

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Joseph H. Gibbs, #185709 vs Mr. Donnie Stonebreaker; Warden
Appellant & State of South Carolina
Respondent

Case # 2012-CP-27-0691 (Habeas Corpus)

LETTER ON APPEAL:

I, the appellant respectfully files this appeal with (NOA) pursuant to Rule 203(1)(B)(vi) SCRAP; From the Orders of Summary Dismissal on Procedure, received by me on December/7/2018 & July/17/2018; By the Honorable, Carmen T. Mullen, Chief Administrative Judge, 14th Cir, "attached".

1. By certificate of Service dated 12/3/18, (attached) the order denying Rule 52 & 59 motion, signed 8/27/18, filed 9/10/18, was served on me 12/7/18, from order dated 6/27/18, filed 7/6/18, received by me on 7/17/18: denying Habeas Corpus filed 11/7/2012, after a letter of inquiry was sent on further delay or response. Numerous letters, complaints, and proposed order was filed by me on the inordinate delay to petition for habeas corpus (HC.691) (attached).

ISSUES / Argument

2. WHETHER THE ORDERS ON APPEAL VIOLATE THE AUTHORITY OF CIRCUIT JUDGES TO RESTORE LIBERTY ON HABEAS CORPUS BY STATUTE AND CONSTITUTION; WHEN PCR WAS SHOWN TO BE UNAVAILABLE AND INADEQUATE; AND THE MERITS OF THE ISSUES WARRANT IMMEDIATE VACATION OF THE CONVICTION; AND RENDERS THE JUDICIAL BRANCE IN VIOLATION OF THE SEPERATION OF POWERS SC.CONST. ART 1 §8, AND PROMOTES AN INADEQUATE STATE REMEDIE, CONTRARY AND CAPRICIOUS TO §17-25-10, §§17-17-10--200, AS DETERMINED BY THE LEGISLATIVE BRANCH; AND VIOLATES MY DUE PROCESS AND EQUAL PROTECTION OF SC & US CONST, AND THE ORDERS WERE ARBITRARY AND GHOST WRITTEN ?

3. I submit and argue that the orders denying (HC.691) and motion to alter & amend judgment is in error of law and fact, and the issues are preserved for this courts jurisdiction; and further

12-17-18|eci/jhg

causes a miscarriage of justice by any american sense of justice; And as shown in the pleadings and record, the merits were proper before the court; as the prior cases and orders were not a full and fair finding of fact and law for the purpose of res judica or estoppel, or other procedural default; and since the pleadings showed PCR inadequate, and Counsel for state did not produce any contrary order or record; the releif sought was within jurisdiction of the circuit court, by law of §§17-17-10,30. Id Motion Rule 52,59 SCRPC (attached) and Proposed order.

4. PCR and Direct appeal, was not, nor now is an issue for appeal, although counsels proposed orders signed by the judge inferred such; by law and rule only a showing of unavailability or inadequate is necessary. Unlike PCR which is an independent cause of action, Rule 71 SCRPC, and preponderance of evidence is the standard by statute, In Simmons v State 215 SE 2d 883(1975) the court decreed that only eneffective counsel can be had on PCR, contrary to §17-27-20(1-6) id dissent of justice Ness. Ineffective counsel is judicated under Strickland, and §17-27-20 did not suspend state habeas; but was emphatic to 28-USC-2254, and the fed courts have held that barred PCR is not proper on Fed/Habeas. As I pointed out in (HC.691) P.2 6.>--P.5 "exhaustion of PCR Remedies" and as determined by this court at P.5 7.> PCR was unavailable (however the order on appeal then was not even filed until 6/28/99, and was signed by judge Beaty as administrative judge 14'th cir, when Judge Smoke was same, and then (ROA # 9032) did not contain order clocked and file stamped by clerk of court.) That order did not address state law or merits of legal and constitutional issues, and although this court stted in the order 2000-UP-503 that appeal from PCR was not had; It was but no order was received until one year after.

5. The PCR order 94-cp-27-309, did not address all issues raised in the pleading, and was contrary to fact and law. Unlike Simpson, Gibson, or Keeler and other cases relied on in the order, the issues here were raised, but either were not adjudicated, or an incomplete and biased finding of fact was made, and did not support the conclusion of law. Certiorari is only discretionary and the

Supreme court did not grant same too review the lower court order, and this dose not forclose Habeas in state court. In Keeler 500 SE 2d 123, the S.Ct held that the issue presented was held unconstitutional, but was not presented on PCR, and in Yates 484 US 211 @ 218, and Justice Toal at 108 S.Ct 534 held that SC must abide by fed law. The issues raised were of such violations, yet the judicial branch has chosen to ignore the pleading on issues raised, and allow the Excutive branch to maintain an unlawfull and unconstitutional conviction, as these orders continue.

6. As shown in (HC.691) at P.2, 4.> a **direct appeal** was filed under Anders not even raising preserved issues, [of insufficient evidence], and even though I filed a petition to perfect the appeal, and Required [letter to Anders] pro se, see PCR transcripts, this was never ruled on, and the whole record was not filed before the court, to exclude any indictments or warrants, or motions; and instead of sending same back to counsel for completion pursuant to Anders, they just "DISMISSED" the appeal on counsels motion. I raised this in the PCR, yet no White V State ruling was had, and counsel did not appear at court for witness. On the Certiorari on PCR, counsels (ROA) contained no indictments or warrants, and excluded P.5A of the trial transcripts on jury selection, or jury poll, and left out preserved issues argued, contrary to Johnson & Anders. I filed a pro se brief and addendum with pro se appendix.

7. In 98-cp-27-198 id at (HC.691) p.7, 10.> as shown, the order dismissing same did not even address the habeas corpus petition, [only] the Rule 65(f) SCRCP civil suite construed into a personal capacity Tort claim, that they removed to US District court, and same was remanded. I filed an appeal, but the respondents would not allow sufficient copies, [Rules 210,211,267 SCRCP] or ability to comply with this court filing requirements for lawyers, so the Clerk of Court dismissed the case; as the ROA would have been several thousand copies. [since the habeas and other motions were not adjudicated, rule 56(d) I filed a rule 7 motion to hear the entire case. answered but no orders or hearing]. The merits were not adjudicated, and res judica or estoppel not

preserved for state.

8. I have filed petition for original jurisdiction id p.6, 8.> yet the S.Ct did not grant the motion for original jurisdiction, and thus did not give cause for the states arguments or the courts holding on default or any preclusion or estoppel.

9. I argued in the motion to alter and amend that the Order denying (HC.691) was ghost written, as it made factual errors, that would not have been made if the judge had actually reviewed the Pleadings or Record; and in doing so made an error of law, and miss applied case law it relied on, and the court did not make a fair and unbiased **prima facie** review, Anderson 470 US @ 572, Colony Square 819 F.2d 272 (11't Cir), Jefferson V Zant 263 Ga. 316, 317. If the evidence and record is reviewed by the lower court, then the court would have jurisdiction.

10. Even though the (HC.691) was filed under **nunc pro tunc** id Blacks law dict 10 ed, and 9-ALR-3d 462, Ex Parte Strom 343 SC 257 (2000); the court did not adjudicate this in either order.

11. I pointed out factual errors in my Rule 52,59 motion, yet these were not corrected.

12. The courts have allowed the Executive branch to write orders for the court, to include present orders and PCR order, and the courts have signed them contrary to fact and law, and have thus violated the purpose and intent of habeas corpus. On PCR even if the conviction is vacated, it is remanded to prosecutor for executive branch. But on habeas, when it is shown that liberty was taken contrary to constitution and law, it is immediately restored. The executive branch, supported by the judicial branch practices the effect that a mans liberty can be taken under infraction of law, but it cannot be restore, even when the language of law, and case law demand otherwise.

13. As shown in the above, and pleadings, as well as record to include trial and pcr transcripts the courts orders is in serious error, and the court has jurisdiction under §§17-17-10,30 and SC Const Art 5 §11, §20 (1895 revised 2009), and by **Title 14** Sc Statute

the circuit court dose have jurisdiction, and §Rule 41(b) SCRCP should not have been applied.

14. As shown in the pleadings, and lack of support by orders, the state waived summary dismissal, as they waited from 2012 until 2018 to move for summary judgment, and then did not answer the issues or argument, but merely filed a proposed order, and thus violated Rule 12, 56 SCRCP, which was arbitrary and capricious expectation that the court would grant any proposed order in which they did.

15. At trial I Was not indicted and the court lacked jurisdiction, as the record shows, and I attached **App.1 & 2** too the Rule 52 & 59 SCRCP motion, and I was denied witnesses to rebut states claim, I was denied a fair and impartial trial or pre trial procedure to include Arraingment, bond Hearing, Evaluation, or any hearing before any judge, and I plead justification,² yet my plea of constitutional rights was turned into a evidence of guilt and the jury was only allowed to consider whether I killed Mr. Brown on unconstitutional charges of law by court and prosecutor; Yet a collusion by judicial and excutive branches have sought to cover the conviction up, on abuse of summary judgments. This renders the prior court actions inadequate and arbitrary.

16. Even though I raised the issue of no, or untimely indictments at PCR, [presentment dated 3/9/92, trial 3/10/92, i never seen same until 1994, and had no notice], the states attorney stated "they did not know when I was indicted", and the court did lack jurisdiction, yet none of this was in the order, and the state stated that Trial Errors, Denial of Due Process, Prosecutorial Misconduct, Unconstitutional Suppression of Evidence, raised in the petition with specific fact and allegation was not allowed on PCR, and the judge agreed overuling my objection on the stand. Ineffective appellant counsel was raised, but counsel was not presented, and order ruled in favor of state. PCR dose not preclude Habeas in this case.

CONCLUSION:

17. I pray that this court, based on the above, and record of pleading, will reverse the lower court orders and remand for a hearing or adjudication on the merits of the legal and constitutional issues; and will find that the PCR process was inadequate and is unavailable, as with prior court actions in this case; or other as this court deems just.

December/17th/2018.

Rule 11 SCRC®

CC:
Mr. Christian Saville, esq
Office of: SC. Attorney general
PO. Box 11549
Columbia SC. 29211-1549
Ph # 803-734-3970
Counsel for Respondent

Respectfully

/s/ Joseph H. Gibbs
Joseph Hugo Gibbs
ECI, F-4-A-282
610 Hwy 9 West
Bennettsville SC. 29512

ph # 843-479-4181
Appellant Pro Se

- 2 Even at parole hearings, I am denied on political popularity, and retried without due process, contrary to the evidence, which is arbitrary and capricious.

eci/jhg

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

TO: Honorable; Clerk Of Court
1015 Sumter St.
PO. Box 11529
Columbia SC. 29211

December/17/2018

RE: Joseph H. Gibbs, #185709 Vs Donnie Stonebreaker, Warden
ECI, F4-A-282 & State of South Carolina
610 Hwy 9 West
Bennettsville SC. 29512 (Case # 2012-CP-27-0691)
Ph 843-479-4181 Habeas Corpus

Court,

Please find enclosed for filing in the above case my;

1. Letter of Appeal, Rule 203(1)(B)(vi) SCRAP, original
2. notice of Appeal, original
3. Order received by me on 12/7/2018
4. certificate of Service, dated 12/3/18
5. Order received by me on 7/17/18.
6. Motion to Alter & Amend Judgment w/ appendix 1 & 2
7. Petition for Habeas Corpus in above case.
7. Filing letter and Proof Of Service.

I am uncertain if anything needs to be filed, for the courts review. Please let me know.

If the court grants the appeal, please appoint counsel, because I am an inmate, I do not have access to resources for filing requirements.

Sincerely

Joseph H. Gibbs
Joseph H. Gibbs

PROOF OF SERVICE:

I, the above named, and below signed appellant, certifies that I have on the day, served one true copy of, Letter on appeal, Notice of appeal, Orders received 12/7/18 & 7/17/18 on appeal, Certificate of Service dated 12/3/18, Motion to Alter & Amend w/appendix 1 & 2, Petition for habeas corpus, and filing letter; on Mr. Christian Saville as addressed below, by depositing same in Evans Mailroom postage prepaid and proper.

This day of/ 19th/2018 December:

Rule 11 SCRPC

Mr. Christian Saville

Office of; SC Attorney General
PO. Box 11549
Columbia SC. 29211-1549
Ph 803-734-3970

Counsel for Respondent

Appellant Pro Se

Joseph H. Gibbs
Joseph H. Gibbs