

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Appeal from the SC. Court of Appeals
Summary Dismissal, Habeas Corpus
Docket # 2012-CP-27-0691

Case # 2018-002271

Joseph Hugo Gibbs, #185709 - - - Appellate

Vs.

The State of South Carolina - - - Respondents

PETITION FOR WRIT OF CERTIORARI

Mr. Christian Saville
Office of; SC. Attorney General
PO. Box 11549
Columbia SC. 29211-1549
Ph 803-734-3970
Counsel for Respondents

Respectfully,
Joseph H. Gibbs
Appellant Pro Se
BRCI, F6A-1093
4460 Broad River Rd
Columbia SC. 29210

RECEIVED
OCT 23 2019
SC Court of Appeals

I, the appellate pro se, certifies that a petition for rehearing was filed and ruled on, by the Court of Appeals, by order filed Sept/27/2019.

I believe the petition meets the requirements of Rule 242(b),(1),(4),(5), and is made in good faith, and the matter has valid merit.

Statement of Issues on Appeal

I: Whether the SC.App.Ct erred in dismissing the petition for rehearing on points of law and fact pleaded: and erred in its finding, dismissing, the informal letter requesting appeal from the lower court: When the issues were raised in the PCR application, but no full and and fair finding of fact and law was made, and The record shows that PCR was inadequate and unavailable.?

II: Whether the SC.App.Ct. erred in dismissing the pleadings for NOA, without a finding of fact and law, on the Jurisdiction of the Circuit Court to hear and issue Writs of Habeas Corpus; When the lower court held that it lacked jurisdiction, relying on case law; when I pointed out that Statutory law §17-17-10, et seq and Title 14 SC Code, along with the SC. Constitution says otherwise; and It is a violation of Separation of Powers by the Judicial and Executive Branch to re-write the law; and a miscarriage of justice was had; And the lawyers for the state have at no time answered the legal and constitutional issues raised and supported by the record, in prior pleadings.?

Statement of the Case

I, filed a petition for Writ of Habeas Corpus, "nunc pro tunc" in the Jasper County Circuit Court, on Nov/7/2012, docketed as 2012-CP-27-0691 with \$150.00 filing fees paid, when informa paupris was denied by Judge Carmen T. Mullen (14'th Cir. Administrative Judge).

After years of requesting answer to complaint, and hearing; I filed a complaint to the office of disciplinary counsel,

id 17-DE-J-0132, dated 7/3/17, & dismissed on 9/25/17. I then sent a letter to Justice Pleicones, dated 10/30/17 requesting answer/hearing. A response was made by letter to Judge Mullen dated 11/2/17. When still no action was taken, I filed a proposed order dated 3/21/18, and the court sent notice to Counsel Mr. Christian Saville, AAG, dated 5/1/18, to file answer & motion.

Counsel made a return and order dated 6/22/18, that was an exact word for word duplicate, which was received by me on July/13/2018. The court signed the **ghost written order** dated 6/27/18, filed with the clerk of court on 7/6/18, post marked 7/13/18, and received by me on July/17/2018. Lack of jurisdiction and improper venue was the judgment of the court, Rule 41(b) SCRPC, along with res judica & ect in the order. appendix **app.06)**

I then filed a motion to alter and amend the judgment, Rules 52(b), 59(d) SCRPC, dated July/23/2018, and served on counsel. (app. 24). I attached appendix to support motion.

The court signed an order denying motion to alter and amend judgment, dated 8/27/18, filed by clerk of court, 9/10/18, and received by me on Dec/7/18, with certificate of service dated 12/3/18, "which was word for word of states reply". The order disallowed jurisdiction, and did not address corrected facts and law. (app.93)

I then filed an Informal letter "per rule" with a notice of appeal (ROA), dated 12/17/18, and attached pleadings, and orders, filed in lower court, and served counsel, id. (app.@ p.13). By order dated 2/6/19, id (app.@ p.02) the court dismissed the appeal; citing that lower court determined "issues could have been raised on pcr", and sufficient facts and law was not reiterated to grant appeal.

I then filed a timely motion for rehearing, pointing out overlooked facts and law, and errors of orders, dated 2/14/19, (app.@ p.15). The court by order dated 9/27/19, (app. @ p.01), denied the rehearing, as not being able to discover material fact or principal of law overlooked.

I went to trial in Jasper County for Murder and Burglary

1st at the March/9th--13th/1992 term of court. The presentments of indictments 92-GS-27-002, 003 dated March/9/1992, was only signed by prosecutor, and was not true billed, published in open court, nor filed stamped and clocked by the clerk, and was not filed in court records for appeal or PCR, state or federal. I was convicted being denied a justification defence, and sentenced to life concurrent. A direct appeal per Anders 92-728 was filed, and dismissed by this court. A PCR application 94-cp-27-309 was filed and a hearing held on March/20/1995, a partial ruling with ghost written order was made. Certiorari was filed and not granted by this court, @ Nov/8/1996, and was not served upon me until @ Nov/8/1997. I filed several other petitions, id. noted in Habeas Petition, but no hearing on the merits have been had, and no petitions for original jurisdiction, or certiorari to review issues have been granted. No finding of frivolous was made by only court to address merits of PCR was made.

I now petition this court to correct errors of lower courts, on certiorari.

Argument

I. THAT THE SC. COURT OF APPEALS DID ERR IN DISMISSING THE PETITION FOR REHEARING ON POINTS OF LAW AND FACT PLEADED; AND ERRED IN ITS FINDING, DISMISSING THE INFORMAL LETTER REQUESTING APPEAL FROM THE LOWER COURT; WHEN THE ISSUES WERE RAISED IN THE PCR APPLICATION, BUT NO FULL AND FAIR FINDING OF FACT AND LAW WAS MADE, AND THE RECORD SHOWS THAT PCR WAS INADEQUATE AND UNAVAILABLE.!

I

I. I submit and argue that the order dismissing rehearing, and informal letter is in plain error of the record submitted, and pleaded; as the grounds/issues for relief sought in the circuit court were raised in the PCR application, and other pleadings, but either were not adjudicated at all, or only a partial and misstatement of fact and law was made. As I showed per Simmons V

State 215 SE.2d 883 (1975), and other cases, to include the order in 94-cp-27-309, "only ineffective counsel can be raised on PCR", Justice Ness in his dissent, held that this denies due process of law, in §17-27-20(1-6). I made the proper showing in the body of the Petition for Habeas, that the PCR process was in-adequate, and is **unavailable**; and thus habeas is proper. The court is demanding a standard of showing that only trained counsel could possibly meet, and is thus denying me due process, and equal protection of the law, to remedie an otherwise illegal and unconstitutional conviction, as determined by holdings of the US. Supreme Court, and even this court, and law, and demands that liberty be restored.

2. Unlike PCR, which is an independent action, id Rule 71.1 SCRPC, and Title 17 Chpt 27 SC Code, in which successes are remanded to the prosecutor, under a preponderance of evidence, standard, which is now a Strickland standard; Habeas restores liberty, that the government took contrary to law and const. I submitted in the pleadings that that the Butler standard was met.

3. When PCR was inadequate, and is no longer available; and the legal and constitutional issues have not been fully and fairly adjudicated, then res judica nor successivness, nor waiver is complete, and Habeas Corpus is ripe, per language of the law itself. The state nor courts, have shut out, or resolved this case.

4. I argued at every stage, that the trial court lacked jurisdiction, and even the lawyer for the state at PCR, stated on the record they didn't know when i was indicted; yet the matter has never been adjudicated, §17-19-10 et seq. There was never any arraignment, preliminary hearing, bond hearing, nor psychological evaluation in my case. The courts and state have ignored the issues simply to keep me from winning my liberty back, and this violates universal justice.

5. I made corrections to plain error statement of facts in the motion to alter and amend judgment on circuit court order, but this was not done, nor included in the Appeals order.

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II. THAT THE SC.COURT OF APPEALS DID ERR IN DISMISSING THE PLEADINGS FOR NOA, WITHOUT A FINDING OF FACT AND LAW; ON THE JURISDICTION OF THE CIRCUIT COURTS TO HEAR AND ISSUE WRITS OF HABEAS CORPUS; WHEN THE LOWER COURT HELD THAT IT LACKED JURISDICTION, RELYING ON CASE LAW, WHEN I POINTED OUT THAT STATUTORY LAW §17-17-10 ET SEQ, AND TITLE 14 SC CODE, ALONG WITH THE SC CONSTITUTION SAYS OTHERWISE; AND IT IS A VIOLATION OF SEPERATION OF POWERS BY THE EXECUTIVE AND JUDICIAL BRANCHES OF GOVERNMENT TO REWRITE THE LAW; AND A MISCARRIAGE OF JUSTICE WAS HAD, AND THE LAWYERS FOR THE STATE HAVE AT NO TIME ANSWERED THE LEGAL AND CONSTITUTIONAL ISSUES RAISED & SUPPORTED BY THE RECORD IN THE PLEADINGS.!

6. I submit and argue that, the Appeals court orders did not take into effect the specific points of fact and law in the pleadings, and circuit court orders; as the circuit court also held that it lacked subject matter jurisdiction to hear and grant writs of habeas corpus, based on case law from this and appeals court, and I challenged this per the SC Statutory and Constitutional law. *id*, §17-17-30, Title 14 SC. Code and the SC. Const. Artical V §11,;20 state that circuit judges do have jurisdiction, *id*. motion to alter & amend judgment (App.@ p.24-29). This was overlooked by the orders denying appeal, and they demand a showing that is arbitrary and capricious as did the circuit court. I also pointed out that the orders were ghost written, as there is no way the court could make its findings upon review of the records. The state only made arbitrary and vauge reference to the clerks records, and made no showing of affirmative defences supported with prior court orders & record.

7. The petition was futher filed per the doctrine of **nunc pro tunc**, yet no defence to nor mention of same in the orders, which dose allow the filing as is, Ex Parte Strom 343 SC. 257 (2000), and the body of the petition met the requirments of Keeler 500 SE.2d 123, Gibson 329 SC. 37, Simpson 329 SC. 43,46, Yates 484 US 211 @ 218, and Butler 302 SC. 466,468.

8. The court in Finkela V State 273 SC. 157, found that §17-27-20 in cooperated all rights available under 28-USC-2254 BUT,

federal habeas only allows what is ruled on in PCR, and excludes barred issues. I argue that the circuit court dose have jurisdiction, and PCR was inadequate, and is unavailable, and the language of the Habeas laws and SC. const cannot be simply re-written to allow the excutive branch to maintain an otherwise unlawfull and uncaonstitutional revoacation of liberty by conviction without due process of the laws itself, id §17-25-10, and §17-17-10.
9.

I submit that these are novel issues of law, and state a federal question, since the issues raised in PCR and Habeas, warrant the vacating of the conviction upon an unbiased finding of fact and law, and the court should not have continued to dismiss same on states summary dismissal bars and notions.

Conclusion

I pray that this court will grant certiorari, and order formal briefing, or grant relief as it deems just and expedient.

October/18'th/2019

Respectfully

/s/ Joseph H. Gibbs
Joseph H. gibbs, #185709

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Certiorari to the SC. Court of Appeals
Summary Dismissal / Habeas Corpus
2012-CP-27-0691

Case # 2018-002271

Joseph H. Gibbs - - - - Appellant

vs

The State of South Carolina

CERTIFICATE OF SERVICE

I the undersigned appellant pro se, certifies that I have on this, 21st /day of /October/2019; Served one true copy of my petition for certiorari on Counsel, Mr. Christian Saville, with Appenix, Filing Letter, Affidavit, certificate of service; and one copy of petition to Clerk of Court, with certificate of service, as addressed below, postage prepaid and proper, by depositing same in mail at BRCI.

Mr. Christian Saville
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Ph. 803-734-3970
Counsel for Respondents

Respectfully
/s/ Joseph H. Gibbs
Joseph H. Gibbs
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appellate pro se

Clerk; SC. court of Appeals
Ms. Jenny Kitchings
PO. Box 11629
Columbia SC. 29211

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The State of South Carolina
In The Supreme Court

Filing Letter

TO: Honorable, Daniel E. Shearhouse
Clerk Of Court
PO. Box 11330
Columbia SC. 29211

October/21/2019

RE: Joseph H. Gibbs, #185709 vs State of South Carolina
BRCI, F6A-1093
4450 Broad River Rd
Columbia SC. 29210
X

Docket # 12-Cp-27-0691
Case # 2018-002271

Court,

Please find enclosed for filing in the above case, my

1. Original and Six copies of the petition for certiorari.
2. Designation of Matter
3. Certificate of Service
4. Affidavit
5. two copies of the appendix.
6. Filing Letter.

I have served one copy on counsel and clerk of court, as required,
please let me know if this is sufficient.

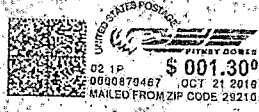
Mr. Christian Saville
Assistant Attorney General

Respectfully

Joseph H. Gibbs
Joseph h. Gibbs
Appellant Pro Se

Honorable Jenny A. Kitchings
Clerk; SC. Court of Appeals

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Honorable: Leroy A. King
Clerk: SC Court of Appeals
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