

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2012-213222

CASE NO. 2003-GS-22-1030&1031

The State of South Carolina, Respondents.

V.

Jody Lynn Ward, #300644, Appellant.

[FINAL] BRIEF OF APPELLANT

Jody Lynn Ward, #300644
Lieber Corr. Inst. E-B-29
P.O. BOX 205
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Appellant Pro Se

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STATEMENT OF ISSUE ON APPEAL

1.) Whether the court erred by denying appellant's Motion For New Trial based on After Discovered Evidence S.C.Crim.R 29(b), Motion For Appointment Of Counsel, And Motion For Private Investigative, And expert Funds/Expenses, Under Due Process And Equal Protection Of Law, U.S. Const. Amend. XIV §1, And Ake V. Oklahoma, 470 U.S. 68 (1985)?

2.) Whether the court erred by denying appellant's Motion For Reconsideration, And Motion To Arrest of Judgment Of Order denying Motion For New Trial, In a violation of Due Process And Equal Protection of Law, U.S. Const. Amend. XIV §1, And in a violation of Ake V. Oklahoma, 470 U.S. 68 (1985) Since appellant Is a Mental Health Patient, And IT being a Conflict of Interest Within the Clerk of Court's Office, and since the Lieber Mailroom held the Affidavit Of Rondie J. Ward that Clearly supported the Motion For New Trial?

3.) Whether the court erred by denying Motion For New Trial, based on After Discovered Evidence S.C.R.Crim.P Rule 29(b); Motion For Appointment Of Counsel; Motion For Private Investigative and expert Funds/Expenses; Motion For Reconsideration And Motion To Arrest of Judgment that resulted in an abuse of discretion amounting to an error of Law? ;as the abuse of discretion is both error of the rulings and resulting prejudice as well as denial of access of courts just because Appellant is an indigent status and pro se litigant for clerk to misabuse there authority ,and correctional mailroom to hold affidavit?

STATEMENT OF ISSUES ON APPEAL

4.) WHETHER THE COURT ABUSED ITS DISCRETION AMOUNTING TO AN ERROR OF LAW: BY FAILING TO GRANT AN EVIDENTIARY HEARING WHICH AMOUNTED TO A DEPRIVATION OF LEGAL RIGHTS OF APPELLANT, BY DENYING HIM FULL ACCESS TO THE COURTS JUST BECAUSE HE IS AN INDIGENT PRO SE LITIGANT, AND MENTAL HEALTH PATIENT, THE RULING WAS AN ERROR AND APPELLANT WAS/DID RESULT IN PREJUDICE TO DENYING MOTION FOR NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.Crim.P. 29 (b), MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR INVESTIGATIVE, AND EXPERT FUNDS/EXPENSES, UNDER DUE PROCESS AND EQUAL PROTECTION OF LAW, U.S. CONST. AMEND. XIV §1, IS FOR ALL?

5.) WHETHER APPELLANTS DUE PROCESS AND EQUAL PROTECTION WAS VIOLATED BY COURT DENYING APPELLANTS MOTION FOR NEW TRIAL, MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR PRIVATE INVESTIGATIVE, AND EXPERT EXPENSES, WHICH RESULTED IN AN ABUSE OF DISCRETION AND APPELLANT WAS THEREBY PREJUDICE BECAUSE IT WAS CLEAR AND CONVINCING EVIDENCE THAT WAS SUBMITTED TO SUPPORT AN EVIDENTIARY HEARING, AND MOTION FOR NEW TRIAL BECAUSE THE AFFIDAVITS OF APPELLANT, LETTER MICHAEL ABNER, AND SWORN AFFIDAVIT OF RONDIE J. WARD, AND AFFIDAVIT OF ASHTON WARD SUPPORTED NEW TRIAL MOTION U.S CONST. AMEND. XIV §1, IS FOR ALL?

6.) WHETHER THE COURT ABUSED ITS DISCRETION BY DENYING APPELLANT MOTION FOR RECONSIDERATION, AND ARREST OF JUDGMENT, DUE TO CONFLICT OF INTEREST WITHIN CLERK OF COURT AND A DENIAL OF ACCESS OF COURT DUE TO INDIGENT MENTAL HEALTH PATIENT WHO CANNOT AFFORD LEGAL COUNSEL AND AFFIDAVIT OF RONDIE J. WARD BEING DENIED TO FILE THAT SAYS "MICHAEL ABNER DID TELL ME THAT HE PAID THEM BOYS TO KILL JODY,"?

STATEMENT OF THE CASE

Appellant (Jody Lynn Ward) was indicted in July 2003 in Georgetown County for the alleged murders of Wilford Brown and Elton Rutledge, Jr.

Appellant proceeded to trial by a jury and Judge on March 15-18, 2004. The Jury ultimately convicted Appellant as indicted and the Honorable Paula H. Thomas sentenced Appellant to two-2 concurrent life sentences. A timely notice of appeal was filed and the appeal was reviewed pursuant to Anders v. California in which the Court of Appeals affirmed the sentences and convictions January 26, 2007 (2007-UP-048). A timely rehearing was filed and rehearing was denied March 22, 2007. Subsequently thereafter Appellant filed a Petition For Writ Of Certiorari. The Petition for certiorari was withdrawn by Appellant June 29, 2007 and the remittitur was thereafter handed down to the circuit court. Appellant filed his first application for post conviction relief ("PCR") July 11, 2007. An evidentiary hearing was convened May 1, 2008. By way of Written Order the Honorable Judge Steven John denied the application.

On May 27, 2008, Appellant submitted a timely Rule 59 (e), SCRPC, Motion to alter/amend judgment. August 6, 2008, Judge John denied the rule 59 (e) motion. A timely notice of appeal was filed and appellant filed for writ of certiorari August 20, 2009, and the remittitur was handed down September 8, 2009.

Appellant filed his second pcr application July 13, 2009 based on "New Rule" of Law, while his first pcr was currently being reviewed on certiorari. Respondent made a Return and Motion to dismiss. A conditional Order Of Dismissal was issued and appellant

made his timely opposition to the dispositive pleading. January 13, 2010 a Final Order was issued granting the respondents motion to dismiss. A timely notice of appeal was filed in the lower court that was ultimately denied and dismissed. The remittitur was handed down about April 1, 2010.

Appellant filed a third pcr application May 4, 2010 based on a New Rule of law. The respondent filed a return and motion to dismiss June 1, 2010. Appellant lodged a timely opposition to the respondent's dispositive pleading June 14, 2010. A conditional order was issued and Appellant lodged a timely opposition to the conditional order. A final order was issued granting the respondent's motion on July 20, 2010. A timely notice of appeal was filed, accompanied with a pro-se petition August 18, 2010. Appellant filed a reply brief, certiorari was ultimately denied August 18, 2011.

Appellant filed a notice of petition for original jurisdiction petition for writ of habeas corpus in South Carolina Supreme court on October 31, 2011. It was ultimately denied on November 16, 2011; to fully exhaust all state remedies. Appellant files a motion for a new trial based on after-discovered evidence on May, 7, 2012. On July 23, 2012 Rondie J. Ward, Appellants uncle went to the Georgetown County Clerk Of Court To file an affidavit that clearly supported the motion for new trial and paid .50¢ and Clerk Ms. Jennifer M. Lawrence Notarized the affidavit but failed to file it. My uncle Rondie J. ward went and mailed me a copy of the affidavit and the Lieber correctional Institution mailroom held the affidavit due to the contents had to be reviewed and Appellant filed an EMERGENCY STEP 1 GRIEVANCE to get the affidavit,

and while Appellant was waited to get the affidavit approved to be released the Court issued an Order Denying Motion For New Trial, motion for appointment of counsel, and motion for expenses on July 31, 2012. Appellant filed a timely notice of appeal dated August 6, 2012. And on August 7, 2012 the appellant filed a motion for reconsideration and/or motion to reconsider order/judgment denying motion for new trial; motion for appointment of counsel and motion for investigative & expert expenses, and while this motion was pending On August 30, 2012 Appellant filed Motion to Arrest of judgment/order denying motion for new trial, motion for appointment of counsel and motion for expenses for expert witness after the discovery of Ms. Jennifer M. Lawrence Georgetown County Clerk of court employee had signed a petition to have Appellants Third Bond hearing denied dated back to September 22, 2002. On September 25, 2012 the Honorable Benjamin H. Culbertson issued an Order Denying motion to arrest judgment. On September 28, 2012 Appellant wrote to the Georgetown County Clerk's office for the disposition of the motion for reconsideration that was still pending and the Clerk mailed to me On October 3, 2012 order denying arrest of judgment. On October 4, 2012 Appellant files his timely Notice of Appeal with attached orders. This appeal Follows:

ARGUMENT

The Appellant presented After-Discovered Evidence that clearly supported a Motion for New Trial based on After-Discovered Evidence, Appellant submitted a Sworn Affidavit, Sworn Affidavit of Rondie J. Ward, Sworn Affidavit of Ashton J. Ward, and a letter written to his mother from serial killer Michael Abner, Appellant was convicted by jury for two (2) alleged murders that the newly Evidence clearly refute, and since Appellants first jury never heard this Evidence he should have at least been granted an Evidentiary Hearing for oral arguments because he meets the five (5) criteria for after-discovered Evidence that was set by the South Carolina Supreme Court, Therefore the Judge abused his discretion that amounted to resulting prejudice to Appellant the moving party.

INTRODUCTION

The Appellant herein would show the court Record on appeal pages 1 -50 Motion for New Trial based on After - Discovered Evidence, with attached Fortior Exhibits A - F , and Motion for Expenditure of Funds for investigative and expert services, and Motion for Appointment of counsel/indigent funds pursuant to §17-3-10. Appellant filed the motions after a convicted Serial killer wrote a letter to Appellants mother, and after his uncle Rondie J. Ward informed him that Michael Abner did call him on the phone at his residence and did in fact tell him that he being Abner did in fact pay Appellants alleged victims that a jury convicted Of 2-alleged murders. see record on appeal pg. 70-71, and pg. 97-103. The Appellant's uncle went to the clerk of court in Georgetown a total of (5) five times in an effort to file his Sworn Affidavit in my behalf since Im an indigent pro se inmate and also mental Health patient Due to a Conflict of interest the Clerk Ms. Jennifer M. Lawrence, and also Mr. Keith Moore they refused to file the affidavit. see: record on appeal pages 63-120. of all the Rigmarole that Appellant has experienced the mailroom staff at Lieber Corr. Inst. also withheld Appellants Affidavit see: record on Appeal: see pages: 74-76 Sworn Affidavit of

Appellant. It is clear that Appellant's Constitutional Right's to Access of the Court's has been violated in a number of ways and the Judge abused his discretion in denying Motion for New Trial, Motion for Appointment of Counsel, Motion for expenditure of funds for Private Investigative & Expert Funds/witnesses, and Arrest of Judgment Motion, And finally the Court/Clerk's office sent Appellant a copy of order Denying Motion for a reconsideration on October 11, 2012 see: Record on Appeal pages 126-150. Its Clear by the record See: R. on Appeal pages 1-150 as a Whole before it will be fully clear how Appellant has been denied Equal Protection and Due Process under the United States Constitution Amend. XIV § 1 . The Constitution was made for all persons regardless of whether I'm a Mental Health , Indigent inmate with no Funds to hire an Attorney or a Private Investigator. Thats why the Constitution was made to protect all persons Equal. The Record really speaks for itself. I should be Granted an Evidentiary Hearing in the Court of General Sessions for oral Arguments after I have been Granted competent Legal Counsel to be Appointed to represent me for the Hearing, thats how I have been Prejudiced to the extent that Abuse of Discretion, amounting to an error of law. As the Courts rulings was prejudicial and a Denial of Appellants Access of the Courts and a Denial of Due Process and Equal Protection of Law that should be afforded to all. *And after Private Investigator been appointed.*

DISCUSSION

A motion made on the ground of after discovered evidence is addressed to the sound discretion of the trial court, and a denial of the motion will not be overturned on appeal unless an abuse of discretion amounting to an error of Law is sworn. See: Bettis V. Busbee, 283 S.C. 502, 323 S.E. 2d 536 (Ct. App. 1984).

AFTER DISCOVERED EVIDENCE: In order to be entitled to a new trial on the ground of after discovered evidence, the movant is required to demonstrate that the evidence:

- 1.) is such that it will probably change the result if a new trial is granted;
- 2.) was discovered after trial;
- 3.) could not have been discovered before trial by exercise of due diligence;
- 4.) is material to the issue; and
- 5.) is not impeaching or merely cumulative.

Now Appellant has covered all 5 prongs because Michael Abner never started admitted to crimes that he committed until after he was arrested for the Murder of Jack Roerink 79, in the state of Kentucky See: Record on appeal pg. 22-24.

Appellant submits that the letter he wrote to his mother and the admitting that he paid Appellants 2 alleged victims to kill Appellant See: Sworn Affidavit of Rondie J. Ward record on appeal pg. 70-71; and 97-103 It is clear that an Evidentiary hearing should have been granted as a matter of law.

Abate v. Abate, 377 S.C. 548 (App. 2008), 660 S.E.2d 515

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The term "abuse of discretion" does not reflect negatively on the trial court: rather, it merely indicates the appellate court believes an error of law occurred in the circumstances at hand.

Burroughs v. Worsham, 574 S.E. 2d 215, 352 S.C. 382
Dearybury v. Dearybury, 569 S.E. 2d 367, 351 S.C. 278
Clark v. Cantrell, 529 S.E. 2d 528, 339 S.C. 369
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State v. Commander, 396 S.C. 254, 721 S.E. 2d 413 (2011)
State v. Jennings, 394 S.C. 473, 477-78, 716 S.E. 2d 91, 93 (2011)
(citation omitted)

CONCLUSION

WHEREFORE, based on the foregoing this Court should Grant Appellants Motion For New Trial based on after Discovered evidenc Motion For Appointment of counsel, Motion For expenses, and/or Remand the case back to General Sessions Court for Evidentiary Hearing for Oral Arguments. Or Grant a New Trial this this matter.

Respectfully Submitted,

151 Jody Lynn Ward, #300644

Jody Lynn Ward, #300644
Appellant Pro-Se