

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

WILLIAM BRUCE JUSTICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001718

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

Petitioner was denied the right of confrontation at both the preliminary and final revocation hearings, and the entirety of both hearings was tainted with a given error such that he was not required to challenge his parole revocation with respect to his other three violations.

Respondent suggests “Petitioner never specifically requested Ms. Cotton to be made available for questioning in his presence.” Return p. 9. At the preliminary hearing in his case, however, Petitioner was told that he could not confront witnesses. App. 304 ll. 2 – 14. Petitioner was therefore denied his right of confrontation; he was entirely unaware of her testimony. Id. Petitioner outright stated that he “wanted to confront Ms. Cotton and [the other witnesses] because they made a bunch of false accusations against me.” App. 305 ll. 2 – 18. Notably, Petitioner was not aware until after the conclusion of the hearing that any adverse witnesses attended his revocation hearing. App. 306 l. 1 – App. 307 l. 3. It is therefore illogical to hold him to such an impossible standard. Petitioner could not have requested that Ms. Cotton or other adverse witnesses be made available for questioning if he did not know of their presence at the hearings. Nonetheless, he opened his remarks at the final revocation hearing by indicating that he was denied his right of confrontation at the preliminary hearing.

Notably, the forms included in Petitioner’s PCR application did not denote that the right of confrontation at the preliminary hearing was a conditional one, as Respondent posits. Form 1122 simply advised that Petitioner had “the right at the hearing to confront and question any person who appears as a witness.” App. 261. Similarly, Form 1124 noted that Petitioner had “the right to question any person making allegations against [him] at the [administrative] hearing.” App. 262. Petitioner, representing himself at the time, indicated at the final revocation

hearing and the evidentiary hearing in his PCR matter that he desired to cross-examine the adverse witnesses but that he was denied his right to do so.

The State's argument that the parole board "specifically stat[ed] they had enough information and reviewed the facts in order to make a decision" before it heard from Ms. Cotton supports Petitioner's contention that he was denied the litany of rights afforded to him by Morrissey and Gagnon.¹ In fact, the parole board member who uttered those words did so once before, immediately after Agent Cook provided her testimony yet before Petitioner was given the opportunity to be fully heard in person, or in his words simply "explain what happened." Audio of Parole Revocation Hearing 2:38 – 3:07.

Petitioner attempted to bring to the board's attention that he was denied his right to confront witnesses and then sought to explain what happened. Id. The parole board member interrupted Petitioner and indicated that he had everything he needed in order to make a decision. Id. After giving Cook carte blanche to level accusations which Petitioner later refuted, the parole board member seemingly accepted her remarks as truthful, interrupted Petitioner, and refused to let him fully be heard in person.

After once more interrupting Petitioner around the five-minute mark on the audio, the parole board forced him from the room and heard from at least one fact witness who described Petitioner's alleged conduct. Respondent explained that this testimony from Ms Cotton was "rehash[ing] the facts." Return p. 12. Seemingly in contravention to the assertion that "Ms. Cotton merely exercised her right to comment on the impact of Petitioner's behavior," the August 27, 2013 administrative hearing summary indicated that "Mrs. Cotton also testified and presented multiple voicemail messages from her cellular telephone which clearly show[ed] the

¹ Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973).

extent of Mr. Justice's ... behavior." Supplemental Appendix 23. Furthermore, both Leigh Cotton and Paul Cotton III were listed as witnesses of Agent Cook. Supp. App. 22.

Petitioner was not obligated to request that adverse witnesses be made available for the final revocation hearing. To the extent that the State argues that he should have done so for the preliminary hearing, Petitioner's testimony sets forth his multiple requests and attempts to cross examine the witnesses. At every stage of his case, Petitioner has expressed a desire to utilize his right of confrontation. Ms. Cotton testified before the parole board, which in turn relied on her testimony in order to make factual findings. The prejudice in Petitioner's matter manifests itself within the entirety of the tainted hearings; Petitioner was not provided the materials which were used against him, he was denied the right to confront adverse witnesses, he was interrupted and not allowed to be heard, and could not respond to allegations or questions raised.

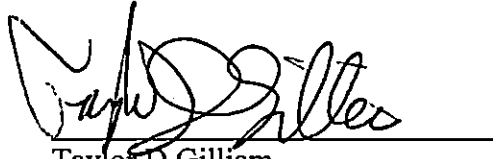
The State's reliance on State v. Allen supports Petitioner's claim that the PCR court should be reversed. 370 S.C. 88, 634 S.E.2d 653 (2006). As cited in the Return, "[w]hen the trial court's revocation decision is upheld on one ground, it ordinarily is immaterial whether probation was properly revoked on other grounds **unless the entire proceeding was tainted by a given error.**" Id. (internal citations omitted) (emphasis added). The error that pervaded this case is the very reason Petitioner sought an appeal under S.C. Code Ann. § 17-27-20: Petitioner was denied multiple due process rights that should have been afforded to him under longstanding case law from the United States Supreme Court. The State noted this distinction in its Return to Petitioner's application for post-conviction relief: "The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful." App. 273. This appeal revolves around the legality of

the parole revocation procedures which prevented Petitioner from fully defending himself as he is allowed to do under Morrissey and Gagnon, *supra*.

As described by Petitioner and his counsel, Petitioner was denied multiple rights guaranteed by the United States Constitution and South Carolina Constitution. App. 258; App. 281 l. 16 – App. 282 l. 17. The resulting errors are structural; they affected the entire conduct of both hearings. Petitioner was not provided the packet of documents which were relied on by the parole board, he was denied the right to confront and cross-examine witnesses, and he was denied the fundamental right of defending himself.

CONCLUSION

For the reasons set forth herein and in the Petition for Writ of Certiorari, Petitioner William Justice respectfully requests this Court grant certiorari to allow full briefing on the issues raised in his Petition.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of October, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

WILLIAM BRUCE JUSTICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply to Return to Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Kelly Oppenheimer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and William Bruce Justice, #84810, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of October, 2018.



Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR RESPONDENT
this 8th day of October, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 07/03/2023