

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
NOV 13 2019
S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Michael G. Nettles, Circuit Court Judge

KELVIN EUGENE COHEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000408

SUPPLEMENTAL APPENDIX

RECEIVED
NOV 14 2019
SC Court of Appeals

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

APPLICATION FOR POST-CONVICTION RELIEF 1

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.)

Kelvin Eugene Cohen)

2017-CP-42-4118

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (either handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answers to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Tyger River 200 Prison Rd. Enoree, SC 29335
2. Name and location of Court which imposed sentence Gen. Sessions / Spartanburg
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-4203501 / Hit & run w/ death
 - (b) 2015-GS-4203502 / Habitual Offender Causing death Supr.
 - (c) 2015-GS-4203503 / Failure to stop
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-13-16 / 20 yrs sup to 10 yrs & 5 yrs probation
 - (b) 12-13-16 / 20 yrs sup to 10 yrs & 5 yrs probation

2017 NOV -7 AM 10:41
M. HOFFER, CLERK

(c) 12/13/16 / 5 yrs all concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of ~~not contendere~~ Alford

7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N

ii.

iii. A

(b) the result in each such Court to which you appealed:

i. N

ii.

iii. A

(c) the date of each such result:

i. N

ii.

iii. A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N

ii.

iii. A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N

(b)

(c) A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2017 NOV -7 AM 9:41
M. HOPE BLACKLEY

- (a) Ineffective Assistance of Counsel
- (b) Guilty plea was not voluntarily nor intelligently made
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) SEE ATTACHED SHEETS
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N
 - ii. _____
 - iii. _____
 - iv. A
- (b) the name and location of the Court in which each was filed:
 - i. N
 - ii. _____
 - iii. _____
 - iv. A
- (c) the disposition thereof:
 - i. N
 - ii. _____
 - iii. A

2017 NOV - 7 AM 9:41
 M. HOPE BLACKLEY

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. A

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See 10 (a) Applicant first time presenting ground

(b) See 10 (b) " " " " " "

(c) _____

17. Were you represented by an attorney at any time during the course of:

2017 NOV -7 AM 9:41
M. HOPE BLACKLEY

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Matthew W. Shealy 306 N. Church St. Ste 3000 Spartanburg
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea & Sentencing
 - ii. _____
 - iii. _____

2017 NOV -7 AM 9:42
 M. HOPE BLACKBURN

19. State clearly the relief you seek in filing this application: my whole negotiated & promised plea and any other relief that I may be entitled to

20. Are you now under sentence from any other court that you have not challenged?
NO

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Kevin Cohen

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kevin Cohen

Applicant

Sworn and affirmed to and subscribed before me this
19th day of Oct., 2017

Paul Dennis Creed
Notary Public

My Commission Expires: Dec 10, 2014

2017 NOV -7 AM 9:42
H. HOPE BLACKLEY

8

Clerk of Ct. M. Hope Blackley
P.O. BOX 3483
Spartanburg, SC 29304-3483

DATE: 10-19-17

Dear Hon. Clerk of Ct.

Please find enclosed for filing my
PCR form and grounds.

Would you be so kind as to forward
the Atty Gen office a filed copy
and me one back please.

Thanking you in advance, I am

2017 NOV -7 AM 9:42
M. HOPE BLACKLEY

Sincerely

cc: Personal file

Kevin Cohen

INEFFECTIVE ASSISTANCE OF COUNSEL

(1) Counsel, Matthew W. Shealy acts and or omissions including but not limited to - failed to enforce the whole "negotiated promised plea agreement, for all charges to be non-violent and 65%.

Which I had "detrimentally reduced on all charges being non-violent and 65%.

(2) Counsel, further failed to properly research and investigate my facts, the laws surrounding the State's case

SEE: Ard v Cotoe 642 SE2d 590

Pelzer v State 672 SE2d 790

(3) Nor did counsel hire his own
Dr. to review the med. reports.
per 17-3-50 or 17-27-60

Here, counsel had a **DUTY** to
enforce the whole "negotiated" promised
plea agreement. And, to conduct a
reasonable investigation, as guaranteed
by the 6th and 14th Amend. per the
U.S. and 5th Const. Article 1 Sec
3 and Sec 14 Also see Strickland v
Washington 104 S. Ct. 2052 and Hill v
Lockhart 474 U.S. 52

GUILTY PLEA "WAS NOT" VOLUNTARILY NOR
INTELLIGENTLY MADE

- (1) My plea was not voluntarily nor intelligently made, due to my arguments. SEE: Pittman v State 524 SE2d 623. Hill v Cockhart 106 S. Ct. 366

Thus I should be allowed to enforce the whole "negotiated promised plea agreement"

And or, allowed to depart from the alleged truth of my statements I made during my plea Because I would not have pled if it was

not for counsel's Shealy unprofessional errors SEE: Hill v Lockhart 106 S.Ct. 366
Crawford v U.S. 519 F2d 317; Edmonds v Lewis 546 F2d 566; Hughey v State 177 SE2d 533; Holte v State 485 SE2d 367; Roscoe v State 546 SE2d 417

(2) I further argue that any grounds set out in this original application, expressly argued or not, is subject to amendments per. S.C. Code Ann § 17-27-90. Also see S.C.R. Civil P. Rule 71.1 (d) Thereby, I am to a FULL and FAIR PCR evidentiary hearing

SEE: Sharper v State 305 SE2d 247

Odom v State 523 SE2d 753

And entitled to a ruling on all

ISSUES SEE: S.C. Code Ann § 17-27-80

Marlar v State 653 SE2d 264; and

Bostick v Stevenson 589 F3d 164.

Date: 10-19-17

Respectfully Submitted

s/ Kelvin Cohen

2017 NOV -7 AM 9:42
M. HOPE BLACKLEY

5 of 5

PROOF OF SERVICE

I kelvin cohen hereby certify that I have served the below Hon. Clerk of Court. my form 5 / P.C.R. By placing the above said into the Tiger River Cour. Inst. mail room on this 19 day of 10 - 19 - 17 to be placed in the U.S. mail w/ postage prepaid.

SUBSCRIBED to before me
This 19th day of Oct. 2017

Clerk of Ct.
M. Hope Blackley
P.O. Box 3483
Spartanburg SC 29304-3483

Paul Allen
Notary Public

st kelvin cohen

My Commission Expires Dec. 10, 2024

2017 NOV - 7 AM 9:42
M. HOPE BLACKLEY

cc: Personal file