

RECEIVED

NOV 06 2019 November 4, 2019

S.C. SUPREME COURT

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

RE: Berry v. State, 2017-CP-44-0259

Dear Sir:

I need your assistance regarding the above captioned case. On July 8, 2019, I received written notice of the final order dated June 12, 2019. My Attorney, Leah B. Moody may have received the final order on the 25th of June, but I did not receive it until July 8th, 2019, and it was received by the institution on the 3rd of July. Upon receipt of the order I submitted my Rule 59 Motion, pursuant to SCRCPC, along with proof of service for the same dated July 9, 2019, in which I served all parties involved. SEE: Enclosure of the Rule 59 Motion, and Proof of Service. Also, the cover letter is enclosed.

I filed a Rule 59 Motion because the Order is defected and arbitrary or capricious based on being insufficient and omittaddressing all my issues for review. I submitted my letter asking that the appeal be held in abeyance until the 59 Motion is ruled on with a disposition and with an amended order.

Ms. Moody lied to the court in the notice of appeal to the court of appeals, with a statement that said I received written notice of entry of the final order on June 25, 2019. This is not so. Enclosed is a copy of the envelope from Ms. Moody showing the stamped date it was received at the institution, July 3rd, 2019. Also enclosed is a copy of the fraudulent notice of appeal she submitted to the court of appeals stating that I received the order on June 25th, along with her letter dated June 25, 2019, in which I received on the 8th of July.

Sir, as you can see, there is no way that I received written notice of the order nor her letter on the 25th of June, because I don't have electronic, nor fax, nor email capabilities to receive as such. Mr. Adáñi Ruffin, Appellate Defender, states that my 59 Motion was filed on the 16th of July. I submitted my 59 Motion in the institutional mail on the 9th of July, under Houston v. Lack, and it was submitted in a timely manner upon me receiving the order on July 8th. I have no control when Union County Clerk of Court filed the Motion, or when the institution mailed the same.

SC Supreme Court
Daniel E. Shearouse, Clerk
RE: Berry v, State, 2017-CP-44-0259

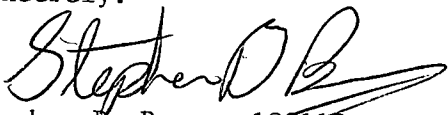
November 4, 2019
page 2

Also, the order is dated the 12th of July, but again, I did not receive the same until the 8th, and I should not be penalized based on the date of the Order, because it's not my fault that Ms. Moody undermined the process.

Mr. Shearouse, in lieu of a formal writ of mandamus, I'm respectfully asking if you may look into this matter and have all parties to perform their proper and adequate ministerial duties pertaining to my Rule 59 Motion, and to hold my appeal in abeyance until the matter is resolved.

Thank you for your findings and if you require any additional information please let me know.

Sincerely,



Stephen B. Berry, 188112
KER.CI-HD133
4848 Goldmine Hwy.
Kershaw, SC 29067

cc: Adam Ruffin, Appellate Defender

Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF UNION

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

Stephen D. Berry, 188812,
Applicant,

Case No. 2017-CP-44-0259

v.

RULE 59 MOTION, SCRPC

State of South Carolina,
Respondent.

THROUGH: The Law Offices of Leah B. Moody, LLC, Attorney at Law

TO: The Office of the Attorney General, Janell H. Gregory, Esq., and the Court of Common Pleas Presiding Judge Thomas A. Russo, and the Office of the Clerk of Court, Melanie Lawson, Clerk.

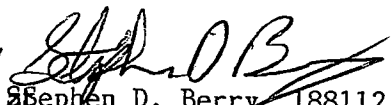
The Applicant, making his Rule 59 Motion, pursuant to SCRPC, based on the Order of Dismissal in case 2017-CP-44-0259, dated June 12, 2019, in which he received on July 8, 2019. Applicant would respectfully show this court the following:

1. The Order of Dismissal is insufficient and defective because the findings and conclusion, along with the decision are arbitrary or capricious, made upon unlawful procedure, and affected by other error of law that substantially violates Applicant right to a fair and impartial PCR hearing and a one bite at the apple.
2. Applicant did not waive ~~PER~~ issue malicious prosecution or prosecutorial misconduct under §17-27-80, and §17-27-90, PCR Act, S.C. Code Ann., and he request that this court make ruling of the same and include in its amended order to preserve for review.
3. Applicant did not waive any issues or statement of facts that were presented in his Supplemental Application for PCR under PCR Act, S.C. Code Ann. §17-27-80, and §17-27-90. All the issues must be ruled upon and included into the amended order to preserve for review.
4. Ineffective assistance of appellate counsel was not ruled on and the issue require an answer or ruling to be preserve for review and to be included into the amended order. SEE: *Evitts v. Lucey*, 469 U.S. 387 (1985).
5. Applicant's actual innocence claim regarding that there is no physical or DNA evidence demonstarting guilt that require a ruling for preserve and to be included into the amended order for review. Failed to prove penetration.
6. Applicant did not waive issue regarding trial judge abuse of discretion under §17-27-20(b), PCR Act, S.C. Code Ann., subsection 6, "that the conviction or sentence is otherwise subject to collateral attack upon ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy,..." ~~SEE~~ *Nelson v. Taylor*, 553 S.E. 2d 488 (SC.App.2001). Any ground of alleged error. The issue require a ruling to preserve for review.

7. Applicant did not waive issue regarding Rule 703, SCRE bases of opinion testimony by experts. This issue require a ruling to be preserve for review.
8. Applicant has not waived PCR counsel duty to amend his original PCR application as required by PCR Act, S.C. Code Ann. §17-27-10-160. This issue require a ruling to be preserve for review.
9. Applicant states that a PCR hearing without all issues ruled on, the court may open the judgment to take additional testimony, amend findings of fact and conclusion of law or make new findings and conclusions, and direct the entry of a new judgment under Rule 59, SCRCF.
10. Applicant states that the court when granting a new trial for a reason not stated in this motion, or for any other grounds not stated in this motion, the court shall specify the grounds in its order under Rule 59, SCRCF.
11. Applicant states any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment, in which he received on 7/8/19.
12. The Applicant states that the assistant attorney general or the court's order is arbitrary or capricious because it states that Applicant's testimony and evidence was not credible in violation of Rule 609, SCRE..If this is the case a convicted PCR Applicant will be impeached each and every time he is a witness during his own hearing and one bite at the apple.

CONCLUSION

Applicant request that each and every issues and grounds raised in his original PCR application and supplemental application be ruled upon to be preserved for review, and that an amended order be issued to support those rulings in effort for him to seek his appeal. SEE: Darryl Pruitt v. State, [citation omitted].

s/ 
Stephen D. Berry, 188112
KER.CI-HD-133
4848 Goldmine Hwy.
Kershaw, SC 29067

July 9, 2019

STATE OF SOUTH CAROLINA
COUNTY OF UNION

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

Stephen D. Berry, 188112,
Applicant,

Case No. 2017-CP-44-0259

v.

PROOF OF SERVICE

State of South Carolina,
Respondent.

I certify that I have served the Rule 59 Motion, SCRCP on the Respondent and following parties by depositing a copy of it in the U.S. Mail, postage prepaid, on June 9, 2019, addressed as follow:

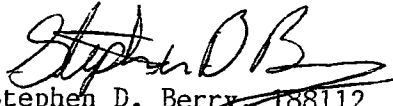
Janell H. Gregory
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Thomas A. Russo
Presiding Judge
C/O: Union County Clerk of Court
P.O. Box 703
Union, SC 29379

Melanie Lawson, Clerk
Union County Clerk of Court
P.O. Box 703
Union, SC 29379

Leah B. Moody
Attorney at Law
235 E. Main St., Suite 115
P.O. Box 1015
Rock Hill, SC 29731

SC Court of Appeals
Clerk of Court Office
P.O. Box 11629
Columbia, SC 29211

s/ 
Stephen D. Berry, 188112
KER.CI-HD-133
4848 Goldmine Hwy.
Kershaw, SC 29067

June 9, 2019

SC Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

RE: Stephen D. Berry, #188112 v. State of South Carolina, Case No. 2017-CP-44-0259.


THROUGH: The Law Offices of Leah B. Moody, LLC, Attorney at Law

TO: Clerk of Court, SC Court of Appeals:

Please be advise that in lieu of a formal motion to hold my notice of appeal in abeyance due to my Rule 59 Motion, SCRCF is ruled upon by Judge Russo, regarding his order dated June 12, 2019, in which I received on July 8, 2019, and did not receive written notice of the same of the final order on June 25, 2019. Attorney Moody may have received the final order on the 25th of June, but I did not receive it until yesterday, the 8th of July.

A copy of the Rule 59 Motion is enclosed for the record, because the current order is insufficient and defective on its face and require an amended order that will include a ruling regarding each and every issue during my PCR hearing, and raised in my original and supplemental PCR applications. I desire for all issues to be preserve for review.

Thank you for your attention in this matter.

s/ 
Stephen D. Berry, 188112
KER.CI-HD-133
4848 Goldmine Hwy.
Kershaw, SC 29067

Enclosures

cc: Leah B. Moody, LLC
Janell H. Gregory, AAG
Thomas A. Russo, Judge
Melanie Lawson, Clerk
Clerk of Court, SC Court of Appeals
Sharon Graham, SCCID

LAW OFFICE OF LEAH B. MOODY, LLC
235 E MAIN ST STE 115
ROCK HILL, SC 29730



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US POSTAGE
FIRST-CLASS
FROM 29730
JUL 01 2019
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endicia



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Stephen Douglas Berry, #188112
Kershaw Correctional Institute
4848 Gold Mine Hwy
Kershaw SC 29067-8136

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MAILROOM

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

June 25, 2019

Stephen Douglas Berry, #188112
Kershaw Correctional Institute
4848 Goldmine Hwy
Kershaw, South Carolina 29067

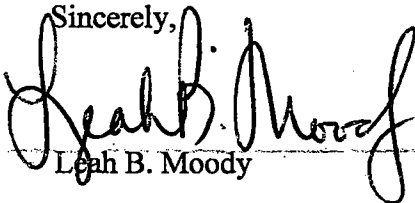
RE: Stephen Douglas Berry, #188112 v. State of South Carolina
C.A. No.: 2017-CP-44-0259

Dear Mr. Berry:

Please find enclosed a filed copy of the Order of Dismissal, Notice of Appeal, Proof of Service and the letters regarding your case with my office.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/bd

Enclosures

**IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM UNION COUNTY
Court of Common Pleas**

The Honorable Thomas A. Russo, Presiding in Union County

Case No. 2017-CP-44-0259

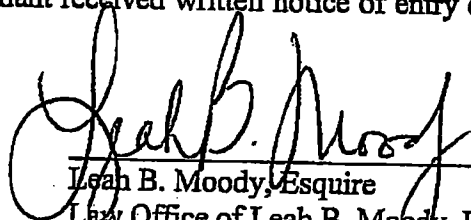
Stephen Douglas Berry, #188112, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Stephen Berry appeals the order of the Honorable Thomas A. Russo, dated June 12, 2019, and mailed on June 20, 2019. Appellant received written notice of entry of the final order on June 25, 2019.


Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Janell H. Gregory, SC Attorney General's Office
Attorney for Respondent
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970



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

October 25, 2019

Stephen D. Berry, #188112
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

Re: Your case


Dear Mr. Berry:

Thank you for your recent letter. I am looking forward to handling your appeal. I am writing you to confirm that I have received the information that you sent to me regarding your Rule 59(e) motion. Unfortunately, your Rule 59(e) motion was filed on July 16, 2019 which was after the date that your notice of appeal was filed with the Supreme Court. Your notice of appeal was filed with the Supreme Court on July 8, 2019 which means that, as of that date, the Supreme Court has exclusive jurisdiction over your case and the PCR judge cannot rule on your Rule 59(e) motion.

It will still be a couple of months before I am able to get to your case to review it for possible legal errors. Once I get to your case, I will be focused solely on it so that I can prepare the best possible petition for certiorari on your behalf.

In the meantime, please do not hesitate to contact me if you have any questions or concerns.

Thank you,



Adam S. Ruffin
Appellate Defender

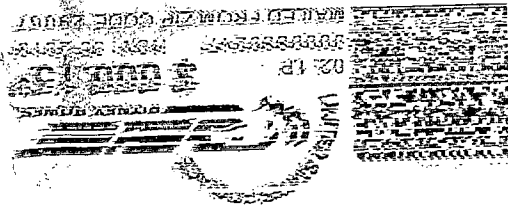
ASR/sl

Stephen Berry #188112 HD-133

KCI

4848 Gold mine Hwy

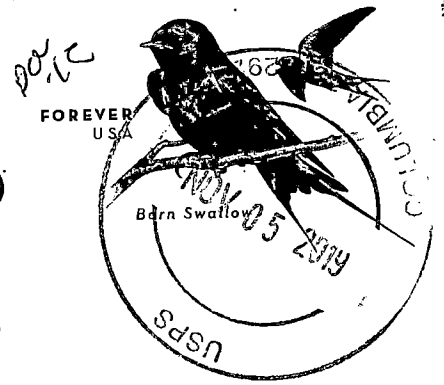
Kershaw SC 29067



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S.C. SUPREME COURT



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PO Box 11330
Columbia SC 29211