

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable Paul M. Burch Circuit Court Judge

Robert J. Phipps

Petitioner

vs.

State of South Carolina,

Respondent.

Pro-se response to petition filed
Case No. 2018-001548

Robert J. Phipps
Pro-se Petitioner

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S.C. SUPREME COURT

Robert J. Phipps
Petitioner,
VS.
State of South Carolina,
Respondent.

The Supreme Court
of South Carolina
Case # 2018-001548
Pro-se response to
Petition Filed.

COMES NOW, the petitioner in the above captioned matter, Mr. Robert J. Phipps, # 334249 the pro-se self-represented prisoner, will at this time, timely file specific written response to the petition for writ of certiorari to the Supreme Court of South Carolina.

Petitioner will also respectfully submit an Memorandum of law in support of his petition. Petitioner received notice of submitted petition on February 6, 2019, institution mail.

Petitioner contends that the (PCR) post-conviction relief court failed to see the improprieties in his case, enough to create doubt in the minds of an reasonable juror.

Accordingly this court should find that, this is one of those rare cases where the petitioner has presented evidence so strong that this court cannot have confidence in the outcome of his trial.

Petitioner, believes through the issues presented, statements of facts and citations of authorities relived on he will show unto this Honorable Supreme Court of South Carolina his entitlement to the relief of, vacate the conviction and sentences with prejudice, and in the alternative correction of the sentences.

This 28th day of February 2019

Respectfully Submitted
Robert J. Phipps
Robert J. Phipps,
pro-se petitioner

This Case Involves a Legal Questions

Can the State of South Carolina maintain a conviction that resulted from an illegal procedures of due-process?

When a legislative enactment limits the manner in which the state may bring cases to trial, or which something may be done, the enactment also evinces the intent that it shall not be done another way.

Thus, since the court utilized an unlawful mode of procedure not allowed under state or Federal law, to bring petitioner to trial that resorted in petitioner not having a fair trial, and his trial counsel not being prepared invalid proceedings should come into play.

The intent of the legislature is to give the defendant time to prepare for a case prior to going to trial under no exceptions can the state prosecutor destroy evidence in bad faith.

This court should be persuaded by reasoning and find that a trial's fairness is compromised when the state/prosecutor fails to meet the bright line of the laws of this state of South Carolina that of in State v. Langford (2012).

There are principles rooted in due-process and the best belief that justice is best served when a trial is fundamentally fair, see Brecht v. Abrahamson, 507 U.S. 619, 113 S. Ct. 1710, 1717, 123 L. Ed. 2d. 353, 367 (1993). Also see → Wainwright v. Greenfield, 474 U.S. 284, 291, 106 S. Ct. 634, 638, 88 L. Ed. 2d. 623, 630 (1986). Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d. 494 (1966).

"This case involves a Constitutional issue of Statewide Importance!"

The conduct described in this/petitioner's case is of statewide importance, it raise serious concern amongst every case in the State of South Carolina, when the State/prosecutor destroys evidence, the [911-Call] in the matter as they did in this/petitioner's case.

Petitioner asserts that, and alleges he has been imprisoned in violation of his right to due-process because the prosecution/authorities concealed evidence, and more generally, engaged in a pattern of non-disclosure and deception during the prosecution and bring petitioner's case to trial.

Petitioner further alleges that his trial Counsel rendered Constitutionally ineffective assistance of counsel by failing to investigate the evidence in question, failing to present an alternate theory of the crime at trial.

The solicitor's actions seriously impaired the petitioner's right to a fair trial, calling petitioner's case to trial, with trial Counsel not being prepared ~~was~~ and without the [911-Call] was a causative factor in petitioner's case, and Petitioner place heavy reliance on its prejudice infect, as to make the resulting conviction a denial of due-process, and a issue of statewide Importance.

Adversarial Challenge

In making this assertion, petitioner relies on Nance v. Ozmint, 367 S.C. 547, 626 S.E. 2d 878 (2006), holding that prejudice was presumed where the state had "no-DNA" NO-immediate physical evidence... NO-Fibers, NO-Hair, that petitioner ~~is~~ has lost his liberty on a life sentence for the evidence of one-fingerprint on a beer-can. "Circumstantial evidence".

Where is the due-process i.e. Fundamental fairness.

Although this is an extremely high level of showing of prejudice, and the record support that trial counsel entirely failed to subject the prosecutor's case to a meaningful adversarial testing see Nance, 367 S.C. at 551 and citing United States v. Cronie, 466 U.S. 648, 659 (1984).

In fact, the United States Supreme Court has held that presumed prejudice as outlined by Cronie is reserved for cases in which counsel fails to meaningfully oppose the state's/prosecution's case see → Florida v. Nixon, 542 U.S. 175, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004).

Clarifying Cronie and the presumption of prejudice.

"Mere Presence"

Did the trial court error in not giving the mere-presence instruction to the jury?

In petitioner's case trial counsel motioned for the mere presence charge. See → State v Kimbrell, 362 S. E. 2d 630 (1987).

In this case if the trial court would have instructed the jury on the mere presence charges for that determination requires careful attention to the words actually spoken to the jury - depends upon the way in which a reasonable juror could have interpreted the instruction.

The state only presented and established mere presence in petitioner's case. With the absent of the other elements of the charge of "Murder". It was incumbent on the trial court to give the mere-presence charge to the jury.

With the jury not having this knowledge of the mere-presence charge, the trial court, created a mandatory presumption and impermissibly shifted the burden of proof to the defense. This is a violation of the due-process clause of the (14) fourteenth amendment.

Acquittal

Notwithstanding the highly deferential appeal standard, this court should find that petitioner is entitled to relief from this court. If this would review the voluminous record in this case, this court should at most be disturbed by the miscarriage of justice that occurred in this case and find that petitioner's trial and case is an example of an extreme malfunction in the State Criminal Justice System see → Harrington 131 S. Ct. at 786 and quoting Jackson vs. Virginia, 443 U.S. 307, 332 n.5 (1979).

That the evidence of the 911-tape/CD is material, not cumulative and that admission of the evidence would probably lead to an acquittal, see → United States vs. Alessi, 638 F. 2d 466, 479 2d Cir. (1980) Fed. R. Crim p. 33.

This case is also showing that a refusal to entertain his claims in the court of appeals would result in a fundamental miscarriage of justice.

Petitioner is not bringing new evidence just evidence that was not presented at his trial, that could change the outcome of his trial.

Relevant Legal Standards

Cherry v. State, 300 S.C. 115, 119, 386 S.E. 2d 624, 626 (1989) applying the "any evidence standard of review to P.C.R. actions, Stevenson v. State, 337 S.C. 23, 26 522 S.E. 2d 343, 344 (1999), recognizing that the (6th) Sixth Amendment guarantees the right to Counsel for criminal defendants. Nance v. Ozmint, 367 S.C. 547, 552, 626 S.E. 2d 878, 880 (2006) observing that prejudice is presumed when an accused is denied counsel at a critical stage.

Counsel's purported lack of preparation regarding the handling of the evidence (911-tape/CD) discovery material and the P.C.R. court erred in finding otherwise.

The state/respondent had the underlying (911-tape) when the petitioner/counsel requested the evidence /tape/CD, so the defendant could show his version of events. The state acknowledges that the (CD/tape-911-call) would have helped the defense immensely, and in the P.C.R. court. Without the CD/tape, trial counsel has failure to adequately evaluate and challenge the state's testimony.

Conclusion

WHEREFORE, Petitioner having made the response to the petition filed in the Supreme Court of South Carolina, case No. 2018-001548 pro-se petition, that the factual allegations set forth in this petition is sufficient to raise a right to relief, above the speculative level to the relevant portion thereof, By protecting the defendants right to a fair trial, with all of the trial court's errors, P.C.R. Court's errors and the several Constitutional violations, that the conviction accompanied by such events, do not meet any civilized conception of due-process of the law. That alone is sufficient to vacate the conviction and sentence at this time, and remand this case back to Spartanburg County for a new trial in the alternative for resentencing.

Respectfully Submitted

Robert Phipps

Robert J. Phipps
pro-se / petitioner

This 28th day of February 2019

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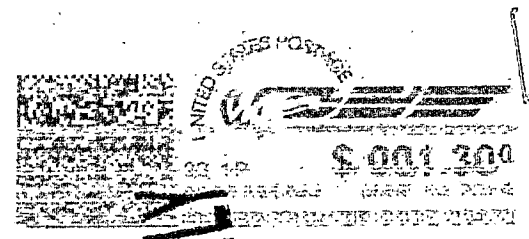
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S.C. SUPREME COURT

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