

March 10, 2013

Office of the Clerk
Supreme Court of South Carolina
P.O.B. 11330
Columbia, S.C. 29201

Re: State v. Edwards,
Appellate Case: 2013-000271

To the Court:

Enclosed please find my application for permission to appeal.

Note: annexed letter of applicant asks the undersigned to submit application for her.

The applicant has been accepted as a poor person in proceedings to date, and requests that status to continue.

Respectfully submitted; I am
very truly yours,

Shirley A. Edwards, 221579
Leath Correctional Institution, M-1-106X
2809 Airport Road
Greenwood, S.C. 29649



Mark Marvin
135 Mills Road
Walden, N.Y. 12586

SE:mm
Enc.

RECEIVED

MAR 15 2013

S.C. SUPREME COURT

MARCH 15, 2013
REFUSED FOR
FILING.
[Signature]
CCONE

RECEIVED

MAR 15 2013

S.C. SUPREME COURT

3/14/13

Hello

MARK

How you doing?

Mark I'm writing you concerning my case you told me to write them and tell them I'm appeal they decision. I don't no how to appeal know thing. I got Jackie to appeal it for me all them

Paper I send you a copy of that what she wrote to appeal it. I hope it right, last week they send me this letter

Saying my SCDC number was wrong. Do you think it will hurt my case? here the other letter they send me this week.

They gave me today written explanation as to why this determination was improper you got a copy of the other letter

They send me back. I need you to read this and send in a written explanation as to why this determination was improper.

Mark I want to thank you for helping me with my case. Cause I don't know nothing about the laws

My son Jonathan Doreen Rhodes
Got a murder on his case. Some
thing he did not do. The only
thing they find was them
people blood was on the car
he was driving and the car
not in Jonathan name. it is
somebody else name. it a lot of
finger print on that car. I told
Jonathan to send you a copy
of his arrest warrant and
police report. Jonathan waiting
on his primary hearing they ain't
gave him one yet. That what
he waiting on. I got another
son Joshua Lamar Edwards in Greenville
County jail with Jonathan his brother.
he got temp murder. and he was
lock up at that time. Well this all
for now. I want to thank you
for every thing you did for me
and my son. may god Bless you
every step of the way. send it in for
me okay.

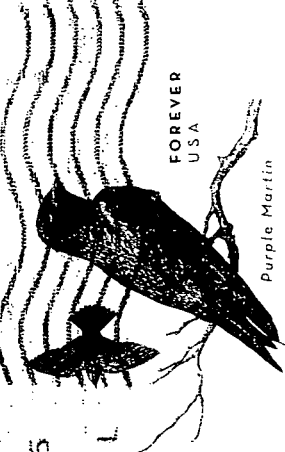
THANK YOU

Shirley A. Edwards # 24649
Montague 1-106X
2809 Airport Road
Leath Correctional Institution
Greenwood SC 29649

Do Appeal

GREENVILLE SC 296

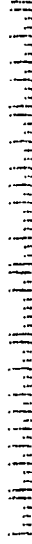
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Mark McGrvin
135 Mills Road
Walden, N.Y. 12586

Legal mail

12565282435



THE SUPREME COURT
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of Pickens
2000-GS-39-0036

Against

SHIRLEY ANN EDWARDS
Applicant

Appellate Case: 2013-000271

APPLICATION FOR PERMISSION TO APPEAL

This Application follows an application under the Uniform Post-Conviction Procedure Act, Sect. 17-27-10, et seq. in that the Applicant has been convicted and is serving a sentence and who claims that her conviction is in violation of the Constitution of the United States and South Carolina, and that she is entitled to relief under this act and under habeas corpus, and that she has never intelligently, knowingly or voluntarily waived the following which was inadequately raised in any prior application before this or any other court, and that counsel was ineffective at the trial level and in post-conviction proceedings, i.e. layered ineffectiveness, and that the government failed to meet the burden of proof required in criminal prosecutions, and in support thereof submits this application.

Dismissal by the court below was improper. The questions raised in her application for post-conviction relief were never considered by the lower court and therefore are not successive. She never waived these issues, but counsel was ineffective for failing to raise these substantive issues which can be considered under federal doctrine of "newly available evidence" or for insufficient state remedy, or for ineffective assistance of counsel, or for miscarriage of justice.

FACTS OF THE CASE:

1, She was convicted after a jury trial for the distribution of crack cocaine on May 1, 2000 and sentenced to twenty years incarceration, by Hon. Henry F. Floyd She was represented by Richard Warner, Esq. at trial. Her Post-Conviction Relief application was dismissed August 20, 2003 and she was represented by Michael Andrews, Esq. Counsel never filed a direct appeal of her conviction but the collateral petition dismissal was appealed to and dismissed by the South Carolina Supreme Court, and she was represented by Robert M. Pachak, Esq. of the South Carolina Office of Appellate Defense.

2, She was arrested after a "buy" engineered by police, Easley, S.C. and sheriff's

deputies in Pickens County, and effected by a paid informant named Kelly Elrod who was supposedly "wired" and was paid by the County in the form of dismissal of traffic infractions worth \$350.

3, The State called one Melissa T. Horne who identified herself as a "drug analysis chemist" for the South Carolina Law Enforcement Division (SLED) She testified on direct examination (voir dire) that she had a B.S. degree in "bio-chemistry" This is not specifically identified as educational regarding cocaine testing methodology. She stated that she had eight years of environmental laboratory experience. This is not specifically related to cocaine testing methodology. She stated that she had two and one-half years experience in drug analysis at SLED. (N.T. p. 90) She did not explain what exactly the experience related to, especially whether it related to cocaine testing. Therefore, there is nothing in her experience, before this court that she was qualified to do "cocaine testing". She did not state that she had ever been trained in testing for cocaine, by any professional organization or by the manufacturer of any scientific instruments that test for cocaine, nor had she taken any courses in the operation of cocaine testing instruments. We must therefore object that Ms. Horne was never established to be "an expert by knowledge, skill, experience, training, or education" in testing for cocaine, and ask that her testimony be stricken from the record on that basis. (See: S.C. Rules of evidence: 702, et seq.)

4, Mr. Ralph Gleaton, for the State at trial showed her an "item marked as States's Exhibit 2. I would like for you to take a look at it and tell me if you recognize it? A. (Ms. Horne): Yes, I do. Q. How do you recognize it? A. This is a heat-sealed pack that we use at SLED to put the evidence in after we get through analyzing it. Inside is a Best Pack and also inside the heat-sealed pack is the evidence that was brought down in the Best envelope. Q. And where did you retrieve this evidence - - or did you retrieve this evidence while you were at SLED? A. Yes, I did. Q. Where did you retrieve it from? A. I retrieved it from the SLED box. Q. And when you received it, had the Best envelope inside been tampered with in any way? A. No, it had not." Then it is offered into evidence, without objection. (N.T. p. 91) This envelope is never identified to be the evidence from the instant case, or criminal proceeding. (See paragraphs 8, 9 below) There is no way that this envelope can reliably identified as related to this prosecution, and the matter should be dismissed on this basis. Without reliable authentication of the evidence, one must conclude that the chain of custody evaporated prior to testing.

5, Ms. Horne describes that she brought it to the drug vault then she later analyzed it.

“Q. Did you analyze this evidence? A. Yes, I did. Q. And how did you analyze it? A. I did a chemical and instrumental analysis. Q. And after your chemical and instrumental analysis, what did you find it to be? A. Item 1, rock substance, results, cocaine crack found, 0.11 grams, 1.69 grains....” (N.T. p. 92-3) That’s it. There’s no description of what chemical and instrumental tests were performed. We are not told whether this was subjected to any particular reagent testing, or what instruments were used to analyze the substances. We are not told what the error rate is. We are not told whether the testing procedures were properly done with a control test. Essentially, we are told nothing to establish that the testing procedures were reliable or if there were a “sound scientific methodology.” (Daubert v. Merrell Dow Pharm. 509 U.S. 579, 584-87, see also General Electric Co. v. Jocker, 522 U.S. 136; Kuhmo Tire Co. v. Carmichael 526 U.S. 137) Particularly, there is no testimony regarding SLED proficiency tests which reveal error rates. (State v. Proctor, S.C.S.C. Opinion No. 25809, filed: April 19, 2004) Of particular interest is the timeless holding of the U.S.S.C. regarding testing for cocaine by gas chromatography which “the analyst must be aware of and adhere to good analytical practices and understand what is being done and why.” (Bullcoming v. New Mexico, 131 S.Ct. 2705, fn. 1) This was clearly not done in this case and the evidence must be stricken as incompetent. This should be considered a new holding of Constitutional law, but “good analytical practices” would be expected regardless.

6, Kelly Elrod for the State testified: “I got out (of the car) gave her the money. She gave me the crack.” (N.T. p. 58:13) Whether she was given “crack” is a fact not in evidence. Mr. Gleaton for the government asks Kelly Elrod: “These drugs, what did you do with these drugs?” (N.T. p. 59:12) Whether there were drugs in her possession is a fact not in evidence. Again asked of Ms. Elrod by Mr. Gleaton: “How big was this crack cocaine....How big was this rock?” (N.T. p. 63:9, 16) Again, whether this substance was a rock of crack cocaine is a fact not in evidence.

7, Dave Morrow, Deputy Sheriff states on direct: “... I wasn’t the one purchasing the drugs....” (N.T. p. 73:7) Whether anyone purchased drugs is a fact not in evidence. Mr. Gleaton for the State asks Dave Morrow: “...what did you do with the substance Ms. Elrod handed you?” (N.T. p. 74:9) This is the “Ah ha” moment. The prosecutor knows that the subject of the “buy” was an unidentified “substance” not drugs.

8, Lieutenant Kelly of the Pickens County Sheriff’s Office is questioned by Mr. Gleaton: “Q. Did Agent Morrow give you anything? A. Yes, sir, he gave me crack cocaine that he had gotten from the CI who had gotten it from the defendant....” (N.T. p. 80:23-25) The

fact that the "substance" was "crack cocaine" is a fact not in evidence. Lt. Kelly goes on to describe "This is the Best envelope that the crack cocaine was placed in...." (N.T. p. 81:15-16) There is no fact in evidence that the "substance" placed in the envelope was "crack cocaine." Mr. Gleaton asks Lt. Kelly: "Q. So you put the drugs in this, what you're calling a Best envelope?" N.T. p. 82:6-7) There is no fact in evidence that there was "drugs" placed in the Best envelope.

9, Lt. Kelly goes on to identify a number placed on the envelope: "a unique number... (a) control number" (N.T. p. 82:13,16) This number was not used by the SLED analyst Melissa Horne to confirm the identity of any laboratory samples in this matter.

11, The repeated use of terms to indicate that the police had confiscated "drugs" or "crack cocaine" in this matter is without foundation. There was no evidence that a "field test" was used. There is repeated use of those terms, but without any such fact being in evidence. As noted above, the laboratory failed to probatively identify any illegal substances in this investigation. The government failed to prove that there was a sale of any illegal substance, and failed to meet its burden of proof.

12, Trial counsel was overtly ineffective regarding these issues and made no objection to the admission of such incompetent evidence. Counsel failed to move the Court for a directed verdict. Counsel failed to appeal, and post-conviction counsel failed to recognize any problem with the evidence. There can be no effective assistance of counsel as required under Constitutional law, i.e. there was no rational trial strategy, and the defendant was prejudiced. (Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064; Butler v. State, 286 S.C. 441, 334 S.E.2d 813; Cherry v. State, 300 S.C. 115, 386 S.E.2d 624)

11, There being no competent evidence in this case, the government failed to meet its burden of proof that the defendant was guilty of possessing any illegal substance.

12, After hearing in the local court, the application was dismissed as "outside the expiration of the statute of limitations" (i.e.: police state tactic to justify imprisonment of innocent persons) and that "the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application...." (i.e. counsel was ineffective for not litigating all issues). The trial court actually recognized the errors, but preferred to maintain incarceration of a person wrongly convicted. This is error.

MEMORANDUM OF LAW

REASONS WHY APPLICATION FOR RELIEF IS PROPER

Petitioner is in receipt of the Attorney General's boiler plate form seeking dismissal for procedural reasons.

Applicant's relief is properly before this court under *Anders*:

The Supreme Court of South Carolina has accepted the holdings of the United States Supreme Court (*Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396) that right to counsel shall apply to arguable issues on appeal. (*Austin v. State*, 305 S.C. 453; 409 S.E.2d 395, 1991 S.C. LEXIS 195) and this is reviewable on the normal "any evidence" standard. (See: *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624, 1989) There is no evidence that the trial or appellate counsel sought review of these crucial issues, and as the "statute of limitations does not apply to Austin claims (*Austin Id.*, *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753, 1999, see: *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581, affirming *Odom*) the defendant is not restricted by time limitations. Specifically, the equitable doctrine of laches does not apply to Austin claims as "the statute of limitations found in S.C. Code Ann. 17-27-45(A) does not apply to Austin claims. (*Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200, 2002 S.C. LEXIS 251)

This petitioner is actually innocent, and "In order to use an actual innocence claim as a procedural gateway to assert an otherwise defaulted claim, 'the petitioner must show that it is more likely than not that no reasonable juror would have convicted (her) in the light of the new evidence.' *Schlup*, 513 U.S. at 327, 115 S.Ct. 851. The *Schlup* Court adopted a broad definition of 'new' evidence to be considered in such cases; a petitioner must offer 'new reliable evidence ... that was not presented at trial.' *Id.* at 324m 115 S.Ct. 851; see also *id.* at 327-28, 115 S.Ct. 851. The Court further explained that a district court undertaking such an inquiry is not bound by the rules of admissibility and should make its assessment in light of all available evidence, including that considered unavailable or excluded at trial and any evidence that became available only after trial. *Id.* at 327-28, 115 S.Ct. 851. (*Royal v. Taylor*, 188 F.3d 239, 1999, 4 th. Cir.)

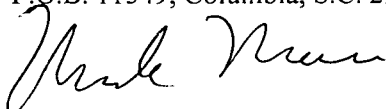
To date, there is no state remedy for a fundamentally unfair trial, a federal issue.

Applicant declines assistance of the S.C.C.I.D. citing case of Karen McCall.

Respectfully submitted,

Shirley A. Edwards, 221579
Leath Correctional Institution, M-1-106X
2809 Airport Road
Greenwood, S.C. 29649

I certify under penalty of perjury that I mailed a copy of this document to the Attorney General,
P.O.B. 11549, Columbia, S.C. 29211-1549



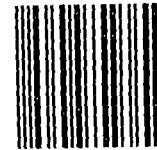
Mark Marvin
135 Mills Road
Walden, N.Y. 12586

Dated: *March 11 2013*

MARVIN
135 MILLS ROAD
WALDEN, N.Y. 12586



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