his client
- 3-23-07 S.C. issues N.C. with Notice of Detainer
- 4-18-08 Wright requests from S.C.S.C. Copies of Motion for Dismissal and Motion to Proceed
- 4-29-08 S.C.S.C. advises Wright to submit \$9⁰² to obtain requested copies
- 5-30-08 Wright requests from S.C.S.C. transcript of Motion
- 6-27-08 S.C.S.C. advises Wright to be more specific in identifying Motion
- 7-11-08 Wright informs S.C.S.C. of his dissatisfaction with their efforts to provide copies of Motions
- 7-16-08 S.C.S.C. responds that they will no longer attempt to locate documents for him. If he requires anything, he or his representative will have to come to the Court to review and copy any document he requires
- 4-23-15 Wright files PCR. 2015-CP-10-2332
- 10-6-17 State files Return and Motion to Dismiss
Request Summary Judgment due to one year time limit exceeds
Request Summary Judgment for "Successive PCR Applications"
- 10-6-17 State files Conditional Order of Dismissal
- 10-10-17 Wright files Objection to Conditional Order of Dismissal,
Request for Appointment of Counsel, and Amended arguments
to P.C.R. 2015-CP-10-2332

11-3-17

Court issues Conditional Order of Dismissal

Court intends to summarily dismiss for failure to comply with one year filing procedure

Court intends to summarily dismiss due to successive to previous PCR application

11-22-17

Wright El files Objection to states claims of untimely & successive filing when they've never ruled on the first one w/ a procedural dismissal w/o prejudice & they had a chance to object in June 04 of timely filing.

4-11-18

Court does not make judicial ruling of law on merit and dismisses petition.

4-17-18

Wright El files Notice of Appeal.

Argument

(a) Wright El was arrested in Aiken County South Carolina and transported to Charleston County Mt. Pleasant Police Department for interrogation where they attempted to obtain D.N.A. but then changed tactics and transported Wright El to Charleston County jail within (12) twelve hours after the initial arrest; that the prosecution had adequate time to try him within the (23) twenty-three months of being in their custody. 16 August 93 - 23 July 95

On October 93 Wright El was indicted and then requested a speedy-trial by Motion to the Courts. It was the beginning of a series of speedy trial motions, petitions, and request filed by Wright El from October 1993 to December 1998.

On 6 April 1995 a hearing was held before Judge Don Rushing concerning a Speedy trial (Hearing transcript page 3 lines 2-25 page 4 lines 1-8; see exhibit-a)

Prosecution manipulated the court with undue delays of any trial date by stalling with an alleged D.N.A. test when they clearly stated Wright El will be sent to North Carolina for strategy reasons.

Prior to this hearing the Prosecution stated they had no intention on answering Wright El's Pro. Se. Motion for a Speedy trial. (Hearing transcript page 9 lines 4-8; see exhibit-a)

Wright El filed numerous more Speedy trial motions and

dismissals against the Prosecutions insufficient evidence warranting Wright El's stay in jail.

The same argument went on for (5) five more years. This subjected Wright El to unreasonable delay that violates his U.S. Const. Amend. Bill of Rights 5th, 6th, 7th and 8th which these convictions should be vacated

Wright El did not waive his rights to a Speedy trial. The Court negligence with the prosecution and the defense attorney to fail to acknowledge Wright El's motions was a harmful error which violated his Federal and State Constitutional Rights to Due Process and to avoid unreasonable delays.

The trial Court reporter has filed (8) eight Motions of Extensions nearly (30) thirty days after each dead line of when the trial transcripts were due to perfect the appeal. Trial transcript wasn't produced until almost (2) two years after the conviction.

This violates Wright El's statutory rights under South Carolina General Statute Rules and the U.S. Const. Amend. and these convictions should be vacated with prejudice.

A. Successive delays subjected Wright El to tactical disadvantage and undue continuances that violates the Due Process Clause.

The basis of the Sixth Amendment Protection against Pre and Post accusation unreasonable delays is that a person shall the right to a Speedy trial and Appeal; has both Constitutional and Statutory underpinnings.

Federal Statutes of limitations and the Due Process Clause of the 5th Amendment to the U.S. Const. provides in relevant part that "[N]o person shall... be deprived of life, liberty, or property without Due Process of law". The 14th Amendment of the U.S. Const. imposes the identical limit on the states.

The Due Process clause also guarantees reasonably speedy appeals and sentencing determinations. Courts, however are reluctant to find a due process violation absent a showing of actual prejudice.

Compare: Simmons v. Reynolds, 898 F.2d 865, 868 (2nd CIR 1990) (Six year delay between conviction and appeal due to counsel's incompetence violated due process)

Burkett v. Cunningham, 826 F.2d 1208, 1225-26 (3rd CIR 1987)

Coe v. Thurman, 922 F.2d 528, 531-32 (9th CIR 1990) (Four year delayed caused in part by government during which time appellate continuously asserted rights violated Due Process.)

The Sixth Amendment provides in relevant part that "[I]n all criminal prosecution the accused shall enjoy the right to a Speedy trial and appeal. This U.S. Const. Amend. guarantees Speedy trial and is binding on States through Due Process clause of the 14th Amendment.

Klopper V. North Carolina, 386 U.S. 213, 222-23 (1967)

see: Fed. R. CRIM. P. 48(b) (authorizing courts to dismiss indictments for governments UNNECESSARY delays.)

The Prosecution pacifically stated ... "there is the contention that we send him back to North Carolina for trial FOR STRATEGY REASONS FIRST," (see: Transcript exhibit-a page 9-line 6-8)

This blatant acknowledgement of their tactical advantage against Wright El to insure a conviction that violated his rights to a fair trial or dismissal of charges.

(Due Process Clause may provide basis for dismissing indictments if defense shows prosecutorial delay prejudiced rights to a fair trial; Merely alleging delay due to government negligence or indifference INSUFFICIENT). Marion, 404 U.S. at 324. U.S. V. Gouveia, 467 U.S. 180, 192 (1984) (DICTUM) (claim that preindictment intentional delay violated Due Process, valid if defendant prove government intentionally delayed to gain tactical advantage and actual prejudice resulted).

In actual case prosecution delayed trial by (A) four more years despite it was already (20) twenty month into the requesting for a Speedy trial in 1995. (see: Transcript exhibit-a page 2 line 1-12)

U.S. V. Smith, 80 F.3d 1188, 1191 (7th CIR 1996) (defendant must show

actual and substantial prejudice; Once shown, burdens shift to government to justify delay.) Such delays goes to the heart of the 6th, 7th, 8th, and 14th Amend. protection. Where tactical delays are successive for the prosecution's advantage over the defendant are at stake, the Due Process clause serves a Constitutional policy of finality for Wright El's benefit protecting him from attempts of unreasonable delays by the prosecution or state agent in additional undue impairment of liberty. see: Marion, 404 U.S. at 325-26.

B. Successive delays violated Wright El's Constitutional Due Process Right's

Barker V. Wingo, 407 U.S. 514, 521-22 (1972)

Strunk V. U.S., 412 U.S. 434, 439-40 (1973)

(Barker requires dismissal for violation of the 6th Amend. Rights; District Courts may not fashion less extreme remedies such as reduction of sentence). The Supreme Court recognizes that unreasonable delays violates the Due Process clause when it appears that such a course of action entails "fundamental unfairness". Thus, an accused will be held to have been denied Due Process by having been subjected to successive delays against him violated those "Fundamental Principles" of liberty and justice which lie at the base of all our civil and political institutions".

Doggett v. US, 505 U.S. 647, 651-52 (1992) Courts generally hold that approximately one year is presumptively prejudicial.

Barker, 407 U.S. at 530.

U.S. v. Holyfield, 802 F.2d 846-848 (6th CIR 1986) (Delayed due to government's decision to delay trial for appeal of defendants' co-defendant weighed against government) Cert. Denied 479 U.S. 1090 (1987)

In the more recent case People v. Taranovich 335, N.E.2d 303 (N.Y. 1975) People v. Wiggins, 2018 N.Y. LEXIS 216 (2018) whereas the prosecution does not have unfettered discretion to indefinitely pursue evidence that would strengthen their case while defendant trial is postponed.

The court should dismiss all convictions on the merit of law and hereby grant this writ immediately, removing all detainers from against Wright EI to restore his rights to due process to the U.S. Const. Amend 5th, 6th, 7th, 8th, 9th, & 14th.