

Exh. 1



HENRY McMASTER
ATTORNEY GENERAL

March 23, 2009

Jackson, Allen, #_00178827
Lee Correctional Institution (L3)
Anthony Padula, Warden
990 Wisacky Highway
Bishopville SC 29010
803-428-2800 or 803-896-2400

Re: 2005CP4002868

Mr. Jackson:

Judge Barber informed me that he was not going to sign off on the State's proposed Final Order of Dismissal; and that your PCR should be set for a hearing on the next available date.

My next hearing date is Monday March 30, 2009 before the Honorable L. Casey Manning.

I will arrange for your transport, the hearing is scheduled for 9:30 AM at the Richland County Courthouse on Monday March 30, 2009.

Sincerely,

Brian T. Petrano
Assistant Attorney General
bpetrano@ag.state.sc.us

RECEIVED

FEB 02 2022

S.C. SUPREME COURT



HENRY McMASTER
ATTORNEY GENERAL

June 15, 2010


Jackson, Allet, # 00178827
Lee Correctional Institution (L3)
Anthony Padula, Warden
990 Wisacky Highway
Bishopville, SC 29010
803-428-2800 or 803-896-2400

Re: 2005CP4002868

Mr. Jackson:

I received your recent letter. It was my understanding that Judge Manning took the issue under advisement. It is not my intention to request that the Clerk appoint you another attorney. In addition, another hearing is not necessary. We both made our argument(s) before Judge Manning back in 2009. I have a proposed Final Order of Dismissal if he requests one.

Sincerely,


Brian T. Petrano
Assistant Attorney General
bpetrano@ag.state.sc.us

227-00

Exhibit #2

Exhibit # 4

application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Pursuant to section 17-27-90, successive PCR actions are barred unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." *Id.* at 452, 409 S.E.2d at 395 (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." *Id.* at 451, 409 S.E.2d at 395. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant's current allegations could have been – and in fact were – raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant's current allegations are identical to those raised in his prior collateral actions. Applicant has failed to establish any sufficient reason why Applicant could not raise his current allegations in previous applications or why this Court should overlook the fact he has previously raised these exact claims of ineffective assistance and subject matter jurisdiction. Accordingly, Applicant has

SCACR. Applicant untimely filed a Motion for Rehearing, and the Court issued the dismissal and Remittitur on January 30, 2008.

iii. Second PCR Action and Appeal (2008-CP-40-2868)

Applicant filed a second application for PCR on June 16, 2005, in which he alleged the following grounds for relief:

1. "The Court lacked subject matter jurisdiction."
 - a. "See attached ground - trial court lacked subject matter jurisdiction because the murder indictment failed to state the time and place of the victim's death."

Respondent made its Return and motion to dismiss on July 10, 2008. On July 21, 2008, the Honorable L. Casey Manning, issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, while giving Applicant twenty days to show why the dismissal should not become final. Applicant filed a response to the Order August 28, 2008. Following receipt of the Applicant's response, the Honorable James R. Barber, III, then Chief Administrative Judge, requested a hearing be set for Applicant to make his requests in open Court. The parties appeared before the Court on March 30, 2009. Respondent argued the matter lacked a genuine issue of material fact for which to have an evidentiary hearing. Applicant raised his claims as pled in his allegation. The Court held the matter under advisement. On October 11, 2008, after reviewing the response and record, Judge Manning, in his capacity as Chief Administrative Judge, issued the Final Order of Dismissal denying and dismissing the PCR action with prejudice.

Applicant appealed, and on November 30, 2011, the South Carolina Supreme Court issued an Order dismissing Applicant's appeal pursuant to Rule 243(c), SCACR, for failing to show an arguable basis for asserting the lower court determination was improper. Applicant thereafter submitted a Motion for Rehearing. Applicant's motion was denied and the Remittitur issued January 11, 2012.

iv. Habeas Corpus Action

Applicant then filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2244, requesting an order authorizing the district court to consider a successive petition for relief pursuant under 28 U.S.C. § 2254. On September 26, 2014, the United State Court of Appeals for the Fourth Circuit denied the motion by written order.

CURRENT APPLICATION

In his third and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Trial Court lacked subject Matter Jurisdiction"
 - a. "Murder Indictment failed to state Element of time, place and cause of death."
2. "Ineffective Assistance of Counsel"
 - a. "Ineffective for failure to move to quash indictment in accordance with S.C. Code Ann § 17-19-90."

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records, Applicant's SCDC records, the trial transcript, Applicant's appellate records, the records from Applicant's prior PCR actions and subsequent appeal, the records from Applicant's prior habeas corpus actions, and the records of this PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to

FACTS OF CASE

At first (P/R) hearing that convened back in 1998. Trial counsel admitted that he informed me that I was being called on the following indictments:

Murder Indictment

That Allen Jackson did in Richmond County on or about September 15, 1990 feloniously and with malice aforethought, Kill one John Darby, by means of slashing his throat and that the said victim died as a proximate result thereof. (See exhibit #1)

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M. NEBRIDE
& G.S.
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Armed Robbery Indictment

That Allen Jackson did in Richmond County on or about September 15, 1990 while armed with a deadly weapon, to wit, broken bottle, feloniously take from the person or presence of John Allen Darby by means of force or intimidation goods or monies of John Allen Darby such goods or monies being described as follows: unknown amount of US money. (See exhibit #2)

At first (P/R) hearing counsel stated his trial strategy was the lesser included offense of murder, and he tried to demonstrate is clear by putting me on the stand to confess to unconditionally killing Mr Darby on September 15, 1990 with a beer bottle doing a fight over a bad drug deal. Tr 254 Counsel at trial demonstrated that there

prosecutor found evidence of what at
times believe to be drugs and evidence
show Mr Darby had money in his pockets
after fight. Tr 34 lines 9-12; Tr 352 line 1-14.

The trial counsel closing arguments to the
jury he stated as follows

Allen was told the stand and
admitted to killing Mr Darby with
a beer bottle on September
15, 1990 in a fight and the only
question for you is was it mu-
-rder or manslaughter. Tr 352 lines 9-12

NICHLAND COUNTY
FILED
2019 MAY -6 AM 9:28
JEANETTE W. MCBRIDE
C.C.P. & G.S.

DISCUSSION

Now ~~can~~ prosecutor approach at trial ~~be~~
I had a co-defence with me on September 15,
1990, and that Mr Darby didn't die on Septem-
-ber 15, 1990. But die on January 2, 1991 from
pneumonia... that was caused or contributed
from wound with beer bottle on September 15, 1990,
with the medical experts testimony. Tr 14-15

Now, can prosecutor withheld is critical medic-
-al evidence as to my guilt of innocence of the
cause of death from pneumonia on January 2,
1991 and that there was a co-defendant with
me and that state need medical experts
testimony to prove it case. Tr 14-25

The Constitution Double Jeopardy Clause protect prosecutor from withholding critical medical evidence as to my guilt or innocence from grand jury investigation. A matter so vital as the place of death of the party kill is absolutely necessary to be alleged in a jurisdictional point of view and must be pass upon by the grand jury in accordance with the constitutional right of the Accuse. Phatt, 151 S.C. 206 at 211. The Court determined that this matter was jurisdictional in nature, like wise the time of death is also a critical jurisdictional element in a dictment for murder must alleged in addition to the place of assault and death, the time of the assault and time of death. Rector, 158 S.C. 212, and recently in Winn Op. No. 25958 Ailed March 28, 2005.

In Winnship the courts held that the Due Process Clause applies in both State and Federal proceeding. see Sullivan v LA 508 U.S. 275 at 278 (1993) The standard protects defendants from stigma of convictions, Its protects his liberty interests. and it encourages community substance to the presumption of innocence. Id at 36-64; This Due Process Clause also applies to elements that distinguish a more serious crime from a lesser one. Append. N.T. 530 U.S. 466; 488-92; (2000).

In South Carolina (A.B.I. K) compose of all the elements of murder... except the death of Mr Darby on January 2, 1991 from pneumonia and punishment at that time could not exceeded (20) years. S.C. Code 16-3-10; and 16-3-620;

In Sutton, a person who was shot in an altercation on the outside of a night club could not be convicted of murder but could only be convicted of

ASSAULT AND BATTERY WITH INTENT TO KILL (A.B.I.K)...
- BECAUSE THE VICTIM DID NOT DIE WITHIN A YEAR AND ONE DAY
AFTER THE WOUND WAS INFLICTED SO THERE WAS AN CON-
CLUSIVE PRESUMPTION THAT THE WOUND FROM THE SHOOTING
DID NOT CAUSE THE DEATH. SUTTON V STATE 508 S.E. 2d 41 S.C.
APP. 1998).

THE COURTS IN SUTTON DID NOT IN ANY WAY STATE THAT THE
AND GRAND JURY WAS NOT ENTITLED TO BE INFORMED OF THE PR-
PRESUMPTION THAT THE WOUND INFLICTED WITH BEER BOTTLE ON
SEPTEMBER 15, 1990 DID NOT CAUSE OR CONTRIBUTED TO MR. DAN
BY DEATH FROM PNEUMONIA ON JANUARY 2, 1991. BECAUSE
THE TIME THAT ELAPSED BETWEEN SEPTEMBER 15, 1990 AND
JANUARY 2, 1991 DID NOT EXCEED THE FULL YEAR AND ONE
DAY CONCLUSIVE PRESUMPTION IN SUTTON V STATE
508 S.E. 2d 41 S.C. APP. 1998).

BOTH SOUTH CAROLINA CONGRESS AND LEGISLATOR HAVE
RESPONDED TO THIS NEED BY AUTHORIZING THE PROVISION
FOR FUNDS TO INDIGENT DEFENDANTS FOR EXPERT SE-
RVICES IN CASES SUCH AS THIS. WHEN IT IS NECESS-
ARY TO ESTABLISH ADEQUATE TRUTH IN THE MATTER, SEE
ABA STANDARD 4-41; S.C. CODE § 17-3-80; McQUEEN
V. STURSON 498 F.2d 207, at 217.

IF THE STATE NEED A MEDICAL EXPERT TO LINK THE WOUND
INFLICTED WITH BEER BOTTLE ON SEPTEMBER 15, 1990 TO CAUSE
OF DEATH FROM PNEUMONIA ON JANUARY 2, 1991... THEN
GRAND JURY NEEDED TO BE INFORMED OF THIS CRITICAL
MEDICAL EVIDENCE AS TO MY GUILT OR INNOCENCE. I
IS OBVIOUS ONE OF THE MOST IMPORTANT THING FOR GRAND JURY TO
KNOW BEFORE THEY INDICTED ME FOR MURDER.

Now can grand jury find out about time, place and cause of death without being informed by prosecutor. The South Carolina Grand Jury determine whether there is probable cause to believe that a crime has been committed and protects citizens against (is) and founded prosecutions, for murder. S.C. Code § 17-19-90; S.C. Const Art 5 Sec 11.

A court's authority to exercise its subject matter jurisdiction over a case may be restricted by failure to comply with restrictions that are mandatory in nature and thus are prerequisite to a court lawful exercise of that jurisdiction. Moss v Com 527 S.E. 2d 415.

South Carolina Criminal Law Provisions for murder are found in both Statutor and common law with dictates the steps to be follow to authority exercise of South Carolina subject matter jurisdiction requirements Notice. S.C. Code 17-19-10-30; 16-3-10; S.C. Constitutional Art V, Sec 11.

In Rector, supra, the courts held that the crime of murder is a composite one that the State must prove not only the assault and death occurring from it, but the time of assault and time of death. These necessary elements of the crime of murder must not only be prove before the accused may be convicted, but they must be alleged in the indictment returned against accused by grand jury. Rector, supra (31 C. 1930) 158 S.C. 212, 155 S.E. 21385; S.C. Code 17-19-30; S.C. Const Art 5 and 11. Winas v. State Op. No 25958 filed March 28, 2005.

The United State Sixth Amendment right to counsel, notice, confrontation and compulsory process, which are applicable to the State's through the Due Process Clause of the Fourteenth Amendment essentially constitutionalize the right to present a defense in a adversarial criminal trial. State v. Schmitt, (S.C. 1986) 288 S.C. 301, 342 S.E. 2d 402. U.S.C.A. Const. Amend. 6th and 14th.

The court has held that trial counsel has a duty to investigate and is not eliminated by clients' own conclusions or admissions of guilt. (Tr 473 line 19-25) BECAUSE clients beliefs may not coincide with the NECESSARY elements of proof to establish guilt by law. S.C. Codes 16-3-10, 16-3-620. His client may not be aware of the significance of the facts regarding intent, mitigation, suppression of evidence or impeachment of witnesses that only an independent investigation can uncover. ABA Standard 4.4.1 (Commenting at 4.54. Jacobs v United State, 350 F.2d 57 (4th Cir 1965). Williams v Martine 618 F.2d 1021.

Trial counsel duty to investigate time, place and cause of death is obvious one of the most important things to do before... advising me to confess to killing Mr Darby with beer bottle doing a fight on September 15, 1990. Tr 234 line 1-25.

Here, it is impossible for trial counsel to advised me to confess to killing Mr Darby without his own expert to properly advise him as to what cause or contribute to the (pneumonia) that Mr Darby die from one Janer < May 2, 1991.

2019 MAY - 5
JEANETTE W. HENRI
CCS & ASS
NICHOLE D. JONES

Trial counsel was a layman in the medical profession and could not secure the information needed to advise me to confess to actually killing Mr Darby on September 15, 1990. An expert was needed just for counsel to understand what is pneumonia and what causes or contributed to the pneumonia Mr Darby died from on January 2, 1991. Tr 224 line 1-15

With an expert advising him trial counsel might well have been able to raise the reasonable doubt as to whether the cut from beer bottle on September 15, 1990, caused or contributed to the death from pneumonia on January 2, 1991. William v. Martine 618 F.2d at 1025; 28 U.S.C. 2244(d)(2)(B)(i); U.S.C.A. Const Amend 6, 14.

Here, state expert at trial leaves questionable room for doubt of whether the wound with beer bottle on September 15, 1990 was the primary cause of the pneumonia that Mr Darby died from on January 2, 1991 as follows: Tr 224 line 6-25

Q, Dr. Armstrong based on your total examination of both Mr. Darby's medical records prior to the autopsy and your internal and external examinations of this body were you able to come to a conclusion as to the ... causes of death?

A, yes, he died ultimately or finally of pneumonia.

Q, What causes or what could have caused it?

A, We see these in essentially any cases that will disrupt the blood supply. It is a finding we see in people who have strokes where they have a clot forming the artery and block the blood supply. It is seen when somebody breaks a blood vessel and there's bleeding and also can occur from

A case such as this where at least in my opinion.

Tr 224; 225).

Here trial counsel made no attempt at trial to challenge what cause or contributed to the ~~presence~~ ^{presence} that killed Mr Darby because he was without expert to advise him.

An indigent defendant who need expert assistance because subject matter is beyond comprehension of an layman should not be required to present proof of what an expert would say when he is denied access to expert at 1026. JAMES AS STATE NEED AN EXPERT TO PROVE THE CAUSE OF DEATH ... I ALSO NEED AN EXPERT TO TEST THE FIRMNESS OF HIS WEAK OPINIONS. Tr 224 lines 1-15; JACOBS, 350 F.2d at 573. WILLIAMS at 1026

Trial counsel constitutional error in withholding the time, place and cause of death. Knowing or should have known that time, place of death was also withheld from grand jury and advising me to confess to actually killing Mr Darby months before he die... demonstrate trial counsel abandoned his role for defense with a classic example of a complete breakdown in the adversarial process that is unreliable. Crowie v U.S. 466 U.S. 648, 104 S.Ct 2639. U.S.C.A. Const. Amend 6, 14;

The essence of an ineffective assistance of counsel claim is did trial counsel unprofessional errors so upset the adversarial balance between defense and prosecu one to render the verdict suspect. Strickland v Washington 466 U.S. at 686; 104 S.Ct. at 2647; Crowie, 466 U.S. at 655; 104 S.Ct. at 2646.

In Hoffman v United States the Supreme Court's held that compelled testimony is self-incriminating if reasonable cause exists to believe that (my) testimony would either... support a conviction (for murder) or provide a link in the chain of evidence (of expert) leading to a conviction. (of murder) 341 U.S. 479 at 486 (1951)

There is no doubt had I been financially able to afford my own defense counsel. He would have undoubtedly informed me of time, place and cause of death and consulted with an expert about whether the wound from beer bottle during the fight over bad drug deal on September 15, 1990 caused or contributed to the death from pneumonia on January 2, 1991... before helping bolstered State case against me by advising me to confess to actually killing Mr. Darby with beer bottle months before he died. JACOBS v. United States, 350 F.2d 57 (4th Cir. 1965) Williams v. Martin 618 F.2d 1025. S.C. Code § 18-3-80. Winkles v. State Op. No 25958 filed March 28, 2005.

Trial counsel withholding this critical medical evidence as to my guilt or innocence of the actual killing from me and grand jury. Without putting this critical evidence to my adversarial testing by grand jury or expert before advising me to confess to actual killing Mr. Darby with beer bottle on September 15, 1990 at trial... infected my entire constitutional right to Double Jeopardy clause and lesser included offenses of (A, B, I, K) which punishment should not have exceeded

TWENTY (20) YEAR AT TIME OF TRIAL. REVIDER A
FUNDAMENTAL MISARRANGE OF JUSTICE OF ONE WHO M-
AY BE ACTUALLY INNOCENT OF CAUSE OF DEATH LONIE
X-U.S. 466 U.S. 848: Strickland v Washington 466
U.S. at 686; 104 S.Ct. at 2064.

THE indictment for murder time, place and ca-
-USE OF death of Mr Darby before grand jury... cl-
-EARLY CONTRARY TO THE LAW AND EVIDENCE
AT TRIAL TIME, PLACE AND CAUSE OF DEATH OF
Mr Darby. PROSECUTOR WAS ONLY WITNESS APPEAR
before grand jury on murder indictment. No
MEDICAL EXPERT AT ALL before grand jury, deliberation

A GRAND JURY IS NOT A PROSECUTOR PLAY THING AND
THE AWESOME POWER OF THE STATE SHOULD NOT
BE ABUSED, BUT SHOULD BE USED DELIBERATELY,
NOT IN HASTE. A PROSECUTOR SHOULD AT ALL TIME
AVOID THE APPEARANCE OR REALITY OF A CON-
FLICT OF INTEREST WITH RESPECT TO HIS OFFI-
CIAL DUTIES. STATE V CAMPBELL, 275 S.E.2d 872.

THEFORE, THE ABOVE PRO-SE PETITIONER RESPECTFULLY
MOVE THIS HONORABLE COURT FOR APPOINTMENT OF COUNSEL
AND REQUEST A RESPECTIVE HEARING BE CON-
VENED IN THIS MATTER.

FILED
RICHLAND COUNTY
2019 MAY -6 AM 9:29
JEANETTE M. HERRIDGE
C.C.P. & G.S.