

State of South Carolina

Terron Dizzley  
Petitioner

v.

State of South Carolina  
Respondent

In The Supreme Court of South  
Carolina

Case No. 2020-000253

Motion To Show Lack of  
Jurisdiction And Fraud  
Upon The Court

**RECEIVED**

APR 28 2020

S.C. SUPREME COURT

Petitioner moves before this Honorable Court with a Motion To Show Lack of Jurisdiction And Fraud Upon The Court pursuant to SCACR 205,242(a),(b),(1),(4),(5); 245 on the grounds that:

Petitioner's PCR counsel was granted substitution of counsel over the telephone by Judge William H. Seals without Petitioner's knowledge or consent after Attorney Eleanor Cleary swindled Petitioner's mother out of \$10,000. Which also occurred with counsel before Eleanor Cleary; Attorney Leah B. Moody swindled Petitioner's mother out of \$6,500. These substitutions were made in violation of SCRCP, Rule 11(b). See Ex parte Strom, 539 S.E. 2d 699 (S.C. S.Ct. 2000), Culbertson v. Clemens, 322 S.C. 20, 25 (S.C. Sct. 1996), Smith v. Bryant, 264 N.C. 208 (4<sup>th</sup> Cir. 1965).

Petitioner contends that there was no motion or petition for substitution of counsel placed before Judge Seals or the judge who authorized Leah B. Moody's substitution which would sufficiently make these substitutions of Petitioner's counsel "cases" that would warrant Judge Seals jurisdiction to authorize substitution of counsel.

See Dennis v. Sparks, 449 U.S. 24, 101 S. Ct. 183 (1980); Stump v. Sparkman, 435 U.S. 349 (1978); Ness v. Eckerd Corp., 350 S.C. 399 (2002), "Trial judge lacked jurisdiction to vacate order that denied corporation's motion to set aside a default judgment, where modification was not made pursuant to a motion to alter or amend court's decision, but on judge's own initiative, and modification was more than 10 days after initial order. Issues relating to subject matter jurisdiction may be raised at any time and should be taken notice of by the Court of Appeals on court's own motion." Heins v. Heins, 344 S.C. 146 (Ct. App. 2001), Bunkum v. Manor Properties, 321 S.C. 95 (1996). Carlisle v. U.S., 517 U.S. 416 (1996), "District court had no authority to enter post verdict judgment of acquittal for drug conspiracy where defendant's motion for judgment of acquittal was untimely." States v. Smith, 331 U.S. 469 (1947), Roell v. Withrow, 538 U.S. 580 (2003).

Petitioner contends that the record clearly shows that Judge Seals lacked jurisdiction to authorize substitution of Petitioner's counsel with Eleanor Cleary and force this representation on him. Therefore, Judge Curtis lacked jurisdiction to affirm Judge Seals' unlawful decision and force Attorney Cleary to remain as Petitioner's lawyer. Therefore, Judge Curtis did not have jurisdiction to authorize Eleanor Cleary to withdraw issues amended to Petitioner's PCR application, amend or brief issues, and Judge Curtis did not have jurisdiction to rule on any

issues brief by Eleanor Cleary, and did not have jurisdiction to authorize Attorney General Johnny James to respond to any briefs, motions or amends filed by Eleanor Cleary.

Petitioner contends that the record clearly shows that the judge that authorized Leah B. Moody's substitution of James K. Falk lacked jurisdiction whereas, substitution of counsel was granted under these same circumstances. Therefore, by law James K. Falk is, by law, legally still Petitioner's lawyer. See Ex parte Strom, 539 S.E. 2d 699 (S.C. S. Ct. 2000).

Therefore, although there was a PCR filed and that PCR was placed before Judge Curtis. Judge Curtis only had jurisdiction to rule on issues amended by James K. Falk and issues addressed by Petitioner at the PCR hearing. Whereas, there was never any motions or petition placed before Judge Seals or Judge Curtis which would sufficiently make the substitution of Petitioner's counsel a "case" that would warrant these judges jurisdiction to authorize substitution of counsel.

Therefore, Attorney Cleary's representation was fraudulent. Therefore, the Supreme Court does not have jurisdiction to except Attorney Cleary's Notice Of Appeal, lacks jurisdiction <sup>to</sup> rule on or affirm any rulings from Judge Curtis or briefed arguments of Attorney General Johnny James in refute to any briefs or issues raised by Eleanor Cleary. To do so would result in participating, and conspiring to commit "fraud" to secure Petitioner's unlawful conviction

and incarceration.

Petitioner contends that Judge Seals, Attorney Cleary, Judge Curtis and Attorney General's fraudulent acts impeded and prevented him from fully and fairly presenting his claims, fully and fairly exhibiting his case, and obtaining discovery, and deprived Petitioner of the opportunity to be heard. Thus, gravely violating Petitioner's Constitutional rights, resulting in "Fraud Upon The Court."

Petitioner contends that the record clearly indicates that Petitioner filed extensive amounts of motions, writ of mandamus, and civil actions which are still pending; Attorney Cleary also filed several motions to relieve herself of counsel, all of these motions explaining these officers of the court's fraudulent acts and how it violated Petitioner's rights, and extreme conflicts of interest. Petitioner contends that he filed these motions also in the Supreme Court pursuant to SCACR 245 demonstrating that the public interest was involved, special grounds for emergency, good reason, support by facts, affidavits, and that <sup>he</sup> had addressed these matters in every court except the Supreme Court.

However, the Supreme Court did nothing to protect Petitioner's rights. Chewing v. Ford Motor Co., 354 S.C. 72 (2003), "Fraud on the court requires a showing that one has acted with an intent to deceive or defraud the court. There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court Rule 60(b), SCRPC." Rozier v. Ford Motor Co., 573 F.2 1332 (1978),

"Automobile manufacturer's failure to disclose an engineering document bearing on the comparative advantages and disadvantages of alternate fuel tank locations prejudiced plaintiff by preventing her from fully and fairly presenting her case. Ray v. Ray, 374 S.C. 79 (2007), Hagy v. Pruitt, 529 S.E. 2d 714 (2000), "A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic." "Extrinsic fraud, is collateral or external to the trial of the matter; it is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."

Petitioner contends that because there was a case, which was his PCR, which was placed before Judge Curtis. Judge Curtis did have jurisdiction to enquire into the conflict of interest with Petitioner's representation that she knew was fraudulent and assess its threat to the fairness of the proceeding, and find out if Petitioner has intelligently assumed that risk and waived any Sixth or Fourteenth Amendment, or statutory rights. Mickens v. Taylor, 535 U.S. 162; Wheat v. U.S., 486 U.S. 153, 160 (1988); Wood v. Georgia, 450 U.S. 261, 272 (1981); Cuyler v. Sullivan, 446 U.S. 335, 347 (1980). cf. Holloway v. Arkansas, 435 U.S. 475, 484 (1978); Glasser v. U.S., 315 U.S. 60, 70 (1942); Bonin v. California, 494 U.S. 1039 (1990). However, Judge Curtis intentionally forced fraudulent, conflicting representation on him. Petitioner contends that he has a right<sup>tr</sup> conflict free representation.

Petitioner contends that the Courts violated his Sixth Amendment right to "self-representation." Faretta v. Cali-

California, 422 U.S. 806 (1975), McKaskle v. Wiggins, 465 U.S. 168 (1984); U.S. v. Singleton, 107 F.3d 1091; Hilton v. State, 422 S.C. 204, 208 (2018), (noting the Prince and Faretta framework apply in a PCR setting where the applicant sought to waive his statutory right to counsel).

Petitioner contends that the courts violated his Sixth Amendment right to "counsel of choice." Wainwright v. Torna, 455 U.S. 586 (1982), it was suggested that in proceedings as to which there is no right to appointed counsel, the defendant may have a constitutionally protected interest in being represented by retained counsel and the state therefore cannot preclude such representation absent a compelling justification. The right to retained counsel in those additional proceedings would rest only on the "state's duty to refrain from unreasonable interference with the individual's desire to defend himself in whatever manner he deems best." In Torna, the Court there found unpersuasive the defendant's claim that he had been "denied due process when counsel deprived him of his right to petition the Florida Supreme Court for review." The majority responded: "Such deprivation - even if implicating a due process interest - was caused by his counsel and not the state."

Petitioner contends that his case is distinguished from Torna. Petitioner did not retain Eleanor Cleary, it was the state and Eleanor Cleary who deprived him of his due process rights by forcing fraudulent representation on him without his knowledge or consent.

The Courts allowed Eleanor Cleary to swindle his mother out of \$10,000 and obtain representation through fraudulent means, and then forced that representation on Petitioner. Petitioner contend that the money the Courts allowed Attorney Cleary to swindle his mother out of deprived Petitioner of the right to use these funds which given to him by his mother to retain counsel of choice.

United States v. Mullen, 32 F.3d 891 (4<sup>th</sup> Cir. 1994), "The Court vacated defendant's conviction for conspiracy to distribute and possess with intent to distribute over 50 grams of cocaine because the district court abused its discretion in denying her motion to dismiss her counsel who was retained by her family and have a court-appointed attorney represent her." See also U.S. v. Gonzalez-Lopez, 548 U.S. 140 (2006), "The right to select counsel of one's choice, by contrast, has never been derived from the 6<sup>th</sup> Amendment's purpose of ensuring a fair trial. It has been regarded as the root meaning of the constitutional guarantee." Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-625 (1989), "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds."

Flanagan v. U.S., 465 U.S. 259 (1984), "No showing of prejudice need be made to obtain reversal when trial court denies appointment altogether or denies counsel's request to be replaced because of conflict of interest, since prejudice to defense is presumed. Petitioner correctly concede

...that post-conviction review of disqualification order is fully effective to the extent that the asserted right to counsel of one's choice is like for example, the Sixth Amendment right to represent oneself."

Petitioner contends that the Courts violated his statutory right to counsel, and deliberately impeded him from raising his claims violating his rights to due process. Petitioner contends that he addressed these issues with the conflicts of interest with Attorney Cleary at his PCR. Petitioner also raised several issues at his PCR and the judge indicated that she would allow him 30 days to amend and brief the issues he wished to raise. Petitioner contends that he briefed these issues and submitted them to the judge and the Attorney General as the "only" issues that is to be considered in his PCR because he did not consent to Attorney Cleary's representation and that this representation was fraudulent. As previously stated Judge Curtis only had jurisdiction to rule on issues amended by James K. Falk who was the "legal" attorney of record, and issues addressed by Petitioner at the PCR hearing. See Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019), "This case arose from the post-conviction relief court's denial of relief to Derrick Fishburne. Because the PCR court's order contained no findings of fact as to one of Fishburne's primary PCR claims, the South Carolina Supreme Court remanded this matter to

the PCR court for the PCR court to issue an order setting forth adequate findings of fact and conclusions of law regarding Fishburne's unaddressed PCR claim. In doing so, the Court stressed that PCR orders had to be prepared in compliance with Section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure. Because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR case, we cannot continue to permit a party's procedural shortcoming - such as the failure to file a Rule 59(e) motion - to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80. Pruitt v. State, 310 S.C. 254 (1992), McCullough v. State, 320 S.C. 270, 272 (1995), Marlar v. State, 375 S.C. 407 (2007), Reese v. State, 425 S.C. 108 (2018), McCray v. State, 305 S.C. 329 (1991).

Petitioner contends that the Courts impeded him from raising his issue of Ineffective Assistance of Appellate Counsel to re-instate his direct appeal, making any state corrective process unavailable which resulted in a "fundamental miscarriage of justice." Washington v. State, 478 S.E. 2d 833, 324 S.C. 232 (S.C. 1996), "because so many procedural irregularities occurred during the course of Washington's judicial process that he has not received due process." citing Giglio v. U.S., 405 U.S. 150, Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639 (1986), "the existence of cause for a procedural

default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the state's procedural rule." Aice v. State, 305 S. c. 448 (1991), Martinez v. Ryan, 132 S. ct. 1309 (2012). Evitts v. Lucey, 469 U.S. 387, 105 S. ct. 830 (1985), "The Supreme Court, Justice Brennan, held that criminal defendant is entitled to effective assistance of counsel on first appeal as of right." Trevino v. Thaler, 569 U.S. 413, 133 S. ct. 1911 (2013), Brown v. Allen, 344 U.S. 443 (1953), "stated that cause would be established by a showing of "some interference by officials that made compliance impracticable." Amadeo v. Zant, 486 U.S. 214 (1988).

Petitioner contends that the Courts actions denied him of any method of raising his claims of federal rights. see Young v. Ragen, 337 U.S. 235, 239 (1949), "requiring states to afford prisoners some "clearly defined method" to raise a claim when federal rights have been denied." The South Carolina Supreme Court has described the holding in Case v. Nebraska, 381 U.S. 336, 338 (1965) as "a determination that the Fourteenth Amendment may require the states to afford state prisoners some adequate corrective process for the hearing and determination of claims of violation of federal constitutional guarantees."

Petitioner contends that forcing him to appeal issues briefed by Eleanor Cleary knowing this representation was fraudulent and substitution was made without jurisdiction. The Supreme Court having no jurisdiction

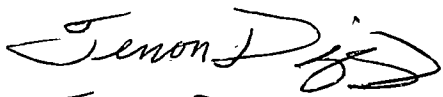
to affirm or rule on any judgments pursuant to issues briefed by Eleanor Cleary or briefs by Attorney General Johnny James in refute to issues briefed by Eleanor Cleary. To force Petitioner to appeal Attorney Cleary's body of work would be "Fraud upon the Court."

Petitioner contends that the only way to come close to protecting his rights would be to allow Petitioner to submit his issues and briefs and provide a ruling based on his briefs. However, this would also further violate Petitioner's rights to due process causing further inordinate delays after 6 years of delays due to the states unconstitutional actions which denied Petitioner due process making any further steps in the state courts futile. See Brooks v. Jones, 875 F.2d 30, 31 (2d Cir. 1989), "eight year delay of federal habeas corpus petitioning for writ of coram nobis in state court would not have been effective, petitioner was not required to exhaust state remedies before filing his federal petition. Reversed and remanded with directions on Appeal. Jackson v. Duckworth, 844 F. Supp. 460 (1994), Exhaustion requirement did not bar petitioner from seeking federal habeas corpus relief as to alleged due process violation in connection with 68 month delay on his state post-conviction petition; delay was inordinate, and state had offered no evidentiary material or explanation with regards to delay. Simmons v. Reynolds, 898 F.2d 865 (1990), "state prisoner who had made frequent but unavailing request to have his appeal processed was not required by exhaustion of state remedies statute to take further futile steps in state court in order to be heard in federal court on

petition for writ of habeas corpus. Trial Counsel's failure to file prisoner's appeal over 5 year period was nominal and ineffective as a matter of law and violated due process rights of prisoner.

For the foregoing reasons due to the fraudulent acts of the state courts. Petitioner request that the relief requested in his PCR application is granted and his sentence is vacated and he is immediately released from the South Carolina Department of Corrections.

Date: April 27, 2020

  
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