

2018-002211

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Roger M. Young, Sr., Circuit Court Judge

CASE No. 2016 - CP - 10 - 6302

BENJAMIN H. LIMBAUGH, AS
REPRESENTATIVE OF THE
STATE OF SOUTH CAROLINA,

RESPONDENT,

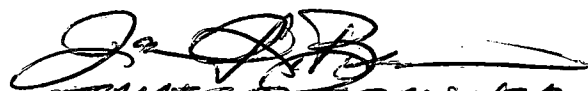
v.

JAMES R. BRAUNER, 249198,

APPELLANT.

NOTICE OF APPEAL

JAMES R. BRAUNER APPEALS THE JUDGMENT
OF THE HONORABLE ROGER M. YOUNG, SR. DATED
OCTOBER 22, 2018. APPELLANT RECEIVED WRITTEN
NOTICE OF ENTRY OF THIS JUDGMENT ON OR ABOUT
NOVEMBER 5, 2018.


JAMES R. BRAUNER
350 REDEMPTION WAY
McCORMICK, S.C. 29579
PRO SE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

ROGER M. YOUNG, SR., CIRCUIT COURT JUDGE

CASE No. 2016-CP-10-6302

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES R. BRAUNER, 241198,

APPELLANT.

RULE 243(c)
WRITTEN EXPLANATION

THIS MATTER COMES BEFORE THE COURT BY WAY OF AN APPLICATION FOR PCR FILED NOVEMBER 21, 2016 BY THE APPELLANT. WHEREAS, RESPONDENT MADE ITS RETURN ON OCTOBER 23, 2017. THE COURT FILED ITS FINAL ORDER OF DISMISSAL ON OCTOBER 22, 2018 BARRING THE APPLICATION AS SUCCESSIVE AND UNTIMELY UNDER THE STATUTE OF LIMITATIONS, AND WITHOUT MERITS. PURSUANT TO RULE 243(c) OF THE SCACR APPELLANT APPEALS THE STATE'S DECISION.

PER TO R. 243(C), APPELLANT RAISED THE FOLLOWING GROUNDS BASED ON HIS ACTUAL INNOCENCE AND THE FRAUD AND PERJURY BY THE STATE AND ITS PUBLIC AND JUDICIAL OFFICERS IN THEIR GOAL TO DEPRIVE ME OF MY CONSTITUTIONAL RIGHTS -

MISTAKEN IDENTIFICATION

IN THIS MERITORIOUS ISSUE, I INDICATED HOW THE INVESTIGATING OFFICER USED UNNECESSARILY SUGGESTIVE IDENTIFICATION BY TELLING THE WITNESS THAT ONE (1) OF THE SUSPECTS HAVE BEEN ARRESTED, AFTER I'D BEEN TAKEN INTO CUSTODY; AND TAKING PICTURES OF ME DURING THE ILLUSION OF THE RETAKING OF FINGER PRINTS NEAR MY TRIAL DATE.

HOW THE VICTIM WITNESS TESTIFIED THAT THE PERPETRATORS WORE MATCHING SWEAT SUITS; TESTIFIED THAT SHE WATCHED THE NEWS AND RECEIVED NEWS PAPERS FOR THREE (3) DAYS AFTER SHE WAS TOLD ONE OF THE SUSPECTS WAS IN CUSTODY BEFORE THE PHOTO LINE-UP WAS CONDUCTED; TESTIFIED THAT THE DARKER SUSPECT WAS SLIGHTLY SHORTER THAN 5'8" OR 5'9" FOOT CO-DEFENDANT; AND TESTIFIED THAT SHE "FELT" THAT SHE WAS SURE OF HER IDENTIFICATION, BEFORE BEING LEAD AND INFLUENCED BY MY STATE APPOINTED TRIAL COUNSEL, TO STATE THAT SHE

WAS 100% SURE OF HER IDENTIFICATION OF THE SUSPECTS. U.S. V. WADE, 388 US 218, 228-9, 233 (1967); STOVALL V. DENNO, 388 US 293, 302 (1967); ARTICLE 1, §§ 3, AND 14 OF THE S.C. CONSTITUTION; AND I, VI, AND XIV AMENDMENT OF THE U.S. CONSTITUTION

COURT LACKED JURISDICTION

IN THIS MERITORIOUS ISSUE, I INDICATED THAT INDICTMENTS 1996-GS-10-1059, AND 1997-GS-10-1060 ARE FRAUDULENT AND THEREFORE VOID DOCUMENTS, BECAUSE THESE DOCUMENTS WERE NEVER PRESENTED TO THE GRAND JURY; NEVER FILED WITH THE CLERK OF COURT. R. 3 OF THE SCRP; §§ 14-7-1646, 14-7-1650, 14-9-210, 17-19-10, 17-23-90 OF THE S.C. CODE; ARTICLE 1, §§ 11, AND 14 OF THE S.C. CONSTITUTION; 35 GEO. L. J. ANN. REV. CRIM. PROC. 252; HELEN T. ZEIGLER 1983 WL 182065 (1983); HOOKS V. STATE, 353 SC 48, 577 SE2D 211 (2003), CRIMINAL LAW-105, AND 1033.1; STATE V. EDWARDS 68 SC 318, 478 SE2D 395 (SC 1904); EVANS V. STATE, 363 SC 495, 509, 611 SE2D 510, 518 (2005); U.S. V. DRAKE, 2018 WL 1897615 (M.D. N.C.).

PROSECUTORIAL MISCONDUCT

IN THIS MERITORIOUS ISSUE, I INDICATED THAT THE PROSECUTOR FAILED TO ENSURE THAT MY RIGHT TO A DUE PROCESS HEARING WAS RESERVED AT THE TRIAL. HECKNEW THAT UNNECESSARILY SUGGESTIVE PROCEDURES USED IN THE IDENTIFICATION PROCESS; THAT DEFENSE

COUNSEL WAS NOT PRESENT DURING THE POSTINDICTMENT IDENTIFICATION PROCEDURES; THAT INADMISSIBLE EVIDENCE (A JACKET, AND COAT) WAS BEING USED AT TRIAL; THAT THE JUDGE OF THE PRELIMINARY HEARING INDICATED THAT THE JACKET AND COAT USED AS EVIDENCE WERE NOT MATCHING "SWEAT SUITS" WORN BY THE PERPETRATORS; THAT I WORE BLUE JEANS AND A GREEN SHIRT WHEN I WAS SIGHTED, MINUTES AFTER THE INCIDENT, AT THE TIME OF MY ARREST, AND IN THE MEDIA; REFUSED TO DISCLOSE A STORE VIDEO THAT THE STATE POSSESSED THAT SHOWED APPELLANT MINUTES AFTER THE CRIME WAS COMMITTED, AT THE TRIAL. SEE RAY V. RAY 374 S.C. 79, 90, 697 S.E.2D 237, 247 (2007); EVANS V. GUNTER, 294 S.C. 525, 529, 336 S.E.2D 44, 46 (1988); GRANLEY V. MILLS, 87 F.2D 779, 790 (6TH CIR. 1996); JOHN V. LOVE, 76 F.3D 508, 510 (3D CIR. 1996); §§ 16-5-10, 17-25-45 OF THE S.C. CODE; AND R. 3, AND R. 60(B) OF THE S.C.R.P.

INEFFECTIVE ASSISTANCE OF COUNSEL

IN THIS MERITORIOUS ISSUE, I INDICATED HOW COUNSEL ASSISTED THE STATE IN SECURING MY CONVICTION EVEN THOUGH ALL EVIDENCE POINTED OUT THAT I SHOULD HAVE ONLY BEEN CONVICTED FOR THE "POSSESSION OF STOLEN PROPERTY."

COUNSEL FAILED TO OBJECT TO PERJURY STATEMENT(S)

BY THE STATE, INCLUDING ONE (1) "THAT THE NOTICE REQUIREMENTS WERE MET IN THE STATE'S INTENT TO SEEK THE SENTENCE OF LIFE WITHOUT PAROLE"; MADE PERJURY STATEMENTS INCLUDING ONE (1) THAT "THE NOTICE REQUIREMENTS WERE MET IN THE STATE'S INTENT TO SEEK THE SENTENCE OF LIFE WITHOUT PAROLE; USED INFLUENCE ON STATE'S WITNESSES TO HELP STATE OBTAIN THE CONVICTIONS; KNEW INDICTMENTS WERE FRAUDULENT; FAILED TO OBJECT TO, AND THEN UPHELD THE IDENTIFICATION PROCEDURE USED BY THE INVESTIGATING OFFICER; FAILED TO PRESENT EXCULPATORY EVIDENCE TO SHOW APPELLANT'S INNOCENCE, AND RELIED ON THE FRAUDULENT EVIDENCE BY THE STATE, INCLUDING THE STORE VIDEO; MISREPRESENTED PLEA, AND FACTS PER TO THE CASE; FAILED TO GIVE EFFICIENT ADVICE, TO KEEP ME FROM TAKING THE STAND AT TRIAL, AFTER I REFUSED TO APPEAL THE OFFENSE OF ARMED ROBBERY. SEE STRICKLANDS V. WASHINGTON, 466 US 668, 687-88, 689 (1984); 5TH, 6TH, AND 14TH AMENDMENT OF THE U.S. CONSTITUTION; ARTICLE I, §§ 3, 11, 14, AND 15 OF THE S.C. CONSTITUTION; §§ 16-5-10, AND 17-25-45 OF THE S.C. CODE; R. 3 OF THE SCRCP; RAY V. RAY, 374 SC 79, 90, 647 SE2D 237, 242 (2007); EVANS V. GUNTER, 294 SC 525, 529, 366 SE2D 44, 46.

THERE IS NO STATUTORY BAR TO RAISING AN ACTU-

AL INNOCENCE CLAIM, SINCE THE CONVICTION OF AN ACTUALLY INNOCENT DEFENDANT'S UNCONSTITUTIONAL, AND MAY BE CHALLENGED AT ANY TIME. THE SOUTH CAROLINA POST-CONVICTION RELIEF RULES CAN NOT BE APPLIED. IF APPELLANT WAS DIMINISHED IN ANY MANNER, THE STANDARD SET IN MURRAY V. CARRIER, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986) REQUIRES A POST CONVICTION PETITIONER TO SHOW THAT "A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE (1) WHO IS ACTUALLY INNOCENT."

THE MURRAY STANDARD STATED IN SAWYER V. WHITLEY, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269, 60 L.S.L.W. 4655 (1992) GOVERNS A MISCARRIAGE OF JUSTICE INQUIRY WHEN THE PETITIONER RAISES A CLAIM OF ACTUAL INNOCENCE TO AVOID A PROCEDURAL BAR TO THE MERITS OF HIS CONSTITUTIONAL CLAIM. THE SOCIETAL INTERESTS IN FINALITY - CONITY AND CONSERVATION OF SCARCE JUDICIAL RESOURCES ALL DICTATE THAT A POST CONVICTION COURT MAY NOT ORDINARILY REACH THE MERITS OF SUCCESSIVE CLAIMS, ABSENT A SHOWING OF CAUSE AND PREJUDICE. HOWEVER, A COLLATERAL COURT MUST ADJUDGE EVEN A SUCCESSIVE CLAIM WHEN REQUIRED TO DO SO BY THE

ENDS OF JUSTICE.


THUS, IN A TRIO OF CASES, THE U.S. SUPREME COURT FIRMLY ESTABLISHED AN EXCEPTION FOR FUNDAMENTAL MISCARRIAGES OF JUSTICE. *CARRIER*, 477 US AT 495, *KUHLMANN V. WILSON* 477 US 436, 452, 106 S.Ct. 2666, —, 91 LEd2d 367 (1986); *SMITH V. MURRAY* 477 US 527, 106 S.Ct. 2661, 91 LEd2d 434 (1986). IN ORDER TO ENSURE THAT THE FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION WOULD REMAIN "RARE" AND BE APPLIED ONLY IN THE "EXTRAORDINARY CASE", WHILE SIMULTANEOUSLY ENSURING THAT RELIEF WOULD BE EXTENDED TO THOSE WHO ARE TRULY DESERVING, THE SUPREME COURT HAS EXPLICITLY TIED THE EXCEPTION TO THE PETITIONER'S INNOCENCE. THE COURT IN *CARRIER* AND *KUHLMANN* ALSO EXPRESSED THE STANDARDS OF PROOF THAT GOVERNS CONSIDERATION OF SUCH CLAIMS. THAT IS, THE PETITIONER MUST SHOW THAT THE CONSTITUTIONAL ERROR "PROBABLY" RESULTED IN THE CONVICTION OF ONE (1) WHO WAS ACTUALLY INNOCENT.

THIS IS A PRO SE APPEAL OF A PRO SE PCR APPLICATION. THE ONLY REASON THE SECOND PCR APPLICATION EXISTS IS BECAUSE OF THE NEGLIGENT DEFICIENCY OF THE FIRST PCR COUNSEL.

THEREFORE, BECAUSE OF THE AFFOREMENTIONED, I SHOULD BE ALLOWED TO APPEAL THE DECISION OF THE LOWER COURT PURSUANT TO RULE 243(c) OF THE SCACR, AND THE MERITS IN THE APPLICATION SHOULD BE HEARD.

TRULY,

DECEMBER 5, 2018.


JAMES R. BRAUNER
386 REDEMPTION WAY
McCORMICK, SC 29869

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AG
AT
SOL
GS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

James Brawner, #249198,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-6302

FINAL ORDER OF DISMISSAL

FILED
2018 OCT 23 PM 4:22
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 11, 2016. Respondent made its return on September 26, 2017, requesting the application be summarily dismissed based upon no genuine issues of material fact, untimeliness, and successiveness.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed October 17, 2017, and filed October 23, 2017, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 30, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

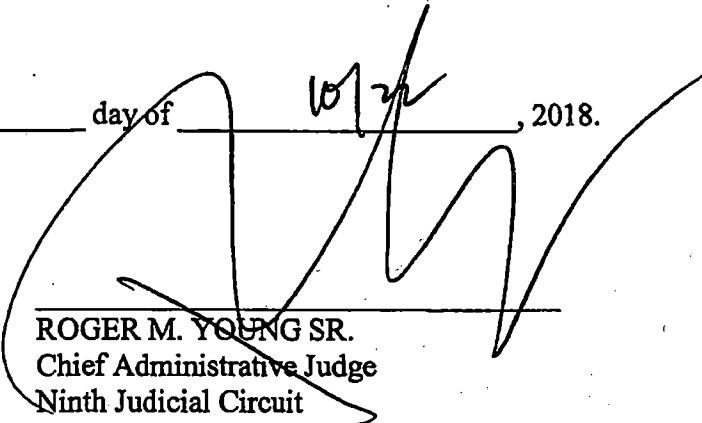
On February 7, 2018, Applicant filed a document entitled "Appellant's Reply to State's Response to PCR Application". In this response, he argued that "this application is an exception

to the ordinary rules of statutory law because of the unlawfulness in his conviction, sentence, and appeal process up to this point.”

After review of Applicant’s response to the Conditional Order of Dismissal, along with the pleadings, this Court finds that Applicant has failed to show that his application should not be dismissed. Applicant has failed to provide any legal explanation that would allow him to bypass the statute of limitations.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court’s Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this _____ day of 10/24, 2018.



ROGER M. YOUNG SR.
Chief Administrative Judge
Ninth Judicial Circuit



_____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JAMES BRAWNER, #249198

Applicant,

v.

STATE OF SOUTH CAROLINA

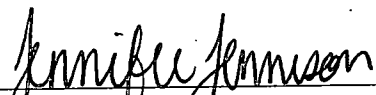
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

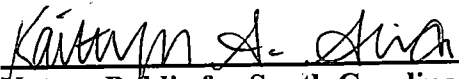
**James Brawner, #249198 (B-0011-A)
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899**

This 31st day of October, 2018.



Jennifer Jannison
Legal Assistant for the Respondent

SWORN to before me this 31st day of October, 2018.



Notary Public for South Carolina.
My Commission Expires: 10/1/2025

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

ROGER M. YOUNG, SR., CIRCUIT COURT JUDGE

CASE No. 2016-CP-10-6302

STATE OF SOUTH CAROLINA,

RESPONDANT,

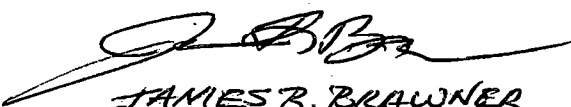
v.

JAMES R. BRAUNER, 249188,

APPELLANT.

PROOF OF SERVICE

I CERTIFY THAT THE NOTICE OF APPEAL IS
BEING SERVED ON THE SUPREME COURT OF S.C.
ADDRESSED AS MR. DANIEL E. SHEAROUSE, CLERK,
P.O. BOX 11330, COLUMBIA, S.C. 29211 ON THIS
5TH DAY OF DECEMBER, 2018.


JAMES R. BRAUNER
386 REDEMPTION WAY
MCDORMICK, S.C. 29899

