

Honorable Jenny Abbott Kitchings,
Clerk, S.C. Court of Appeals

RECEIVED

22 November 2021

NOV 24 2021

SC Court of Appeals

Re: Motion for Resentencing filed
with Richland County General Sessions
Courts, according to 18 D.S.C. A.
§ 3742 (a) (1) (2) (4) if errors were
made at sentencing you may file
for sentencing. I know the S.C.
Court of Appeals has Authority
and jurisdiction subject matter
over this action. So a copy was
sent to this court.

Respectfully Submitted,

Steph My Smith

THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF RICHLAND
IN THE COURT OF GENERAL SESSIONS

Stephen Roy Gratton, #136990,
Plaintiff,

-VS-

State of South Carolina,
Respondent.

MOTION FOR

RESENTENCING

Case No: _____

Plaintiff respectfully moves this Honorable Court for resentencing pursuant to 18 U.S.C.A. § 3742(a)(1)(2) and PRCRP Rule 35(a). On October 18, 1986, was convicted of a crime which occurred on April 30 1986. Plaintiff was found guilty by a Jury and the Honorable Hamilton Smith, sentenced Plaintiff to life for 1st degree Burglary and to two thirty-year terms (to run consecutive) for two counts of 1st degree Criminal Sexual Conduct; which was actually the same crime.

Plaintiff will show that because of errors, in law and statutes at trial and sentencing the Plaintiff was denied Due Process of law that is guaranteed under the Fourteenth Amendment of the United States Constitution. In order to correct these constitution violations Plaintiff should be entitled to resentencing to correct this injustice. Plaintiff will produce findings of facts set forth in statutory language accompanied by concise and explicit statements of underlying facts supporting all the findings pursuant to S.C. Code Ann. § 1-23-350

(2009),

JURISDICTION

Pursuant to the South Carolina Department of Probation, Parole, and Pardon Services making Plaintiff ineligible for parole by application of S.C. Code 24-21-640 in conjunction with SC Code 16-1-60, (This is a violation of ex post facto laws under U.S. Const. Art. 1 § 9-10 and SC Const. Art. 1 § 4) Plaintiff has access to the Courts. Parole was denied on August 18, 2021, and Administrative Law Court rejected the Plaintiff's motion for appeal pursuant to SC Code Ann. § 1-23-600(D) (Supp. 2020). Therefore, this Honorable Court has subject matter jurisdiction under 28 U.S.C.A. § 2202 and § 2255 and pursuant to 18 U.S.C.A. § 3742 (a)(1)(2) and PRCRP Rule 35(a). In support of this motion the plaintiff argues the following Constitutional Violations of Federal and State laws and statutes:

ERRORS OF LAW

- ISSUE NO. I: Court appointed trial Counsel, Jimmy Rogers, erred in providing Plaintiff with effective counsel by the following:
- A. Failed to argue that one indictment was a Double Jeopardy violation pursuant to S.C. Code 1976 § 17-23-20 and § 17-25-50 and U.S. Const. Amendment V. (C.S.C. First Degree)
 - B. Violated Criminal Practice Rule 5 § (e)(1)(3)(4) concerning alibi witness, James Riddick, who had facts that could exonerate plaintiff. Violation

U.S. Const. amendment V and S.C. Code 1976 § 17-23-60. (See Exhibit No. 1, 5 pages, note: the original copy is in the records of court appointed PCR counsels).

- 10.** Failed to request a pre-sentencing investigation despite a conflict in past criminal record by the prosecution pursuant to 18 U.S.C.A. § 3553 and 3569 sentencing guidelines, which constitutes a violation under the Fourteenth amendment of the U.S. Const. (Due Process).
- D. Failed to argue that sentencing under S.C. Code § 16-11-311, which mandates only a life sentence was not a statute at time of plaintiff's crime date and a less sentence could be given with a minimum of 15 years, a violation of due process and equal protection of law.
- E. Failure of trial counsel to request a mercy allowance which was held to be per se prejudicial (Id. at 613 Patrick v. State 562 S.E. 2d 609) (SC. 2002). This statute was abolished in 1997. Another Fourteenth Amendment Due Process Violation.

ISSUE NO. II: That there exist an alibi witness, James Riddick, who has information which could exonerate petitioner and affidavits support this (See Exhibits No. 1 5 pages). Due to PCR COURT ATTORNEY Phillip Florence, Jr. violation of SCACR Rule 407 § 1.16 (7)(c), who withdrew from case witness was not able to be found after 2 years. At PCR hearing new attorney McDow introduced affidavits and the Honorable Judge Patterson unlawfully provoke the

hearsay rule to dismiss case. However, under SCR REV § Rule 802 and 804 affidavits were exceptions to the hearsay rule.

Issue No. 3: These show how the S.C. Dept. of PPRS is violating due process of law to deny parole eligibility. (See Exhibit 100, 2 1 page). Also the S.C. Dept of Corr. and the S.C. Dept of PPRS has unlawfully labeled me as a sexual predator. Pursuant to SC ST § 44-48-100 only a Judge and Jury has the jurisdiction to determine this manner.

In conclusion, the Plaintiff prays that this Honorable Court, for the constitution errors as listed above, will rule in favor of the need for resentencing an order for justice to be best served. If not for the errors of court appointed, Jimmy Rogers and Phillip Florence Jr, attorney's Plaintiff would have been released from prison years ago. Because of these constitution violations Plaintiff should be permitted to be resentenced by this motion and not have to go through a PCR Application or Writ of Habeas Corpus; which would take several years and the Plaintiff would be handicapped because of his poor health and not having access to a typewriter. Because of the circumstances of this case Plaintiff prays the Courts will grant the justice that should be awarded after 35 years in prison for a crime he did not commit.

Respectfully submitted this 2nd day of November, 2021.

Stephen Roy Grotton

Stephen Roy Grotton
signature

CERTIFICATE OF SERVICE

I, Stephen Roy Gratten, Plaintiff in this matter, hereby certify that on the 22nd day of November, 2021 in Columbia, South Carolina served a copy of the foregoing Motion For Resentencing on all all parties by depositing in the United States Mail, postage prepaid and addressed as follows:

Honorable Jeanette W. McBride
Clerk of Court for Richland County
P.O. Box 2766
Columbia, South Carolina 29202-2766

Office of the Attorney General
Henry Dargan McMaster
P.O. Box 11549
Columbia, South Carolina 29211

Honorable Jenny Abbott Kitchings
Clerk of S.C. Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Respectfully Submitted on this 22nd day of
November, 2021

Stephen Roy Gratten

State of South Carolina)
County of Richland)

VERIFICATION

I Stephen Roy Gratton #136990, Plaintiff in above matter certify, depose and say that I have subscribed to the foregoing motion, that I know the contents thereof; that it includes every ground known to me for setting aside or correcting the conviction and sentence attacked in this motion; and that the matters and allegations therein set forth are true.

This 22nd day of November, 2021
Stephen Roy Gratton
Signature.

APPLICATION TO PROCEED WITHOUT
PREPAYMENT OF COSTS AND AFFIDAVIT
IN SUPPORT THERE OF

I, Stephen Roy Gratton #136990, Plaintiff in above matter, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the plaintiff in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security.

This 22nd day of November, 2021
Stephen Roy Gratton
Signature

Exhibit No. 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Stephen Roy Gratton, 136990,)
)
Plaintiff,)
)
vs.)
)
State of South Carolina,)
)
Defendant.)

Civil Action No. 89-CP-40-1351

AFFIDAVIT OF J. MARK JONES

J. Mark Jones, after being duly sworn, deposes and states that:

1. I am an attorney in Columbia, South Carolina.
2. I have assisted John U. Bell, III, who is court-appointed counsel for Steven R. Gratton, in the preparation and presentation of Mr. Gratton's post-conviction relief petition.
3. Based upon our review of trial counsel's file in this case and our own investigation, we knew that Mr. Gratton had given his trial counsel the name and telephone number of his former supervisor at the State newspaper, James Riddick, shortly after he was arrested. It was our understanding that Mr. Riddick could have helped trial counsel to identify co-carriers who waited with Mr. Gratton for the paper truck to arrive at the Richland Mall drop on the morning of April 30, 1986.
4. On or about early November of 1989, I called the State newspaper to see if Mr. Riddick was still in its employ. Someone in the State's Personnel Department informed me that Mr. Riddick had left the State's employ some time back, and that he did not leave a forwarding address or telephone number.

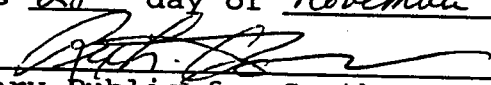
5. I then sought to speak with someone with the State's Circulation Department who could provide me with a list of Mr. Gratton's co-carriers who picked up their papers at the Richland Mall drop on the morning of April 30, 1986. I was directed to Tim Bostick, Assistant Circulation Director. When I spoke with Mr. Bostick about this matter, he said he did not know of the whereabouts of James Riddick. He also said that because of the time that had passed, he would not be able to pin down ~~exactly which paper carriers would have picked up their newspapers~~ at the Richland Mall drop on the morning in question, but that he could provide me with a list of all paper carriers who picked up at the Richland Mall drop during the end of April, 1986. In January of 1990, Mr. Bell and I sent letters to every individual on the list provided to us by Mr. Bostick. Our letter explained the circumstances of the case, and asked "Do you know any facts whatsoever that might be relevant to Mr. Gratton's case? Yes ___; No ___," and provided the addressee with a self-addressed stamped envelope in which to respond. The majority of these individuals sent back negative responses, and the remainder did not respond or their letters were returned and we determined that ~~they had moved out of the area.~~ Attempts to follow up with those who did not respond by mail were unsuccessful in most cases. Those we were able to reach by telephone had no knowledge of the events in question.

6. In October of 1990, we learned from Steven Gratton that his mother had found someone at the State newspaper, Gail

Bullet, who had a forwarding address, but not a telephone number, for Mr. Riddick. I obtained this address from Mrs. Bullet and immediately wrote Mr. Riddick. On Friday, November 9, 1990, Mr. Riddick responded to my letter with a telephone call, but I was attending a CLE seminar out of state. I returned Mr. Riddick's call when I returned to the office on Monday, November 12, 1990, but was not able to reach him. John and I spoke with Mr. Riddick for the first time by telephone on Tuesday, November 13, 1990. During that telephone conversation, (we determined that Mr. Riddick may know of new facts that could exonerate Mr. Gratton, and Mr. Riddick offered to give testimony about the facts within his knowledge.) We immediately contacted the State Appellant Defender's Office, to whom the file had been transferred, to share this new evidence with them.


J. Mark Jones

SWORN to and subscribed before me
this 28th day of November, 1990.


Notary Public for South Carolina (L.S.)

My Commission Expires: 12/15/96

AFFIDAVIT OF JAMES RIDDICK

Exhibit No. 2

James Riddick, after being duly sworn, deposes and states that:

1. That on the morning of April 30, 1986, I was the supervisor over, one Stephen Roy Gratton who was one of my paper carrier's.
2. That on Wednesday mornings the paper truck is always there before 3:45AM because of the inserts which go in the Wednesday paper. And that on this date, Wednesday, April the 30th, 1986, the truck had arrived on time, Approx. 3:45AM.
3. That, I remember that Stephen Gratton was there before the paper truck was there, because I remember saying it was good work he was doing and getting here early which showed he was a devoted worker.
4. That the following carriers were with Mr. Gratton on the morning in question: JOE Wilson, Jerry Taylor and Lee Jennings and Fred Turner. I recall that Stephen Gratton was waiting with Lee Jennings and Fred Turner.
5. The next Day on Thursday April 31, 1986 I called Stephen Mother to see why he wasn't there, because he was always there before the truck arrived. His Mother told me he had been arrested.
6. That, I was sure that I would be contacted about his case, however, no attorney ever approached me or talked to me about Stephen's case until October, 1990. I could of gave Stephen an alibi from about 3;40AM until about 4:15AM.
7. Also the driver keeps a log of the time they arrive at the drop off point, if asked I could of provided Stephen's Attorney with this.
8. That the above statements are true and accurate to the best of my knowledge and belief.

JAMES RIDDICK

DATE

SWORN to and subscribed before me
this ____ day of _____, 1991

Notary Public for

My Commission Expires: _____

STEPHEN ROY GRATTON,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

A F F I D A V I T

Exhibit NO. 3

Personally appeared before me James Riddick, who being duly sworn, deposes and says:

1. My name is James Riddick. I currently reside at 171 Seventh Street, Leominster, Massachusetts 10453. I am employed as an auditor by RGIS, Inventory Specialists also located in Leominster, Massachusetts.

2. On April 30, 1986, I was employed by the State Newspaper of Columbia, South Carolina as a district manager. Stephen Roy Gratton was my employee, a paper carrier for the State Newspaper. On the morning in question, Stephen Gratton was present at the "paper-drop" located at the Richland Mall in Columbia at Forest Acres. This paper-drop is located specifically in front of the cleaners when the Forest Drive side of the Mall. Stephen Gratton was present at about 3:00 or 3:30 a.m. for the purpose for folding newspapers for his route. I talked to Mr. Gratton that morning. Lee Jennings and Fred Turner were also present. I recall Stephen Gratton leaving the drop at 3:45 - 3:50 a.m. I remembered this date because the next date Mr. Gratton, who was usually a reliable employee, did not appear for work. I learned that Mr. Gratton had been arrested when I contacted his mother the next day. Also, I read of the arrest in the newspaper.

3. I moved from Columbia to Leominster in September, 1989. No one ever contacted me with respect to this matter until I was contacted by Attorney J. Mark Jones, of the Nelson-Mullins Law Firm.

AND FURTHER, AFFIANT SAITH NOT.

[Signature]

JAMES RIDDICK

SWORN TO AND SUBSCRIBED before me
this 22 day of January, 1991.

[Signature]

NOTARY PUBLIC FOR MASSACHUSETTS

My Commission Expires: 1/22/92

Exhibit No. 4

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Stephen Gratton, 136990

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 21-ALJ10-021-AP
GRIEVANCE NO.: 21P021

Notice is hereby given that Stephen Gratton does hereby appeal the final decision of the South Carolina Department of Corrections dated and received on 8-19-21, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

- ① The Parole Board violated Ex Post Facto laws by permanently denying parole eligibility by application of Sec. 24-21-640 (2) and 16-1-60 S.C. Code thus violating U.S. Const. Art. I, § 10, S.C. Const. Art. 1, § 4, Denied benefits of Art. 100 of 1981.
- ② The Parole Board acted arbitrarily and capriciously and deprived a state-created liberty interest under 24-21-640 S.C. Code
- ③ The Parole Board violated the 5th, 6th, 8th, and 14th amendments of the U.S. Const. and Art. 3 and 4 of S.C. Const. by unlawful application by using nature and seriousness of offense continually as reason for rejection.

Stephen R. Gratton

Appellant's Name
SCDC - Kirkland C.I. - B2-4
4344 Broad River Road
Mailing Address

Stephen R. Gratton

Signed
8-19-21
Dated

Columbia, SC 29210
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Stephen Gratton (your name), on the 19 day of Aug., 2021, in Columbia (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Division of Legal Serv., SC Dept. of PPRS

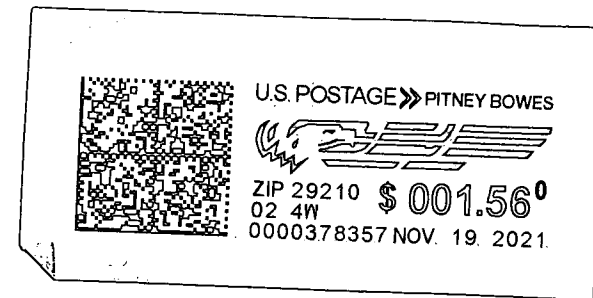
Address: 2221 Devine St., Suite 600, P.O. Box 50666

City, State, Zip Code: Columbia, SC 29250

Stephen R. Gratton

Stephen R. Gratton

Stephen Roy Gratton #136990
SC DC Kirkland C.I. B2-4
#344 Broad River Road
Columbia, South Carolina 29210



RECEIVED

NOV 24 2021

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

"legal
mail"