

State of South Carolina

Terron Dizzley  
Petitioner

v.

State of South Carolina  
Respondent

In The Supreme Court  
of South Carolina

RECEIVED

Case No. 2020-000253 JUN 24 2020

Objections

S.C. SUPREME COURT

Motion To Alter or Amend

Judgment or Order

Petitioner moves before this Honorable Court with Objections and Motion To Alter or Amend Judgment or Order pursuant to the Denial of his Motion for Immediate Release, Motion to Show Lack of Jurisdiction and Fraud Upon the Court and Motion for Discovery pursuant to SCRCP 72, and 59(e) on the grounds that:

Motion for Immediate Release

1. The Court's Order does not state any facts specially and state separately any conclusions of law pursuant to SCRCP 52(a)
2. The Court's Order is a misrepresentation of facts and not supported by any evidence of the record or supported by any law.
3. Petitioner has supported this Motion for Immediate Release with clearly established Federal Law Supported by the United States Supreme Court and clearly established State Law Supported by the Supreme Court of South Carolina. Which shows that the Honorable Judge Michael Baxley's ruling in Petitioner's first

trial of 2012 to declare a mistrial / hung jury after only 2 hours and 50 minutes of deliberations, portions of that time consumed by a lunch break and several questions from the jury and that time accounted for approximately an hour. Which left only 1 hour and 50 minutes for deliberations was not dictated by "manifest necessity or ends of public justice." Which violated Petitioner's Fifth Amendment Right to have his trial completed by a particular tribunal. Because Jeopardy attached when the jury was sworn in, Petitioner's second trial was barred by Double Jeopardy. See Motion For Immediate Release attached and Memorandum of Law.

Petitioner objects to the Courts Order denying this Motion and request that this court alter and amend it's Order and state facts specially and state separately supporting with evidence of the record and law as to how and why his case is distinguished from the cases he supports this motion with. Which shows that the Honorable Judge Baxley's decision to declare a mistrial / hung jury after 1 hour and 50 minutes was not dictated by "manifest necessity or ends of public justice".

4. Petitioner has supported this Motion For Immediate Release with clearly established Federal Law supported by the United States Supreme Court and clearly established State Law supported by the Supreme Court of South Carolina. Which shows that the Honorable

Judge Baxley's ruling was an "acquittal" of Petitioner's case. See 2012 Trial Tr. p. 314, L13-18, "Now what you've told us is that you can't reach a unanimous decision, and I would say to you to that that's not a failure on your part. That's actually a strong message to the Prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict."

Judge Baxley's ruling was based on "insufficient evidence" to which the Prosecution failed to meet their "burden of proof." Judge Baxley's ruling was an "acquittal" of Petitioner's case and Double Jeopardy Bars retrial. See Motion For Immediate Release attached and Memorandum of Law.

Petitioner objects to the Courts Order denying this Motion and request that this court alter and amend it's Order and state facts specially and state seperately supporting with evidence of the record and law as to why and how his case is distinguished from the cases he supports this motion with. Which shows that the Honorable Judge Baxley's ruling was an "acquittal" of his case and Double Jeopardy barred retrial.

### Motion To Show Lack of Jurisdiction And Fraud Upon The Court

5. Petitioner has supported this Motion To Show Lack of Jurisdiction with clearly established Federal Law supported,

by the United States Supreme Court and clearly established State Law Supported by the Supreme Court of South Carolina. Which shows that:

Attorney Leah B. Moody swindled Petitioner's mother out of \$6,500, and then conspired with a Judge and Attorney General through ex parte communications to have herself substituted without Petitioner's knowledge or consent.

Attorney Eleanor Cleary swindled Petitioner's mother out of \$10,000, and then conspired with Judge William H. Seals and Attorney General Johnny James to have herself substituted as Petitioner's counsel through ex parte communications by telephone without Petitioner's knowledge or consent.

These substitutions were made in violation of SCRPC, Rule 11(b) and Eleanor Cleary's representation was fraudulently forced upon Petitioner.

Petitioner contends that pursuant to these substitutions, there was never any motions or petitions placed before Judge Seals or any Judge which would sufficiently make these substitutions of Petitioner's counsel "cases" that would warrant Judge Seals or any Judge jurisdiction to authorize substitution of counsel.

Petitioner contends that the Courts Order does not address these facts and the evidence of record and laws that support them. Which shows that:

Judge Seals lacked jurisdiction to authorize substitution of Petitioner's counsel with Eleanor Cleary and force fraudulent representation on Petitioner. Therefore,

Judge Curtis did not have jurisdiction pursuant to the subject matter of Petitioner's counsel to affirm Judge Seals unlawful decision and force Attorney Cleary to remain as Petitioner's lawyer. Judge Curtis did not have jurisdiction to authorize Eleanor Cleary, who representation was illegal and fraudulent to withdraw issues amended to Petitioner's PCR application, amend and brief issues pursuant to Petitioner's case, against Eleanor Cleary and Petitioner's wishes. Although Eleanor Cleary filed several motions to relieve herself as counsel acknowledging these facts. Although Petitioner filed several Motions To Relieve Eleanor Cleary, established these conflicts on the record at his PCR, filed civil action against Attorney Cleary, and filed a Writ of Mandamus pursuant to this matter.

Petitioner contends that pursuant to these facts and the evidence of the record and law which supports them. Judge Curtis did not have jurisdiction to rule on any issues briefed by Eleanor Cleary, and did not have jurisdiction to authorize Attorney General Johnny James to brief or respond to any motions or amendments filed by Eleanor Cleary pursuant to Petitioner's case. Pursuant to Ex parte Strom, 539 S.E. 2d 699 (S.C. S. ct. 2000), Culbertson v. Clemens, 322 S.C. 20, 25 (S.C. S. ct. 1996), Smith v. Bryant, 264 N.C. 208 (4th Cir. 1965). Legally James K. Falk is still Petitioner's attorney because Leah B. Moody and Eleanor Cleary were unlawfully substituted as

Petitioner's counsel without his knowledge or consent and without jurisdiction.

Petitioner contends that the record is clear that the Supreme Court obtained jurisdiction of his case pursuant to a Notice of Appeal filed by Eleanor Cleary. Whereas, this Court relieved Eleanor Cleary of Petitioner's counsel pursuant to Petitioner's Motion For Notice of Counsel acknowledging that Eleanor Cleary was never an agent of him. Petitioner contends that the same way the Supreme Court ruled that they did not have jurisdiction to except Petitioner's Writ of Mandamus to protect Petitioner's rights by relieving him of Eleanor Cleary's fraudulent representation, although the Court of Common Pleas violated his rights by failing to file his Motions To Relieve Counsel and his Writ of Mandamus To Relieve Counsel.

Therefore, the Supreme Court did not have jurisdiction to except a Notice of Appeal on behalf of Petitioner filed by a lawyer who was representing Petitioner illegally and was substituted illegally without jurisdiction. Therefore, under these circumstances the Supreme Court lacks jurisdiction to affirm any ruling from Judge Curtis pursuant to briefed arguments of Attorney General Johnny James in refute to any briefs filed by Eleanor Cleary who this Court acknowledges, and Eleanor Cleary acknowledges was never an agent of Petitioner. To do so would result in participating and conspiring to commit "fraud upon the Court" to secure

Petitioner's unlawful conviction and incarceration and impeded, prevent, and obstruct him from fully and fairly presenting and exhibiting his case, defiles the court itself, and prevents the judicial machinery from performing in the usual manner its impartial task of adjudging Petitioner's case.

Petitioner contends that he was deprived of his right to a direct appeal pursuant ineffective assistance of Appellate Counsel. Petitioner's initial-review collateral proceeding was the first designated proceeding for him to raise the ineffective-assistance claim pursuant to trial counsel and appellate to re-instate his direct appeal as of right. Thus, his initial review collateral proceeding was equivalent to his direct appeal.

See Martinez v. Ryan, 132 S. Ct. 1309 (2012), Coleman, 501 U.S. 722 (1991); Trevino v. Thaler, 569 U.S. 416, 423, 429 (2013); Workman v. Superintendent Albion SCI, 915 F. 3d 928 (2019) citing Martinez, "post-conviction counsel's failure to present claim that trial counsel was ineffective for not presenting cogent defense was deficient performance that excused the procedural default. Vacated and remanded with instructions."

Martinez v. Ryan, 132 S. Ct. 1309 (2012), held that, in limited circumstances, "inadequate assistance of counsel or absence of counsel at initial collateral review proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."

Petitioner contends that he had a right to adequate

assistance of counsel at his initial-review collateral proceeding. Petitioner contends that he also had a right to a disinterested judge in his initial-review collateral proceeding. See Lopez v. Vanderwater, 620 F. 2d 1229 (1980), "judge selects and prepares the criminal charge and prepares the guilty plea form." In re Murchison, 349 U.S. 133 (1955), "judge initiates prosecution by acting as one-man grand jury." Sevier v. Turner, 742 F. 2d 262 (1984), "We hold that Judge Turner involvement in initiating both the criminal prosecution and the civil contempt proceeding against Sevier, if proven, would constitute nonjudicial acts exposing them to liability for resulting damages." See also King v. Love, 766 F. 2d 962 (1985); Turney v. Ohio, 273 U.S. 510, 47 S. Ct. 437 (1927), "his due process right to a judge who had not prejudge his case;" U.S. v. Grinnell Corp., 384 U.S. 563, 86 S. Ct. 1698 (1966), "Alleged bias and prejudice, claim to disqualify judge, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." Berger v. U.S., 255 U.S. 22 "

Petitioner contends that his case is distinguished from Grinnell, whereas, Judge Curtis was aware of the fraudulent representation of Eleanor Cleary and how it violated Petitioner's rights, and forced that fraudulent representation on Petitioner. Which lead to an opinion in Petitioner's case which stem from an extra-

judicial source, whereas, Judge Curtis knew the merits of that source as to Petitioner's case was false and inaccurate. Petitioner contends that the Court's decision denying Petitioner's motions does not stem from the facts of his case, evidence, and clearly established law which supports these facts. However, the Court's Order denying these motions is based on the same extrajudicial source pursuant to the fraudulent actions of the Officers of the Court in his initial-review collateral proceeding.

Ex parte Virginia, 100 U.S. 339 (1879), "The rule that a habeas corpus may be granted in favor of liberty, not necessarily to review the whole case, but to examine the authority of the court to act at all, applied on petition of a county judge indicted and in custody on a charge of excluding colored citizens in his selection of jurors. The act of a county judge in selecting jurors is a ministerial <sup>act</sup>, not judicial; and although he derives his authority from the state, he is bound, in the discharge of that duty, to obey the federal constitution and the laws in pursuance thereof.

Petitioner contends that not only was Judge Seal's substitution of Counsel authorized without jurisdiction.

Forcing fraudulent representation on Petitioner were not "judicial acts." On October 6, 2008 Chief Justice Taol's administrative order directed that instead of the PCR Judge, the Attorney General's Office will decide whether or not a PCR applicant is appointed counsel, (who is the inmates adversary) for inmates who cannot afford counsel.

Petitioner objects to the Courts Order denying this Motion and request that this Court alter and amend it's Order and state facts specially and state separately supporting with evidence of the record and law as to how and why his case is distinguished from the cases he supports this motion with. Petitioner request that the Courts consider the facts that:

- there is no fee agreements or release documents with Petitioner's informed consent <sup>in</sup> writing, whereas Petitioner never signed these documents which was sent to him by Attorney after she was already substituted. Petitioner explained to Attorney Cleary he did not agree to the representation and to return his mother's funds. Attorney Cleary refused to return the funds to Petitioner's mother.
- there are no Motions or Petition, which exist to support jurisdiction to authorize Eleanor Cleary or Leah B. Moody's substitution.

Petitioner contends that the Courts Order pursuant to his Motion For Immediate Release And Motion To Show Lack of Jurisdiction is arbitrary and capricious and does not take consideration of the rights which were gravely violated. Incorporate Original Motions.

Petitioner contends that the Courts failure to address the misconduct of these Officers of the Court violates SCACR 501, Judicial Conduct Canon 3 (D) (1) (2), Canons 1, 2 (A), Canons 3 B (2), (5), (7) and destroy's the public

Confidence in the integrity of the judiciary and its impartiality.

### Motion For Discovery

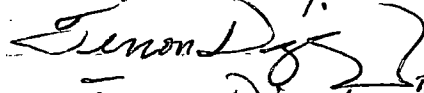
6. Petitioner has supported his Motion For Discovery and Inspection and Entire Case File with facts that he was convicted after having been denied pretrial discovery to which he was entitled. Petitioner contends that the disclosure of exculpatory evidence does not end after a verdict is rendered at trial. Rather the Prosecution has a continuing duty to provide any evidence that was unlawfully withheld, including in the context of post-conviction proceedings. Petitioner contends that the record shows throughout the 6 years of his incarceration he has went above and beyond to obtain a complete discovery and case file. For the post-conviction Court to also deprive Petitioner of discovery would compound the state's malfeasance. See Motion For Discovery

Petitioner contends that denying him the right to obtain discovery is "Extrinsic Fraud" and prevents him from fairly and fully exhibiting his case, and deprives him of the opportunity to be heard. Rozier v. Ford Motor Co., 573 F. 2d 1332 (1978), Chewning v. Ford Motor Co., 354 S.C. 72 (2003), Ray v. Ray, 379 S.C. 79 (2007), Hagy v. Pruitt, 529 S.E. 2d 714 (2000), Brady v. Maryland, 373 U.S. 83 (1974).

For the foregoing reasons Petitioner respectfully request the the Courts Order is Altered and Amended to state facts specially and state seperately any conclusions of law pursuant to it's Order denying Petitioner's motions.

Date 6-23-2020

Respectfully Submitted,

  
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