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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

THE HONORABLE CARMEN T. MULLEN, CHIEF ADMINISTRATIVE PURPOSES JUDGE
Lower Case No:#2006-GS-07-01640, & 01641

Appellate Case No:2020-000110

Nathaniel Johnson, Jr. #211574,Petitioner,
V.
State of South Carolina,Respondent,

PETITION FOR A WRIT OF CERTIORARI

Nathaniel Johnson Jr. #211574
Mr. Nathaniel Johnson, Jr. #211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
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Pro-Se Petitioner

Other Counsel of Record:

Ms. Mary Jordan-Lempesis, Asst. Solicitor
Fourteenth Judicial Circuit Office of Solicitor's
P.O. Box 1880
Bluffton, S.C. 29910.
Attorney for Respondent

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QUESTIONS PRESENTED

1. Did the Circuit Court err in holding that the Petitioner is not entitled to Forensic DNA Testing when his Trial Counsel failed to challenge the Chain of Custody or the Authenticity of the Original Forensic DNA Testing used to convict?

2. Did the Circuit Court violate the federal rights of the Petitioner when it denied the procedural and substantive due process guaranteed under the Fourteenth Amendment of the Due Process Clause?

3. Did the Circuit Court abuse its discretion when it failed to promptly act, or to exercise its discretion reasonably, without arbitrary, or unfair decision making process?

4. Whether the Circuit Court's finding of fact and conclusion of law in compliance with the Access to Justice Post-Conviction Forensic DNA Testing Act, Section § 17-28-90(B)(2), or Section §17-28-30(a)?

5. Did the Circuit Court deprived the Petitioner of his federal rights guaranteed under the Sixth and Fourteenth Amendment Due Process Clause?

6. Whether the Lower Court violated the federal rights of the Petitioner when it convicted the Petitioner twice for the same offense violating his Fifth Amendment Double Jeopardy Clause prohibition?

STATEMENT OF THE CASE

On March 12th-14th, 2007, Petitioner, went before the Honorable Howard P. King, Circuit Court Judge, and jury. Petitioner, was convicted of criminal sexual conduct in the first degree and kidnapping. Judge King, sentenced the Petitioner, to served thirty (30) years for each conviction to run concurrent. The Petitioner, was represented by his trial counsel Ms. Stephanie Smart-Giddings, and the State, was represented by former Asst. Solicitor Ms. Gail Lovell, and Ms. Melissa M. Milligan-Kilby, who's currently working in the Beaufort County Clerk of Court's Office as the Judgment Administrator.

On Direct Appeal, conviction and sentence was affirmed by the South Carolina Court of Appeals. See * State v. Johnson, OP. No: #2008-UP-690 (S.C. Ct. App. filed December 11th, 2008). The Remittitur was issued on Dec. 30, 2008.

On March 9th, 2009, Petitioner, submitted his first Post-Conviction Relief Application and was assigned a Case No: #2009-CP-07-01050. A PCR hearing was conducted on August 30th, 2011, before the Honorable D. Craig Brown, Circuit Court Judge. Petitioner, was represented by an court-appointed attorney Mr. Timothy M. Wogan, and the State, was represented by Mr. Matthew J. Friedman, Esq.

On October 6th, 2011, the Honorable D. Craig Brown, issued an Order Denying the Post-Conviction Relief Application and did not allow for an full and fair hearing to raise all issues on the Application.

Thereafter, Petitioner, filed with the S.C. Supreme Court, an Petition for a Writ of Certiorari and the Petition was denied on June 5th, 2013, Appellate Case No: 2011-202807. The Remittitur dated June 21st, 2013, was sent back to the lower court. Petitioner, was represented by Appellate Defense Mr. Robert Pachak, who misled the Petitioner, by giving erroneous advice to seek Petition for a §2254 federal Writ of Habeas Corpus, making the Petitioner believe that he has exhausted all of his state court remedies.

Petitioner filed his second PCR Application on June 25th, 2013, back with the Court of Common Pleas. An Conditional Order of Dismissal was filed on January 13th, 2015, under the Case No: 2013-CP-07-01650, signed by the Honorable Carmen T. Mullen. On June 29th, 2015, the Petitioner, received from the Court an Final Order denying and dismissing this action, allowing the Petitioner, thirty (30) days in which to show why this action should not become Final or Why the ruling is improper. Petitioner, appealed and was assigned a Appellate Case No: 2015-001611. Thereafter, received an Order denying on August 20th, 2015. Remittitur was sent back to the lower court on August 18th, 2015. Petitioner, then filed an Rule#60(b) Motion to be Relieved of the Judgment under the Case No: 2013-CP-07-01650. Order denying the Motion signed by the Honorable Carmen T. Mullen, received on 02/12/16, and filed on 02/23/16. Petitioner, filed an third PCR Application on 04/22/16, and was assigned an Case No: 2016-CP-07-00979, and filed an Forensic DNA Testing Application to the Original Court of General Sessions, on 04/22/16, Case No: 2006-GS-07-01641. While the case is pending the Petitioner, filed several other motions to the Court which has not yet been ruled on. One motion filed against the Respondent's for Judgment by Default, an Motion to Suppress the Illegally obtained DNA evidence. Petitioner, received the State's Return and Motion to Dismiss and Conditional Order of Dismissal of the PCR Application Case No: 2016-CP-07-00979, on 08/14/17. Petitioner, filed a Return and Motion to Proceed in Opposition. The Final Order of Dismissal received on 02/05/18. The State filed its Response to the Forensic DNA Testing Application on 11/02/16. Petitioner, filed his Reply in Opposition to the State's Response, along with Notice of Motion for an Order to Terminate the Sex Offender Registration filed on 06/28/18, Case No: 2006-GS-07-01641.

Petitioner filed a Petition for a Writ of Mandamus, with the S.C. Court of Appeals, and assigned an Appellate Case No: 2018-000545, on 03/16/18, and the case was transferred to the S.C. Supreme Court, on 03/23/18. The State was ordered to answer the Writ, and the Petitioner, received the State's Return to the Petitioner's Petition for a Writ of Mandamus, on 04/26/18. Petitioner, filed a Reply in Opposition to the State's Return along with an Motion for an Order to Compel Discovery and Inspection of the DNA evidence. Petitioner, received an Order from the S.C. Supreme Court declining to issue the Writ of Mandamus on 05/03/18.

On 09/10/18, the Petitioner received a letter from the Honorable Carmen T. Mullen, making him aware of an Court appearance for an Forensic DNA Testing hearing. The appearance was canceled due to bad weather. On 11/15/18, the Petitioner, was transported to Court without notice for an hearing.

After, the hearing was conducted, the Petitioner, contacted the Court Reporter, Ms.Rebecca H. Hill, in reference to obtaining an transcript. In response to the request the Petitioner, received from Court Reporter on 12/12/18. Petitioner, contacted the S.C. Commission on Indigent Defense requesting funding for transcript and was advised that he would need an Order from the Judge to authorize the funding to provide transcript requested.

Petitioner, filed an Motion and Order to the Honorable Carmen T. Mullen, requesting such order to be obtained to receive transcript. The Motion has yet to be answered.

Petitioner, filed with the S.C. Supreme Court an Petition for a Writ Habeas Corpus, State Writ, dated 06/27/19, and filed on 07/02/19, assigned an Appellate Case No:2019-001079. On 11/20/19, Petitioner received from the S.C. Supreme Court an Order Denying the Petition for a Writ of Habeas Corpus, and granting permission to proceed In Forma Pauperis.

Thereafter, the Petitioner, wrote a letter to the Beaufort County Clerk of Court's Office requesting the status of his Post-Conviction Forensic DNA Testing Application, and received back from the Court an Order Denying the Application for Forensic DNA Tesing. Petitioner, was prejudiced by the actions of the Court and the Respondent, for failing to adequately providing notice of the Order until it was requested. The Order was signed by the Honorable Carmen T. Mullen, on 10/14/19/, and filed on 10/21/19, and the Court did not provide the Petitioner, with an copy of the Order. Petitioner, sought filing an Notice of an Belated Appeal with the S.C. Court of Appeals, and received notice that it was filed on 01/23/20, and assigned an Appellate Case No:2020-000110.

ARGUMENT

1. The Court did err when it denied the Petitioner his constitutional rights of guaranteed Due Process.

Petitioner, argues that the Access to Justice Post-Conviction Forensic DNA Testing Act Section§17-28-30(a), states in part that the Petitioner, may apply for DNA Testing of his physical or biological evidence available for any of the offenses enumerated and there is no statute of limitations. If, the Petitioner, does not have a constitutional right to prove his innocence, then the statute in nothing more than a blank check. Petitioner, asserts that he is innocent of the offenses for which he was convicted, and maintains his innocence and should be allowed to test, inspect, or contradict any available DNA evidence for which the Solicitor's office claim is in the possession of the Clerk of Court. Trial Counsel, Stephanie Smart-Gittings, failed to present an defense, failed to adequately represent which amounts to being denied effective assistance of counsel, violating Petitioner's Sixth Amendment of the United States Constitution. Trial Counsel failed to challenge the authenticity of the DNA evidence, nor did counsel challenge the chain of custody. The Petitioner, has an legal obligation for which he did not waive or forfeited. The Trial Court, erred when it forced the Petitioner, to be compelled into giving of an blood sample when it lacked subject-matter jurisdiction. See Petitioner's exhibit#P-1,S,T,U,& V. The Petitioner's federal rights were violated under the Fourth Amendment unreasonable search and seizure, Fifth Amendment, self-incrimination and being forced to compel, Sixth Amendment, Denied Effective Assistance, and his Fourteenth Amendment, Denied equal protection of the law, he was Deprived by the State of Life, Liberty, and Property without proper Due Process.

ARGUMENT

2. The Circuit Court did violate the Petitioner's federal rights.

The Petitioner, was denied the right to be present at a preliminary hearing, for which the Court, stated that the Petitioner, was not entitled to an preliminary hearing because the Petitioner, was already indicted before the preliminary hearing was held. See Petitioner's exhibit#Y and Letters from the preliminary hearing clerk, stating that a preliminary hearing was conducted. The Court, ruled in err denying the Petitioner's Motion to Dismiss.

Petitioner, argues that his trial counsel was inadequate during a critical stage of the Petitioner's pre-trial violating the procedural due process of law. Petitioner, received an unfair trial by way of an sham legal process. Petitioner, alleges that he was never indicted by an grand jury, therefore, his conviction and sentence is hereby void ab-inito. Due Process is denied whenever, the accused is not given a fair opportunity to present an defense. According to Section§17-28-50(c), which states, that the court shall make specific findings of fact and expressly state its conclusion of law, and thereafter, the Petitioner, shall be given an opportunity to reply to the proposed dismissal. Section§17-28-90(A), states, that a record of the proceeding must be made and preserved. All rules and statues applicable in criminal proceedings are available to the Applicant and the Solicitor. All Sections are within the Access to Justice Post-Conviction Forensic DNA Testing Act. The S.C. Criminal Rules and Procedure Rule#6(d) Rules for Chemical Analysis and Chain of Custody. Rule#6(d) Waiver of Rights: Nothing in this rule shall preclude the right of an Defendant to obtain an expert chemist or analyst to test a substance in his behalf, nor shall it preclude any party to introduce any evidence supporting or contradicting reports or papers entered into evidence.

ARGUMENT

- 3. The Circuit Court did abuse its discretion by failing to promptly act, it failed to rule properly on all motions that were presented before this Court, while action was pending.

Petitioner, argues that he filed an Motion to Suppress, Motion for Judgment by Default, Motion to be Relieved of Judgment, Motion for an Order to Terminate Sex Offender Registration and a Motion for Certificate of Innocence, all were filed while the Petitioner, was awaiting an decision for DNA Testing hearing. The length of delay was an abuse of discretion and totally unreasonable. The Court, finally decided to deny the Petitioner's Application for Forensic DNA Testing and did not adequately provide the Petitioner, with notice, nor did the Respondent. This process was very prejudicial to the Petitioner.

- 4. The Circuit Court failed to make a specific finding of fact and conclusion of law in compliance with the Access to Justice Post-Conviction Forensic DNA Testing Act, Section§17-28-90(G), states, that the Applicant or the Solicitor, shall have the right to appeal a final order denying the Application. The Court made its final order and did not adequately provide a copy to the Applicant. The lower Court was supposed to make a determination as to whether the Exclusionary Rule, applies to suppress the illegally obtained DNA evidence. See * People v. Hammerlund, 2019 Mich Lexis 1286 (2019). Petitioner, had an legal obligation to move with his motion to suppress the DNA evidence that was illegally obtained by way of an unreasonable search and seizure violating the Petitioner's Fourth Amendment right in which his Trial Counsel failed to protect by failing to move with this motion. See * Kimmelman v. Morrison, 477 U.S. 365, 91 L.Ed.2d. 106 S.Ct. 2574 (1986). Petitioner's reference is based upon the closing arguments of his trial counsel page#307 lines 22-25, counsel stating that she would have attacked the DNA evidence. Petitioner, was denied fundamental fairness, and effective assistance. Violations of the Petitioner's Sixth and Fourteenth Amendment.

5. The Circuit Court, did deprive the Petitioner, of his federal rights because it did not comply with the S.C. Criminal Rules and Procedures, Rules for chemical analysis and chain of custody. Rule#6(d) Waiver of Rights, the Petitioner, argues that he was denied equal protection of the law, denied the right to the Confrontational Clause, where the Petitioner has a right to face his accusers and prepare a defense without deprivation.

The DNA Testing request is material to the issue against the Petitioner's identity as the perpetrator. Petitioner, asserts that he has a constitutional right to challenge the authenticity of the Forensic scientific DNA evidence and that it is reasonably necessary for the Petitioner to demonstrate actual innocence. See * Cherif v. Braxton, 131 F.d. Supp 2d. 756 App (2001 ED VA).

Due Diligence requires a person to seek to satisfy his legal requirements or to discharge an obligation. It looks not to what was actually discovered, but, to what he could have discovered. Due Process of law requires that a person shall have a reasonable opportunity to be heard, before a legally appointed and qualified impartial tribunal, before any binding decree, order or judgment can be made affecting the rights to life, liberty, or property.

The Sixth Amendment right of an accused to confront the witnesses against him is a fundamental right, and is made obligatory on the State by the Fourteenth Amendment. See * Pointer v. Texas, 380 U.S. 400, 403 (1965). To deprive an accused of the right to cross examine the witnesses against him is a denial of due process of law.

6. The Lower Court did violate the federal rights of the Petitioner, because the trial counsel failed to protect the Petitioner's rights to be protected against the prohibition of violating the Petitioner's Fifth Amendment Double Jeopardy Clause.

Petitioner, argues that whenever, two convictions that arises out of the same transaction it violates the Fifth Amendment Double Jeopardy Clause. For, the offense of criminal sexual conduct in the first degree has the elements of kidnapping within its statute.

Petitioner, argues that the Prosecutor's misrepresented the physical evidence. See * Miller v. Pate, 386 U.S. 2, 17, L.Ed.2d. 690, 87, S.Ct. 785

At trial, the prosecutor and the Beaufort County Sheriff department knowingly misrepresented the fitted sheet and the Forensic DNA rape kit to obtain an conviction by way of the fruit of the poisonous tree analysis. They all conspired and made false statements alleging that the semen identified was the semen of the Petitioner. Petitioner, alleges prosecutorial misconduct, where the Defendant was convicted of criminal sexual conduct in the first degree, and kidnapping through the use of false evidence and a conviction obtained by means violating the Fourteenth Amendment. See * Napue v. People v. Illinois, 360 U.S. 3, L.Ed.2d. 1217, 79 S.Ct. 1173 (1959), and * Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 [omitted].

CONCLUSION

For the reasons stated, Petitioner, Nathaniel Johnson, Jr. #211574, respectfully asks this Honorable Court, to grant the Petition for A Writ of Certiorari, as a matter of law, as justice is so required.

Dated: Tues. February 18th, 2020

Respectfully submitted,
/s/ Nathaniel Johnson, Jr. #211574
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Pro-Se Petitioner

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Appellate Case No:2020-000110

Nathaniel Johnson, Jr. #211574,Petitioner,
V.
State of South Carolina,Respondent,

PROOF OF SERVICE

I, Nathaniel Johnson, Jr. #211574, the Petitioner, hereby certify that I have served a true copy of the Petitioner's Petition for a Writ of Certiorari, on the Respondent, by depositing into the U.S. mail postage prepaid and addressed to: Ms. Mary Jordan-Lempesis, Asst. Solicitor, for the Fourteenth Judicial Circuit Office of the Solicitor's, P.O. Box 1880, Bluffton, S.C. 29910.

Dated: Tues. February 18th, 2020

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
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Pro-Se Petitioner

Tues. February 18th 2020

The Honorable Jenny A. Kitchings
Clerk, of the S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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RE: Nathaniel Johnson Jr. #211574, Petitioner,
v. State of South Carolina, Respondent,
Appellate Case No: 2020-000110

Dear Ms. Kitchings:

Enclosed you will find a copy of the Petitioner's
"Petition for a Writ of Certiorari". I am sending this
copy to receive back for my records. Please check
stamp as being received. Thank you kindly!

Sincerely
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ACI

The Honorable Jenny A. Kitchings
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LEGAL MAIL