

#279992
Lord Slater,

McCI F4A side
386 Redemption Way
McCormick, SC, 29099
April, 22, 2019

Daniel E. Shearouse
Clerk of The SC Supreme Court
P.O. Box 11330
Columbia, SC, 29211

RECEIVED

APR 25 2019

S.C. SUPREME COURT

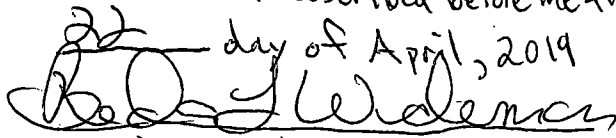
Re: Lord Slater v. State
Appellate Case No. 2019-000628
written explanation as to why the determination
by the lower court was improper. Rule 243(c), SCACR

Dear Mr. Shearouse,

Enclosed within said forth letter is the written
explanation as to why the determination by
the lower court was improper. Rule 243(c), SCACR
I also ask the courts to reference the
stipulations, the signed deposition by both
Investigator Hawkins, and Dr Collins that
I submitted with my notice of Intent
to appeal for fact finding.

Sincerely,

Lord Slater

Swoon to and subscribed before me this
22 day of April, 2019

Notary Public of South Carolina
My Commission Expires: 9-30-26

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Question Presented

Did PCR court erred in summarily dismissing Slater's application as successive or untimely without a hearing, when there is a factual dispute as to whether or not the application was successive, or untimely under SC code Ann § 17-27-45(c)

McCoy v. State 401 SC 363, 737 SE2d 623 (2013) ?

Lord Slater #279992

Applicant,

v.

State of SC,
Respondent

The Supreme Court of SC

Case No.: 2019-000628

Rule 243(c) SCACR

Explanation as to why the determination
by the lower court was improper.

This matter comes before this Court by way of an application for post conviction relief filed by the applicant on June 25, 2018. The application was dismissed as successive and or as being untimely under the statute of limitations. The applicant now present the following reasons why the determination by the lower court was improper.

Newly Discovered Evidence

Applicant went to trial November 2001, for murder and poss of a weapon during a violent crime. Applicant was found guilty and sentenced to LWOP. The Forensic Pathologist, who performed the autopsy on the body of the deceased, was not present. A stipulation was used in place of the Pathologist testimony. Applicant felt something strange was going on, and during applicant's first PCR in 2009 attempted to bring to the Courts attention that something was wrong with the Pathologist not being at applicants 2001 trial to testify to no avail. For years applicant has been trying to obtain a copy of the stipulation that was used at the 2001 trial, even attempted to write the Public Defender's office of Charleston County to no avail. I had to wait for financial donations from family and friends to pay for a private investigator, because the court appointed attorneys fail to investigate. In March 2018 Premier Investigative Associates was retained to track down Dr Kim Collins, and also obtain documents specifically state exhibit 35 (stipulation) On April 11, 2018 George W. Hawkins met with applicants trial attorney and reviewed Applicants criminal defense file. The document (stipulation) was not found in the attorney's file. On April 18, 2018 Investigator Hawkins went to the Charleston County Clerk of Courts office and reviewed the murder trial file and finally located state exhibit 35

(stipulation) signed by the Prosecutor and the defense attorney. A copy of the stipulation was provided to the applicant. A signed deposition by Investigator Hawkins supports applicants claim of Newly Discovered Evidence. Applicant contends that was his first time actually seeing State's exhibit 35 stipulation. While waiting to hear from Premier Investigative Associates, Applicant while housed at McCormick Corrections Applicant had a conversation with Cole B. Gray an inmate at the prison at the time, and he too went to trial and a stipulation was used during his October 16, 2017 trial in Anderson County. A copy of Cole B. Gray's stipulation was obtain May 24, 2018. Cole B. Gray's stipulation was a stipulation by the defense. Applicant filed an application for Post Conviction Relief the next month, filed by the Charleston county Clerk of Court June 25, 2018. Applicant raised 2 issues Newly discovered evidence § 17-27-45 (c) provides that if a PCR applicant discovers "material facts not previously presented and heard that requires vacation of his conviction or sentence" Applicant may file a PCR application within one year after the date of actual discovery or after the date when the facts could have been ascertained by the exercise of reasonable diligence." Applicant contends that once he obtained both stipulations, he immediately filed the said forth application. While responding to the State's Conditional order of dismissal, applicant obtain a sign deposition by Dr Kim Collins addressed to me and the courts January 26, 2019 and applicant immediately submitted Dr Collins deposition, the deposition was filed with applicants response, the States order, or final order dismissed application, as successive and or untimely, In doing so the PCR courts overlooked the discovery rule § 17-27-45 (c) Dr Collins worked in Charleston County from 1995 to 2008, applicant went to his first PCR hearing in November 2009, during that time Dr. Collins was working in Newberry County. The 2nd issue applicant raised was that the Conviction or sentence was in violation of the Constitution of the United States or laws of this state derived from the discovery of Cole B. Grays defense stipulation, and State exhibit 35, which was a stipulation by the prosecution.

Applicant is challenging the stipulation by the prosecution as UnConstitutional, it violated applicants Due Process Rights to a fair trial. The stipulation was false testimony, that misled the jurors. While styled as a stipulation, was actually a waiver, that applicant did not consent to. Applicant contends that in the State of South Carolina, the stipulating between the prosecution and defense in a murder prosecution on what the Forensic Pathologist would testify to if they were called to testify, and the Pathologist was available, but wasn't subpoenaed is unheard of.

The stipulation in question stated:

The State of South Carolina, by and through its undersigned attorney, and the Defendant, by and through his undersigned attorney, hereby stipulate and agree:

1. If Dr. Kim Collins were called to testify she would testify that she is a Forensic Pathologist at the Medical University of South Carolina in Charleston, South Carolina,
2. That on February 4, 2001, she was called upon to perform an autopsy on the body of Sharone Middleton, who died on February 3, 2001,
3. That on February 4, 2001, she performed the autopsy on Sharone Middleton to determine the cause of his death,
4. That after examining the body of Sharone Middleton she determined that he suffered two (2) indeterminate range, penetrating and perforating gunshot wounds to the chest,
5. That she would testify that in her expert opinion, to a reasonable degree of medical certainty, Sharone Middleton died as a result of the two (2) gunshot wounds to the chest.

And it is so stipulated this 13th day of November, 2001.

Signed by the prosecution and defense attorney.

There wasn't a slot for the applicant to sign on the document.

At trial the state presented 2 hollow point silver tip nickel plated projectiles as evidence against applicant.

January 26, 2019 the signed deposition by Dr. Kim Collins in regards to what she would have testified to if she were called to testify. "I retrieved one projectile from the body." "Projectile 1, recovered from the 10th right posterior-lateral intercostal space, was described as a severely deformed, yellow metal jacketed bullet, base = 0.30 x 0.30 inch and length = 0.50 inch

"A numeral one (1) was inscribed on the base." "The second projectile cause a perforating wound and thus was not within the body (The projectile exited the body." "The manner of death was deemed homicide." "It is my understanding

that the solicitor and public defender agreed to stipulate to the autopsy report." "I was not subpoenaed to testify." "If I had been subpoenaed to testify as to the autopsy findings," "I would certainly have done so."

The prosecution never disclosed to the jurors that the projectile that the Pathologist removed from the deceased was a yellow metal jacketed bullet, that had a numeral one (1) inscribed on the base. As well as the 2nd projectile was not recovered by the Pathologist and that the police department never turn over any other projectile to the Forensic Pathologist to be tested and confirm to be consistent with causing the exit wound. Applicant also brings to the courts attention that no one at trial declared the death to be a homicide. Applicant contends that the testimony by Dr. Kim Collins would have cleared applicant of the shooting, had she been subpoenaed to testify. An applicant requesting a new trial based on after discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))

Applicant contends that (1) The testimony by Dr Kim Collins would have changed the outcome of trial. (2) The deposition by the Forensic Pathologist, and the states stipulation has been discovered since the trial. (3) The stipulation in question could not be discovered before trial, because it happen during trial. (4) The testimony by the Forensic Pathologist is material to the issue of guilt or innocence. and (5) Is not merely cumulative or impeaching.

Furthermore, Applicant with the aid of both stipulations, the signed depositions of Investigator Hawkins and Dr. Collins has establish all 5 elements under South Carolina law for Newly Discovered Evidence. S.C. Code Ann §17-27-20(A)(4), §17-27-45(c).

Statute of limitations

Applicant contends the determination by the lower court was improper. Applicant rely on the discovery rule of §17-27-45(c) which states: That if a PCR applicant discovers "Material facts not previously presented and heard that requires vacation of his conviction or sentence", he may file a PCR application within one year after the date of actual discovery or after the date when the facts could have been ascertained by the exercise of reasonable diligence". Applicant discovered Cole B. Gray's and State exhibit 35 stipulation May 2018. And filed his PCR application the next month, well within the one year as provided by §17-27-45(c). Applicant contends that the lower courts determination that applicants PCR application is untimely under the statute of limitations was improper and shows the lower court who depended on the Attorney Generals office determination of facts, apparently overlooked the discovery rule in section 17-27-45(c).

Successive Application

The lower courts determination that applicant's present application is successive because "Applicants current allegations were or could have been raised in the proceedings based on applicant's prior application for post conviction relief; thus, the current application is successive and barred under S.C. Code Ann 17-27-90, is also misplaced because there exist a genuine

issue of fact as to whether applicant's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. There is "factual dispute" that exist herein since the lower court contends that the applicant could have raised the issue previous and the applicant's position is that he could not have raised the issues herein until he received Cole B. Gray's defense stipulation, as well as state exhibit 35 stipulation by the prosecution. The lower court apparently overlooked the date on Cole B. Gray's defense stipulation, which was October 16, 2017 and applicant obtain a copy of his stipulation May 24, 2018. Applicant's first PCR was November 2009. Cole B. Gray's stipulation was a stipulation by the defense, which would be trial strategy, anything a trial counsel does on behalf of his client, on the other hand state's exhibit 35 was a stipulation by the prosecution, and could not be considered trial strategy. Applicant contends that trial counsel had no business attaching his name, or his clients name, on the waiver without consent, when trial counsel became an adverse witness against his own client it became a conflict of interest and everything trial counsel did or didn't do has to be question. Further more, the signed deposition by Dr Kim Collins is newly discovered evidence, Dr Collins worked from 1995 to 2008 in Charleston county. Applicant first PCR was November 2009, a year after the Forensic Pathologist left Charleston County. The lower courts determination that applicants current application is successive was improper, applicant contends that the lower courts was in error, a factual

dispute based on Applicant's facts and the state facts, a hearing was required to resolve this critical issue. See McCoy v. State 401 S.C. 363, 737 S.E. 2d 623 (2013).

In the McCoy case the South Carolina Supreme Court found that the PCR judge erred in summarily dismissing Petitioner's application because genuine issues of material fact existed as to whether his claim is successive or time barred. Therefore, the Court reversed the dismissal of McCoy's second PCR application and remanded the matter for a hearing.

The PCR court may grant a motion by either party for summary disposition of the PCR application when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. Code Ann. §17-27-70(c).

When considering the state's motion for summary judgment, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in light most favorable to the applicant. Leamon v. State, 363 S.C. 432, 434, 611 S.E. 2d 494, 495 (2005) (citing S.C. Code Ann. §17-27-80). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the court, as is the case here, a question of fact is raised which can only be resolved by a hearing. Delaney v. State, 269 S.C. 555, 556, 238 S.E. 2d 679 (1977).

Conclusion

Applicant contends he presented sufficient facts, argument, and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper, and ask the courts to grant Applicant's appeal.

Respectfully submitted,

Loch Shuler

**KIM A. COLLINS, MD, FCAP
FORENSIC PATHOLOGIST
P.O. Box 835
CHARLESTON, SOUTH CAROLINA 29402**

January 26, 2019

Mr. Lord Slater
386 Redemption Way
McCormick, South Carolina 29899

Re: South Carolina v. Lord Byron Slater

Dear Mr. Slater and the Court:

I am a Forensic Pathologist, board certified in Anatomic Pathology, Clinical Pathology, and Forensic Pathology. I practiced Forensic Pathology from 1995-2008 at the Medical University of South Carolina as a Professor of Pathology and Laboratory Medicine and have served as Director of both the Autopsy Pathology and Forensic Pathology Sections during this time. I also served as Chief Medical Examiner of Charleston County.

On 2-4-2001, I autopsied the body of Sharone W. Middleton, autopsy number FA-01-64. I identified two indeterminate range penetrating and perforating gunshot wounds to the chest. Resultant injuries were to multiple viscera and the aorta. I retrieved one projectile from the body. Projectile 1, recovered from the 10th right posterior-lateral intercostal space, was described as a severely deformed, yellow metal jacketed bullet, base = 0.30 x 0.30 inch and length = 0.50 inch. A numeral one (1) was inscribed on the base. The second projectile caused a perforating wound and thus was not within the body (the projectile exited the body). The cause of death was listed as "Two indeterminate range, penetrating and perforating gunshot wounds to the chest". The manner of death was deemed homicide. It is my understanding that the solicitor and public defender agreed to stipulate to the autopsy report. I was not subpoenaed to testify. If I had been subpoenaed to testify as to the autopsy findings, I would certainly have done so.

Respectfully,



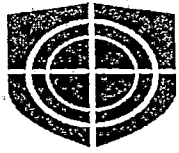
Kim A. Collins, MD
Forensic Pathologist

Sworn to and subscribed
before me this

26th day of January, 2019

Elizabeth G. Richberg






PREMIER

INVESTIGATIVE ASSOCIATES

MAY 15, 2018

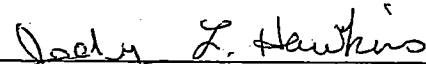
TO WHOM IT MAY CONCERN:

- 1- IN MARCH, 2018 PREMIER INVESTIGATIVE ASSOCIATES (PIA) WAS RETAINED BY LORD BYRON SLATER TO OBTAIN DOCUMENTS, SPECIFICALLY STATE'S EXHIBIT 35 (STIPULATION), FROM THE CRIMINAL DEFENSE FILE RELATIVE TO THE CHARGE OF MURDER FROM HIS ATTORNEY, ASHLEY PENNINGTON.
- 2- ON APRIL 11, 2018 I MET WITH ASHLEY PENNINGTON AND REVIEWED SLATER'S CRIMINAL DEFENSE FILE. THE DOCUMENT (STIPULATION) WAS NOT FOUND IN THE ATTORNEY'S FILE.
- 3- ON APRIL 18, 2018 I WENT TO THE CHARLESTON COUNTY CLERK OF COURT'S OFFICE AND REVIEWED THE MURDER TRIAL FILE. I LOCATED STATE'S EXHIBIT 35 (STIPULATION) SIGNED BY THE PROSECUTOR AND THE DEFENSE ATTORNEY.
- 4- A COPY OF THE STIPULATION WAS PROVIDED TO LORD BYRON SLATER.



GEORGE W. HAWKINS
INVESTIGATOR

SWORN TO BEFORE ME THIS
15TH DAY OF MAY, 2018



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8-18-26

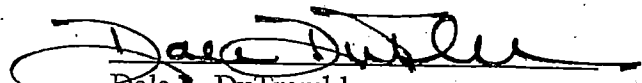
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) Indictments 2001-GS-10-3221, 3223, 3226

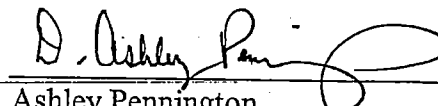
THE STATE)
VS.) **STIPULATION**
LORD BYRON SLATER)
_____)

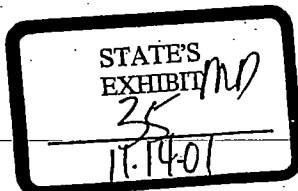
The State of South Carolina, by and through its undersigned attorney, and the Defendant, by and through his undersigned attorney, hereby stipulate and agree:

1. If Dr. Kim Collins were called to testify she would testify that she is a Forensic Pathologist at the Medical University of South Carolina in Charleston, South Carolina,
2. That on February 4, 2001, she was called upon to perform an autopsy on the body of Sharone Middleton, who had died on February 3, 2001,
3. That on February 4, 2001, she performed the autopsy on Sharone Middleton to determine the cause of his death,
4. That after examining the body of Sharone Middleton she determined that he suffered two (2) indeterminant range, penetrating and perforating gunshot wounds to the chest,
5. That she would testify that in her expert opinion, to a reasonable degree of medical certainty, Sharone Middleton died as a result of the two (2) gunshot wounds to the chest.

AND IT IS SO STIPULATED THIS 13TH DAY OF NOVEMBER, 2001.


Dale L. DuFremble
Attorney for the State


Ashley Pennington
Attorney for the Defendant





SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 24, 2018

Mr. Cole Brooks Gray #330061
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Your Case

Dear Mr. Gray:

I received a call from your trial lawyer Mr. Oppermann this week. He let me know that you contacted him to request a copy of the stipulation that was entered as an exhibit at your trial. I am enclosing a copy of that exhibit for you with this letter.

I have not filed a brief in your case yet. When I do, I will send you a copy, and keep you updated on the case.

Please feel free to contact me if you have any questions or concerns about your case. A telephone privilege form is on file with SCDC that allows you to call me collect, or you can write to me if you prefer.

Sincerely,

Joanna K. DeJany
Appellate Defender

JKD/cp

Enclosure


STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
THE STATE,)
)
-vs-)
)
COLE B. GRAY,)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
10TH JUDICIAL CIRCUIT

STIPULATION BY THE DEFENSE
Indictment Nos.: 2017-GS-04-1220;1850;1851

The Defendant, Mr. Cole B. Gray, stipulates, by and through his attorney, Mr. Joseph Oppermann, the following:

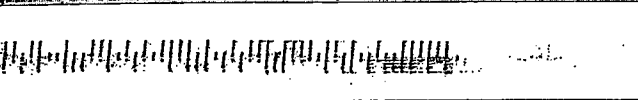
- 1) That on November 12th, while operating a motor vehicle and driving on a road, street and/or highway of the State of South Carolina, fail to stop when signaled by a law enforcement vehicle by means of a signal and a flashing light; and
- 2) That he failed to stop despite knowledge that he had been so signaled.


R. JOSEPH OPPERMANN SC BAR #77943
ASSISTANT PUBLIC DEFENDER

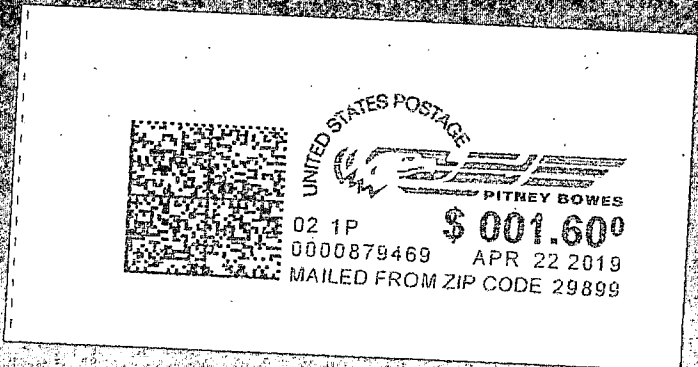
Anderson, South Carolina
October 16th, 2017

FILED CLERK'S OFFICE
ANDERSON SC
2017 OCT 20 AM 10:37
COMMON PLEAS AND
GENERAL SESSIONS

DEFENDANT'S
EXHIBIT NO. 2
FOR IDENTIFICATION
DATE: 10/16/17 REF: [initials]



CHAITT
Redemption Way
Columbia, SC, 29899



The Honorable
Daniel E. Shearouse
Clerk of SC Supreme Court
P.O. Box 11330
Columbia, SC, 29211

RECEIVED

2 2 2019