SOUTH CAROLINA COURT OF APPEALS

Appellate Case No. 2014-002776

Loushonda Myers,

Petitioner-Appellant,

PETITION FOR REHEARING

Vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

I, LouShonda Myers, now timely petitions for rehearing of the May 9, 2018 order affirming the judgement of Kristi Lea Harrington.

This Court has overlooked, misapprehended, and/or disregarded the fact that I stated in Court to Judge Harrington that I was deprived of my right to submit documents in the lower court on my own behalf. This statement has been pointed out in the transcript in this matter. If I had not been deprived of the right to submit and/or file documents in this matter by the Clerk of Court's Office, all issues that I have raised would have clearly been on the record. I have been deprived of my due process right to submit and/or documents on my own behalf and in my own cause. This not only denied me a meaningful opportunity to be heard, but it also is again depriving me the right to proper redress, relief, and/or remedy.

Furthermore, Judge Harrington not only presided over the case, but she was also personally involved and had an interest in the outcome. Judge Harrington testified at bench, questioned the clerk of court, Alma White, and sat to judge the matter. Judge Harrington nor the State gave proper notice of any witnesses, and I was deprived my due process right to file my motion for discovery and the production of witnesses.

As we said in In re Oliver, 333 U.S. 257, 275-276,

"If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires . . . that the accused be accorded notice and a fair hearing . . . ."
And see In re Savin, 131 U.S. 267, 277.

It would, therefore, seem that a fair hearing would entail the opportunity to show that the version of the event related to the judge was inaccurate, misleading, or incomplete.
.....Trial before "an unbiased judge" is essential to due process. Bloom v. Illinois, 391 U.S. 194, 205; Mayberry v. Pennsylvania, 400 U.S. 455, 465.

(Johnson v. Mississippi, 403 U.S. 212, 215-16 (1971))

It is not enough that I was given a trial and/or hearing. The trial and/or hearing itself must take place in a fair and meaningful way. (1) I was denied and/or deprived of my right to file and/or submit documents to challenge the jurisdiction, obtain discovery, witnesses, and to defend myself (These facts are on the record.); (2) I was deprived of the right to a meaningful trial and/or hearing due to these facts and due to the fact that I was constantly interrupted and received frightening looks and gestures from the judge; (3) I was forced to accept an attorney that was ordered from the bench out of a courtroom and ordered to represent me (I was ordered to be represented by an attorney during the actual trial and/or hearing without any preparation for the attorney and/or any knowledge of the matter. The only way to challenge that order is/was appealing it; not in court when I would have had to choose between my freedom and due process rights. Here again, I was forced to choose between two substantive constitutional guarantees.) (*SCACR 201*); (4) I was denied effective assistance of counsel caused by the judge herself due to the fact that she ordered an attorney to represent me at during the trial/hearing (The attorney ordered to represent me was not present during the beginning of the trial/hearing and was not present during questioning, testimony, and had no knowledge of witnesses.); and (5) I was deprived and/or denied the right to confront my accuser, Judge Harrington, and the clerks of the

Clerk of Court's Office including the Clerk of Court herself. (*The right of confrontation is guaranteed in state law by the Constitution of South Carolina. See Art. I, Section 14, Constitution of South Carolina, 1895, revised. Historically, the right of confrontation and cross examination has been held to apply in criminal prosecutions. See State v. Hester, 137 S.C. 145, 134 S.E. 885 (1926); State v. Smith, 230 S.C. 164, 94 S.E.2d 886 (1956). Where the accused enjoys the right to be confronted by the witnesses against him, affidavits are inadmissible in evidence on the question of guilt. See State v. Hester, supra; State v. Smith, supra. (State of S.C. v. Nest Egg Society Today, 348 S.E.2d 381, 130-31 (S.C. Ct. App. 1986))*

> *Due process encompasses "[a]ll rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice" and includes "[p]rocedural . . . rights of citizens against government actions that threaten the denial of life, liberty, or property." BLACK'S LAW DICTIONARY 501 (6th ed. 1990).*

> *"Procedural due process imposes constraints on governmental decisions which deprive individuals of `liberty' or `property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). "`[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.'" Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748-49, 6 L.Ed.2d 1230, reh'g denied, 368 U.S. 869, 82 S.Ct. 22, 7 L.Ed.2d 70 (1961) (quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)). "Rather, the phrase expresses the requirement of `fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty." Lassiter v. Department of Social Services, 452 U.S. 18, 24, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640, reh'g denied, 453 U.S. 927, 102 S.Ct. 889, 69 L.Ed.2d 1023 (1981). "Applying the Due Process Clause is therefore an uncertain enterprise which must discover what `fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." Lassiter, 452 U.S. at 24-25, 101 S.Ct. at 2158. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). "[R]esolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected." Mathews, 424 U.S. at 334, 96 S.Ct. at 902.*

The Fourteenth Amendment articulates a prohibition against any state deprivation of life, liberty, or property without due process of law. The rule is enunciated in Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977):

(Anonymous v. State Board of Medical Examiners, 323 S.C. 260, 264-65 (S.C. Ct. App. 1996))

And, as to my claims regarding being forced by an order of the judge to be represented by counsel, I went to court and was pro se. I have a right to handle my own cause and/or represent myself. The Sixth and Fourteenth amendments include the "right to proceed without counsel" when a criminal defendant "voluntarily and intelligently elects to do so". (*Faretta v. California 422 U.S. 806 (1975*) An accused has a constitutional right under the Sixth Amendment "to conduct his own defense," and the "primary focus" in determining whether this right was violated "must be on whether the defendant had a fair [and meaningful] chance to present his case in his own way" (citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). (*McKaskle v. Wiggins 465 U.S. 168 (1984*) "There are two principles which are founded on reason and authority in this field to which this Court gives full weight. First, an accused has an unquestioned right to defend himself. Second, an accused should never have counsel not of his choice forced upon him. This Court has never failed to recognize either of these fundamental rights. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel." 28 U.S.C.A. § 1654. "The Constitution does not force a lawyer upon a defendant." Adams v. United States, 317 U.S. 269, 279, 63 S. Ct. 236, 242, 87 L.Ed. 268. (*Duke v. United States 255 F.2d 721, 724 (9th Cir. 1958)*)

I was effectively denied and/or deprived of access to the court and denied and/or deprived of submitting and/or filing documents on my own behalf to defend myself. These actions and/or conduct caused the record to be absent of key materials and/or documents. These actions and/or

conduct was the direct result of the actions and/or conduct of the Clerk of Court in Georgetown County and/or her staff and/or deputy clerks. Judge Harrington was aware of the actions and/or conduct and failed to act and/or allow submission and/or filing of the documents and materials, and therefore aided in these deprivations and denial. Judge Harrington failed to act when she was aware and knew that a constitutional violation and/or deprivation was occurring and had occurred. Judge Harrington failed in her duty as a circuit court judge to correct the deprivation and/or denial that occurred to me and was occurring, especially since it was in her power and authority to do so. There is no excuse. I cannot be effectively denied access to the court, and then be told that the issues I was denied and/or deprived of making record of are not on the record. This in fact causes another hinderance of the just administration of justice. These issues that I have raised are not new issues on appeal or issues that were not raised during the trial and/or hearing. I stated on the record that I was denied and/or deprived of meaningful access to the court and/or denied and/or deprived of my right to submit and/or file documents on my own behalf.

> *This Court's prior cases on denial of access to courts have not extended over the entire range of claims that have been brought under that general rubric elsewhere, but if we consider examples in the Courts of Appeals as well as our own, two categories emerge. In the first are claims that systemic official action frustrates a plaintiff or plaintiff class in preparing and filing suits at the present time. Thus, in the prison-litigation cases, the relief sought may be a law library for a prisoner's use in preparing a case, Bounds v. Smith, 430 U.S. 817, 828 (1977); Lewis v. Casey, 518 U.S. 343, 346-348 (1996), or a reader for an illiterate prisoner, id., at 347-348, or simply a lawyer, ibid. In denial-of-access cases challenging filing fees that poor plaintiffs cannot afford to pay, the object is an order requiring waiver of a fee to open the courthouse door for desired litigation, such as direct appeals or federal habeas petitions in criminal cases, or civil suits asserting family-law rights, e.g., Boddie v. Connecticut, 401 U.S. 371, 372 (1971) (divorce filing fee); M. L. B. v. S. L. J., 519 U.S. 102, 106-107 (1996) (record fee in parental-rights termination action). In cases of this sort, the essence of the access claim is that official action is presently denying an opportunity to litigate for a class of potential plaintiffs. The opportunity has not been lost for all time, however, but only in the short term; the object of the denial-of-access suit, and the justification for recognizing that claim, is to place the plaintiff in*

a position to pursue a separate claim for relief once the frustrating condition has been removed.

The second category covers claims not in aid of a class of suits yet to be litigated, but of specific cases that cannot now be tried (or tried with all material evidence), no matter what official action may be in the future. The official acts claimed to have denied access may allegedly have caused the loss or inadequate settlement of a meritorious case, e.g., Foster v. Lake Jackson, 28 F.3d 425, 429 (CA5 1994); Bell v. Milwaukee, 746 F.2d 1205, 1261 (CA7 1984) ("[T]he coverup and resistance of the investigating police officers rendered hollow [the plaintiff's] right to seek redress"), the loss of an opportunity to sue, e.g., Swekel v. River Rouge, 119 F.3d 1259, 1261 (CA6 1997) (police coverup extended throughout "time to file suit. . . under . . . statute of limitations"), or the loss of an opportunity to seek some particular order of relief, as Harbury alleges here. These cases do not look forward to a class of future litigation, but backward to a time when specific litigation ended poorly, or could not have commenced, or could have produced a remedy subsequently unobtainable. The ultimate object of these sorts of access claims, then, is not the judgment in a further lawsuit, but simply the judgment in the access claim itself, in providing relief obtainable in no other suit in the future.

(Christopher v. Harbury, 536 U.S. 403, 412-14 (2002))

In conclusion, it is the duty of this court to ensure that constitutional rights are safeguarded, and it is the duty of this court to ensure that everyone receives their constitutional guarantees.

June 21, 2018.

LouShonda Myers
Petitioner-Appellant
27 Wateree Trail
Georgetown, South Carolina 29440

CERTIFICATE OF SERVICE

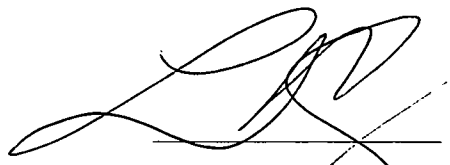
I, Loushonda Myers, certify that a copy of the foregoing has been served on the following parties in the following manner:

V. Henry Gunter, Jr.

P.O. Box 11549

Columbia, South Carolina 29211

June 21, 2018.



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Georgetown, South Carolina 29440