

The Supreme Court of South Carolina

Billy R. King Jr. #249995
Appellant

Supreme Court of
South Carolina

vs.

State of South Carolina

Writ of Certiorari
2018-CP-08-298

Writ of Certiorari

Appeal of P.C.R. Final Order of
Dismissal, Berkeley County 9th
Circuit Court.

Honorable Jenifer B. McCoy

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S.C. SUPREME COURT

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SC Court of Appeals

Prepared By:
Appellant Billy R. King Jr.
SCDC # 249995

Kirkland Corr. Inst. B2-7
4344 Broad River Rd.
Columbia, SC 29210

Cases

Delaney v. State, 269 S.C. 555, 238
S.E. 2d 679 (1977)

Hood v. Com. Supreme Court of Virginia
(2010) 280, Va 526

Kentucky v. Stince, 482 U.S.
730, 745 (1987)

Legare v. State 333 S.C. 275, 509
S.E. 2d 472 (1998)

Norris v. South Carolina, 18 Fed.
Appx 171 (4th Cir 2001)

Norris v. South Carolina, 2001 WL
34085161 (D.S.C. 2001)

People v. Lopez, 251 Cal. App. 2d
918, 60 Cal. Rptr. 72, 76

State v. Ashley, 121 S.C. 15, 113
S.E. 305 (1922)

State v. James, 107 S.E. 908

State v. James 116 S.C. 243, 107
S.E. 907 (1921)

State v. Mabe 412 S.E. 2d 386,
306, S.C. 355

State v. Munyon 365 S.C. 516

State v. Rivers 294 S.C. 123, 363
S.E. 2d 105 (1987)

State v. Rivers 363 S.E. 2d 125

Constitutional Law

S.C. Digest

Key 4594(7) S.C. 91

Key 4594(8) Duty to Preserve

Key 4594(10) Time & Manner of Disclosure

Key 4594(1) Suppression by prosecution
of evidence favorable to accused S.C. 2004

Key 4754 Fair and impartial jury S.C. 1973

USCA Cont. Amen. 5

USCA Cont. Amen. 6

USCA Cont. Amen. 14

US Const Act. I Sec. 14

42 USC § 1983

42 USC § 1988

South Carolina Code of Law

17-27-90

17-25-50

17-25-326

56-1-1020

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The appellant Billy R. King Jr. ask this Honorable Court to overturn the lower Courts ruling to dismiss appellants PCR.

The State has argued that the appellants PCR was successive and beyond time parameters. The fact remains that the appellant has not had these issues before the Court. The Attorney General's office made their argument on technicalities instead of the actual facts. This can be seen in the Final Order to dismiss where the Attorney General's office states appellant could have presented these issues earlier. This statement lacks proof on their behalf. The appellant was never given his fair bite of the apple, but instead just small

nibbles that did not allow appellant to form a full PCR defence. Appellant had to file Freedom of Information Act request in order to receive issues of evidence. Further lack of attention on behalf of the Attorney General's office can be seen in their (Conditions) Order to Dismiss. They state appellants argument concerning 14th Constitution violation comes from SC Code 56-1-1020 which is misquoted from Appellant's Amended Brief filed May 31, 2018. This brings into question again did the Attorney General's Office just seek technicalities to dismiss the case and if they even looked at the filed amendments and motions. Why do they get a redo and the appellant does not. The appellant feels as though if he would have given false statutes, cases or laws he would be held accountable.

The state has not showed why the appellants PCR arguments were dismissed and did not address the Constitutional violations. The appellant contends his PCR shows

how his Constitutional Rights were violated concerning evidence and his right to a fair and just trial.

Issues of Argument for Review

I. Sentencing

The appellant was denied and deprived of a fair sentence which violated the appellant's fifth and fourteenth Amendment Rights to due process that the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair trial or hearing.

A. 14th Amendment Violation

Appellant contends that because all of the charges occurred during the same time period. The assaults were said to be committed during the time of the kidnapping. The appellant contends his 14th Amendment Right was violated according to South Carolina Code 17-25-50, "Considering closely connected offences as one offence

In determining the number of offences for the purpose of imposition of sentence, the court shall treat as one offence any number of offences which have been committed at times so closely connected in point of time that they may be considered as one offence. The Supreme Court's opinions in State v. Munyon 365 S.C. 516; State v. Woody 359 S.C. 1; Legare v. State 333 S.C. 275; 509 S.E. 2d 472 (1998), display an overwhelming consensus that all of the separate charges should be considered as one charge when it comes to sentencing.

B. Layout of Sentence

The appellant contends that the layout of his sentence is illegal. The appellant has a ten year sentence with five years probation run consecutive to a twenty year sentence run concurrent with a twenty-five year sentence with five years probation. The issue is that the appellant must complete one sentence (w/probation in middle) before

he can begin the sentence running consecutive to it. If the sentence stays the way that the Department of Corrections is interrupting it the first five year probation is moved to the end of both sentences. If any part of the sentence has to be moved then the sentence does not stay true to the legal terms of Consecutive.

II. Evidence / Constitutional Violation

Determining what is required of the government to satisfy due process (Handling of Evidence) depends upon the particular situation ^{OR} issue and the interest involved. U.S.C.A. Const. 5th & 14th; Hood v. Com. Supreme Court of Virginia (2010) 280 Va 526. And the miscarriage of Justice exception which allowing a Federal court in a Habeas Corpus proceeding to address a claim of Constitutional error that, although ordinarily unreviewable is subject to review because of a State Court procedural default that rendered the proceedings basically unfair.

S.C. Code 17-27-90 where an appellant alleges facts that would establish an exception to either the Statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before PCR Court a question of fact is raised which can only be resolved by a hearing. Delaney v. State, 269 S.C. 555, 238 S.E. 2d 679, (1977). This after discovered evidence will support the motion for new sentencing or to re-open for amended findings referring to evidence of facts based on the facts pursuant to the law of the land, the U.S.C.A. fifth and fourteenth amendments, prejudicial Due-Process, Miscarriage of Justice exception and perjured testimony.

A. Release of Vital Evidence without Examination (appellant's car)

Key 4594(1) Suppression by prosecution of Evidence favorable to accused (S.C. 2004).

Appellant's car was released to his ex sister-in-law without the appellant's consent. The car was

released the second day after the appellant was arrested. Appellant never had an opportunity for his attorney or investigator to go over the car for evidence. During appellant's trial the title to the car which was in appellant Billy R. King Jr's name, was presented as evidence showing the car was appellants. This was a key piece of evidence. Appellant had purchased car from ex sister-in-law and had title in his name. Since ^{the} Sheriff's department gave her legal claim to the car, how the was the State allowed to show the car title to the jury telling them that this proved the car to be the appellants. Constitution Law (S.C. Digest) Key 4594(7) displays support that with the car being released before appellants defence team had the opportunity to photograph, examine, or obtain material for testing fully denies the appellant of fairness in adherence to Constitution Law, S.C. 1991 Due Process which requires that

Criminal defendant be offered the opportunity to obtain material for testing and examination, U.S.C.A. Const, Amed 14th, State v. Mabe 412 S.E. 2d 386, 306 S.C. 355. The petitioner had questions about the content and items in the car. This left him vulnerable to the bias of what the Sheriff and Solicitor felt was relevant.

1. There was no physical evidence placing the victim in the car (eg Blood, DNA, hair or fingerprints) the only evidence was clothing which was not tested for DNA.

2. The victim stated she was dragged across console and out ^{of} the car. Nothing looked disturbed in the car and no hair was found.

B. Missing Evidence, SC Digest Key 4594(8)
Duty to Preserve

The Sheriff's report mentions Appellant being in his underwear, pictures were taken showing this. Once Appellant was taken to jail for booking and holding, the appellant's underwear were taken as evidence (DNA) (seemed to disappear and never were entered into evidence.)

Pictures of appellant wearing the underwear was ^{shown} during trial.

The underwear should have been checked for physical evidence. The sheriff's department had to have discarded the underwear, because they were not with the other materials sent to S.L.E.D. for forensic testing.

Amendment 5th and 14th, State v. Singleton - if evidence possesses exculpatory value that is apparent before its destruction, its disposal constitutes denial of Due Process.

C. Evidence Left Behind

When the car was processed it was said to contain clothes and a cigarette case in it. There was no DNA trace or fingerprints on these items. The cigarette case was given to my ex sister-in-law when she picked up ^{the} car. Key 4594 (10)
Time & Manner of Disclosure

1. The cigarette case was said to belong to the victim. The appellant had no chance to have it examined. It was said to have no DNA or fingerprints on it. The appellant cannot be sure because it seemed to be cleaned by ^{fore} examination.

Duty to Preserve) advises that all evidence prevalent to a Criminal case must be preserved.

2. There were sodas in the cancoke cup holders in the pictures showed in court, but they were never checked for fingerprints or DNA to identify if anyone else was involved. They were left in the car when it was realised. This called into question how someone was dragged across the cancoke from one side of the car out of the other side without disturbing the sodas. These questions could not be answered because the appellant's Constitutional Right to Due Process, when the appellant was denied the right to examine evidence not was it preserved. South Carolina Digest Key 4594.

III. 6th Amendment Violation - Miscarriage of Justice

Decision or outcome of legal proceeding ~~that~~ is prejudicial or inconsistent with substantial rights of appellant. As used in constitutional standard of reversible error, "miscarriage of Justice" means a reasonable probability of a more favorable outcome. People v. Lopez 251 Cal. App. 2d 918, 60 Cal Rptr. 72, 76.

The appellant contends that his 6th Amendment Constitutional Right was violated due to him not being a part of a ruling of the court during trial. Appellant's right to due process was violated when a jury member came forth after recognizing that she had been an employee of appellant's brother who was a witness. She had been dismissed from her job by the brother. Neither the brother nor the appellant was notified of the discussion or decision by the court. The decision to leave the juror on the jury should be considered a bias move, denying the appellant due process throughout the proceedings brought against him.

A defendant in a criminal proceeding has the right to be present at every phase of his or her criminal trial. The right is rooted in the Confrontational Clause of the United States Constitution and the corresponding sections of the South Carolina U.S. Const. Amend VI; S.C. Const. Art. I Sec. 14. A fair and just trial was prevented because of absence of appellant during a

Critical stage of trial where judge addressed a juror (Sydney v. Massachusetts, 291 U.S. 97, 105-108, 1934). Conversations between a judge and juror while the jury is out, and without the defendant or at least his knowledge constitute a critical stage which the appellant had the right to be at. The judge speaking with the juror constitutes a modified or supplemental charge in response to a jury's note is a critical stage, Norris v. South Carolina, 2001 WL 34085161 (D.S.C. 2001) (order vacated on other grounds, Norris v. South Carolina, 18 Fed. Appx 171, 4th Cir. 2001); State v. James 116 S.C. 243, 107 S.E. 907 (1921).

The South Carolina Supreme Court has specifically noted that "nothing can be done by the Court in a trial for a felony, after the jury is sworn and impaneled, unless the defendant is personally present" State v. James, 107 S.E. 908. The denial of a defendant's right to be present during a critical stage of a trial mandates reversal. In State v.

James, the court concluded that the defendant's absence from additional jury instructions given by the trial judge in response to a note from the jury violated the defendant's right to be present and reversed the conviction.

The South Carolina Supreme Court has unequivocally stated that a defendant has the right to be present at everything that happens in a criminal case, especially when a juror's potential bias is being explored, State v. Rivers, 363 S.E. 2d 125; State v. James, 107 S.E. 908.

The appellant is seeking a fair bite on an even field.

Conclusion

The appellant has provided specific, factual, and legal reasoning to show that his case has merit. He knows that extreme prejudice occurs when one's legal rights to due process as well as the right to correct sentencing is denied.

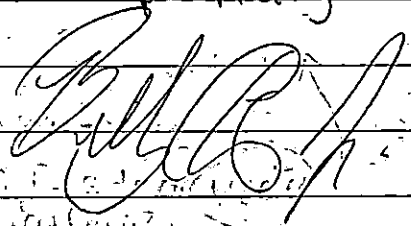
The before mentioned issues could not have been argued earlier because they were obtained after

filing through the Freedom of Information Act to receive information that appellant never received. The United States Supreme Court set forth the 5th and 14th amendments that due process is the embodiment of the concept that the government is required to do, or refrain from doing. Certain things must be done if it is to exercise the authority that it derives from the consent of the governed justly and without prejudice. Concerning Constitutional Right issues there is no statute of limitations contained within the language of 42 USC 1983. The United States Supreme Court has directed that 42 USC 1988 requires court to borrow and apply to all 1983 claims the one most analogous State statute of limitations.

For the foregoing reasons the Appellant to grant his petition of questions and arguments that have violated his rights.

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Respectfully





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Also you must serve Attorney General.
Thank you*

Please make the necessary corrections and return this document for filing.
Thank you for your assistance.

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Billy King 249995

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