

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

Honorable: James R. Barber, III Circuit Court Judge

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APR 19 2013

ALONZO KEY

PETITIONER

V.

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

Appellate Case No. 2011-198347

WANDA H. CARTER

Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense

Division of Appellate Defense

Post Office Box 11589

Columbia, South Carolina, 29211-1589

ATTORNEY FOR PRO SE

ALONZO KEY

Lee Correctional Institution

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990 Wisacky Road

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RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

A preal from Aiken County
Honorable: James R. Barbour III Circuit Court Judge

ALONZO KEY PETITIONER
V.
STATE OF SOUTH CAROLINA RESPONDENT

Appellate Case No. 2011-198347

I Alonzo Key #192814, am the Petitioner in the above captioned case and motion this Court for a writ of Mandamus pursuant to Petitioner's petition for an appeal and writ of Certiorari. Petitioner has filed a pro se response to petition filed by his Attorney Mrs. Wanda H. Carter. Petitioner states that this case do have merit.

Petitioner's pro se response filed on June 19, 2012, and properly addressed to Mr. Daniel E. Shearouse, Clerk of Court, to the Supreme Court of South Carolina, Post Office Box 11330, Columbia, South Carolina, 29211, and pursuant to Petitioner's Appellate Court Counsel Mrs. Wanda H. Carter, of which submitted a petition for writ of Certiorari indicating that this appeal is without merit, and moves to be relieved as Counsel on June 11, 2012. All pursuant to PCR Case # 2010-CP-02-02124, and Appellate Case # 2011-198347.

Mr. Michael McCall is the warden here at the Lee Correctional Institution.

I Alonzo Key #192814, am here at the Lee Correctional Institution at Sumter-South-1139, 990 WISACKY Road Bishopville South Carolina, 29010.

Petitioner was charged with possession with intent to distribute cocaine base, indictment # 2010-GS-02-0458, upon agreement to plead guilty on the charge of indictment and waiving presentment to a new charge of possession with intent to distribute within proximity of a school. A separate charge of possession of cocaine base, warrant # I-091-222, and indictment # 2010-GS-02-0459, was nolle prossed pursuant to the plea agreement.

At the guilty plea, petitioner was represented by Charles David Hayes, esquire.

Petitioner is presently serving 12 years suspended to 8 years, with 3 years probation upon completion, rendered from a conviction to him in the Aiken County General Session's Court, on March 15, 2010, before the Honorable Judge Doyet A. Early III.

No direct appeal was suggested or filed from sentencing by Charles David Hayes, Attorney for Client on his behalf, App. 1-17

On September 3, 2010, petitioner filed a PCR Application with the Aiken County office of the Clerk of Court, App-19-48.

The respondents filed a return on March 24, 2011, requesting a hearing be held in this case. App-~~49~~52.

An amended PCR Application was filed on June 30, 2011, App-53-59.

A PCR hearing was held on July 13, 2011, at the Aiken County Court House before the Honorable Judge James R. Barber III. App-60-101, Attorney Mr. Brett H. Lanter represented petitioner at the PCR hearing. On August 17, 2011, an order of dismissal was issued in this case by the

Honorable: James R. Barbar III. App. 102-108, on August 17, 2011.

Petitioner's Attorney Mr. Brett H. Lancer appealed the Honorable: James R. Barbar III's dismissal of PCR, 8/31/2011.

Petitioner's Appellate Court Counsel Mrs. Wand H. Carter, submitted a petition for Writ of Certiorari, indicating that this appeal is without merit and moves to be relieved as counsel on June 11, 2012. Appellate case 2011-198347. Petitioner filed a pro se response that this case do have merit, on June 19, 2012, and properly addressed to Mr. Daniel E. Shearouse Clerk of Court to the Supreme Court of South Carolina, Post Office Box 11330, Columbia, South Carolina, 29211.

Petitioner contend that A defendant who pleads guilty may seek to set aside a conviction based on prior Constitutional claims which challenge the very power of the state to bring the defendant into court to answer the charge brought against him. See Blackledge v. Perry 417 U.S., at 30, 94 Sct. 2103. Because a challenge to an indictment on grounds of prosecutorial vindictiveness is such a claim, the Court should conclude that this appeal should be granted and writ of certiorari should be granted if this Court finds merit in that Constitutional challenge. Id., at 30-31, 94 Sct. 2103-04.

Petitioner contend that pursuant to Constitutional Amendment 5 and 14 due process of Law, Petitioner move and motion this court to grant this appeal and writ of Mandamus, and grant this writ of certiorari, filed with the United States Supreme Court, pursuant to Petitioner's pro se response and appeal, that this case do have merit. When officers per-

formed a warrantless trash search of which violates the Fourth Amendment and South Carolina Constitution. Finding that probable cause to search the house would not have existed without the evidence obtained from the trash can searches, that the State should dismiss the charge under Peoples v. Krivda, 5 Cal. 3d 357, 96 Cal. Rptr. 62, 486 p.2d 1262, which held that warrantless trash searches violated the Fourth Amendment a Federal protected right, as well as State Law. See also The United States Court of Appeals for the District of Columbia Circuit sitting en banc. Norman v. United States, 140 U.S. App. D.C. 313, 435 F.2d 385 (1970). Freedom from intrusion into the home or dwelling without consent is the archetypal type of the privacy protection secured by the Fourth Amendment "Id." at 317, 435 F.2d 389.

Petitioner contends that Affidavit in support of Search, and Judgment in support of the State to bring defendant into court to answer the charge brought against him was insufficient to support jurisdiction for the court. See Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed. 723 (1964). The purpose of the "two-pronged" test thus enunciated in Aguilar and Spinelli is, of course, to assure that the magistrate will not function merely as a rubber stamp but will issue search warrants only when the facts are sufficient to satisfy a reasonable prudent detached and neutral person that a crime is being committed or evidence of it kept on the premises to be searched and that the informant's information has been obtained by him in a reasonably reliable way rather than through neighborhood gossip, conjecture, or mere suspicion. Then only is a limited invasion of a person's privacy

Sanctioned by the Fourth Amendment.

Petitioner contend that absent exigent circumstances even if probable cause exists officers must not cross that threshold without a warrant. Derman v. United States, 140 U.S. App. D.C. 313, 435 F.2d 385 (1970).

Petitioner contend that in support of all the above allegations facts and laws, pursuant to the Affidavit, Search, Search Warrant and Indictment is defective, and is insufficient to give the Court the power to bring defendant into Court to answer the charge brought against him see Blackledge v. Perry, 417 U.S., at 30, 94 S.Ct., at 2103, See Petitioner's response filed June 19, 2012, also Appellate Appendix, Case No. 2011-198347.

Petitioner contend that failure to comply to S.C. rules of Court denies him due process of Law. That the facts remains that Petitioner is still at Waterlee Correctional Institution, and because Petitioner is in prison do not suffice due process on denoted facts.

(A) A duty of Respondents and the Court to perform acts requested

(B) The ministerial nature of the facts, (C) Petitioner's specific legal right for which discharge of the duty is necessary.

The Courts ability to compel the performance of a ministerial act is due here. Where there exist a plain, admitted and unquestioned legal right that has been arbitrarily and without due process, de warrant deprived and denied rights unto Petitioner.

Therefore this Court has proper and sole jurisdiction

over the Petitioner's present case as well as the Authority to Compel the Respondents to uphold this Writ of Mandamus to Writ.

Petitioner contend that he filed a PCR on 9/03/2010, that an Order of dismissal was rendered by the Honorable Judge: James R. Barbar III, on August 17, 2011. An appeal was taken by petitioner and his Attorney Mr. Brett H. Lancer, on August 31, 2011, that it has been more than 20 months since the appeal, that it has been more than 31 months since the filing of the original PCR Application. Petitioner contend that his Max out date is 11/13.

RELIEF SOUGHT: Petitioner pray this Court will Compel Respondents to hold such a hearing to determine the merit, and genuine issue of material facts and Law in question and grant this writ of Mandamus to Compel the Court to honor this appeal, writ of Certiorari, and grant an Order of Judgment to free Petitioner from his unconstitutional confinement.

To The Respondents:

You are here by Summons and Required to answer the allegations of the attached, Writ of Mandamus, within the 30 days from the day after receipt of this Summons.

Your answer must be received in Summons and a copy sent to Mrs.: Liz Godard, Aiken County Clerk of Court, Post Office Box 583, Aiken, South Carolina, 29802-0583, and Petitioner's Appellate Court Attorney, Mrs.: Wanda H. Carter, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina, 29211-1585, and to Petitioner Alouzo Key #192814, Lee Correctional Institution, Sumter-South-1139, 990 Wisacky Road, Bishopville South Carolina, 29010.

If you fail to answer within the prescribed time, a judgment by default will be rendered against you.

Given under my hand this _____ day of _____
2013.

Judge

Date 4/16/13

Respectfully Submitted

Sl Alouze Key

Alouze Key #1928 14

Lee C.I.

Sumter-South-1139

990 Wisacky Road

Bishopville, South

Carolina, 29010

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STATE OF SOUTH CAROLINA

RESPONDENT

IN FORMA PAUPERIS

Appellate Case No. 2011-198347

I, Alonzo Key, #192814, here by apply for leave to proceed in this case, Appeal, and writ of Certiorari, filed June 19, 2011, and this writ of Mandamus in support of, without payment of fees or cost or security therefor. In support of these of. In support of this Appeal, writ of Certiorari, and the writ of Mandamus.

I declare under penalty of perjury that the following facts are true:

- (1) I am the Petitioner in the above case action and I declare and believe I am entitled to redress;
- (2) Because of my poverty I am unable to pay the cost of said proceedings or give security therefor.

Sworn or Affirmed to and subscribed
before me this _____ day of _____

Petitioner

SL Alonzo Key
Alonzo Key #192814
Lee C.I.

Notary Public _____

Sumter-South-1139
990 Wisacky Road
Bishopville, S.C.

My Commission Expires _____

Date 4/16/13

29010

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Honorable: James R. Barbar, III Circuit Court Judge S.C. SUPREME COURT

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CERTIFICATE OF SERVICE

I Alonzo Key #192814, do certify that a true original of this Petition for Writ of Mandamus in the above case pursuant this appeal, and Writ of Certiorari have been served on the Supreme Court of South Carolina, by mailing in the U.S. Mail, to the addresses below on the Notarized date, and for forwarding:

The Supreme Court of South Carolina
Mr. Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, South Carolina, 29211

Attorney General
Mr. Allen Wilson
Post Office Box 11549
Columbia, South
Carolina, 29211

Sworn or Affirmed to and Subscribed
before me this _____ day of _____

Petitioner

SI Alonzo Key

Alonzo Key #192814
Lee C.I.

Notary Public _____

Sumter-South-1139
990 W. Sackey Rd
Bishopville S.C.

My Commission Expires _____

Date 4/16/13

29010