

P. 2 of 15

State of South Carolina
County of Richland

In The South Carolina Supreme Court
Appellate Case # 2016-002319

Bernard McFadden,
Petitioner,

vs.

State of South Carolina,
Respondent.

Petition For Writ of Certiorari

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

Issue Presented :

Whether the PCR court erred in denying Petitioner relief where counsel failed to file a motion to hire photographic / blood splatter expert witnesses to explain to jury photographs and blood droplet did not represent a true and correct position of crime scene evidence in light of Simmons Vs. State, Appellate No. 2014-00387 (June 08th, 2016); and City of Columbia Vs. Asse'ad - Faltas, Case # 2007-UP-193 (S.C. Ct. App. April 26th 2007) ?

Facts :

Petitioner alleged that counsel was ineffective in not filing a motion for certain expert witnesses in Issue # 6 of his Amended (PCR) application. (See Motion To Supplement Appendix, Attachment A herewith this Pro-se Petition For Writ of Certiorari.)

At the 4/16/2015 (PCR) hearing, Petitioner testified to the same, that trial counsel was ineffective for not filing motion for

photography and blood splatter experts to explain the manufactured position of evidence to the jury. (See Appendix at p. 584, lines 18-25; p. 585, lines 1-11.)

When trial counsel Willie Brunson was asked whether the evidence appeared to be altered at Petitioner's (PCR) hearing, counsel testified that he did not see where it was necessary to hire a blood splatter or photography expert after reviewing the single blood droplet shown at p. 499 of the Appendix. (See Appendix at p. 644, lines 11-25; p. 645, lines 1-16.) When asked about other photographs that show a first aid kit box being in some photos on a shelf, but not in others (Compare Appendix pgs. 501, 502, 503 to 504.), Brunson maintained there wasn't a need.

Brunson testified that it wasn't necessary to hire expert witnesses (See Appendix at p. 645, lines 17-25.) And unfortunately the (PCR) court failed to find the significance of trial counsel Brunson's following closing statement to the jury:

" Now on this photo there is a pack of New Port cigarettes and a lottery ticket lined up perfectly. There's blood on -- what appears to be blood on the box. Was that swabbed? When you go into the jury room you will have these pictures... You will be able to ask yourself these questions. And you will be able to look at these photos. And you will be able to compare and contrast... (Appendix at p. 426, lines 11-21.)

" So I submit to you that it is possible that in the realms of reality that this blood was

P. 4 of 15
placed in this Young's Market "Appendix at p. 430, lines 1-3).

Applicable Law:

In Simmons, Simmons filed a (PCR) application alleging, among other things, ineffective assistance of counsel in relation to his trial counsel failure to adequately challenge the state DNA evidence. Vacating and remanding in part, this Court stated in Simmons vs. State that:

"It is established that a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the 14th Amendment. The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears." Simmons vs. State, Appellate No. 2014-00387 (June 08th, 2016) at p. — (citing Napue vs. Illinois, 360 US 264, 289 (1959) (other citations omitted.)) (See also City of Columbia vs. Assaad - Faltas, where a new trial was granted and affirmed after a digital enlargement of trial photo proved that two Walmart employees made mistaken or fabricated testimony.)

Conclusion

WHEREFORE, petitioner prays that this court find the (PCR) court did err in not finding trial counsel ineffective in light of his closing argument to jury without expert witnesses to explain evidence to jury - in violation of Petitioner's 6th and 14th Amendment rights under the U.S. Constitution.

P. 5 of 15

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

Proof of Mailing

Appellate Case #: 2016-002319

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly - addressed - stamped envelope in the U.S. Mail this 1st day of May 2018; such matter being: Petition and Motion To Supplement Appendix;

1) Julie Coleman, Esq., Robert Dennis Building, 1000 Assembly Street, Room 519, Columbia South Carolina 29201;

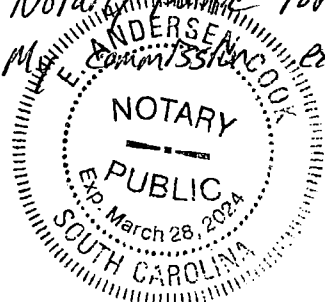
2) Daniel E. Shearouse, clerk S. C. Supreme Court, Post Office Box 11330, Columbia South Carolina 29211;

and 3) Taylor D. Gilliam, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401 Columbia, S.C. 29201-3332

Sworn And Subscribed Before Me This 1st day of May 2018

[Signature]

Notary Public For South Carolina expires: 3.28.2024



[Signature]

Bernard McFadden
Pro se Petitioner
(803) 201-9477

P. 1 of 15

Bernard McFadden
P.O. Box 1622
Columbia, S.C. 29202

May 1st, 2018

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

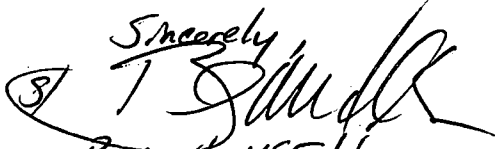
Deniel E. Shearouse, clerk
S.C. Supreme Court, P.O.
Box 11330, Columbia, S.C. 29211

RE: McFadden vs. State, Appellate Case # 2016-002319

Dear Clerk:

Enclosed, please find my Petition and Motion To Supplement Appendix for filing in your office; also find an extra copy of the first page of each with a self-addressed-stamped envelope for the return of a clocked-stamped-filed copy.

Thanking you in advance,

Sincerely,

Bernard McFadden

cc:

Julie Coleman, Assist. Atty. Gen.
Taylor D. Gilliam, Appellate Defender