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Apr 21 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Appellate Case No. 2019-000637

Tony Young,.....Appellant,

v.

Greenwood County Detention Center and the Greenwood County Sheriff’s Office, Defendants,

Of Which the Greenwood County Sheriff’s Office is.....Respondent.

APPELLANT’S PETITION FOR REHEARING

COMES NOW the appellant, pursuant to Rule 221 SCACR, and other rules of Court, and petitions for rehearing as to the Court’s dismissal of this appeal. The appellant respects the Court’s decision, but respectfully submits that he must petition the Court for rehearing in order to preserve his right to petition the South Carolina Supreme Court for certiorari and, if necessary, petition the United States Supreme Court for certiorari. Young respectfully preserves for appeal and petition for certiorari all appellate issues, including all those briefed and all of those addressed by the South Carolina Court of Appeal’s decision.

Young was deprived of his constitutional right to a jury trial. The appellate Court misapprehended the case law and the constitutional amendment that protects his right to a jury

trial. Young did not waive his objections to related convictions. Rather, the Court addressed those convictions and prejudiced him before the record stated, without warning, and before he could object. As a result, *Kirkland v. Allcraft Steel Co.* 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) is inapplicable.

The excluded proffered testimony should have been admitted. It is not required that other inmates have been mistreated in exactly the same way as Young, only that other inmates were mistreated. See Rule 401 SCRE and related case law.

Young was entitled to a new trial. See *Welch v. Epstein* 536 S.E.2d 408, 342 S.C. 279 (Ct. App. 2000). The denial of his motion for a new trial was clear error and abuse of discretion. The Court denied Young denied the right to present relevant evidence and prejudiced his case in front of the jury. The Court also erred in failing to grant Young a new trial under the thirteenth juror doctrine. Because Young was denied his right to a fair trial under the seventh amendment, it was an abuse of discretion for the Court to fail to grant him a new trial.

Young respectfully submits that the Court erred in its jury instructions. It was impossible for Young to be comparatively negligent, and such an instruction can only amount to an abuse of discretion. See *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). The Appellate Court reasoned that since the jury found the Sheriff's Office was not negligent, this issue is of no consequence. The Court did not address, however, how hearing this instruction, along with the Court's negative commentary on the evidence, deprived Young of his rights and prejudiced him.

The trial court erred in allowing Deborah Knowles' deposition. The evidence showed that Knowles was confused and ill when she was deposed, and the Court did not address the error related to the trial court allowing the testimony.

Perhaps the most important issue for the Court is the trial court's diminishing of Young's case in front of the jury. The American system of justice is built on everyone's right to a fair trial. When a trial court influences a jury's decision by commenting on the strength or weakness of the evidence, it robs a litigant of his right to have his peers determine facts and a "controversy exceeding twenty dollars." The Appellate Court failed to apply the plain words of the constitution and the case law related to it.

CONCLUSION

For these reasons, Young requests rehearing and that the Appellate Court alter and amend its decision. In the alternative, Young preserves all issues for appellate review by the state and federal Supreme Courts.

Respectfully submitted,

s/ Joshua T. Hawkins

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PROOF OF SERVICE

I certify that I have served the Appellant’s Petition for Rehearing on The South Carolina Court of Appeals, via U.S. Certified Mail *and* electronic mail to the addresses listed below, and on The Greenwood County Sheriff’s Office via electronic mail only, on April 21, 2022, to their attorney of record at addresses below:

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Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Tony Young v. The Greenwood County Sheriff's Office*
Appellate Case No. 2019-000637

Dear Ms. Kitchings:

Please find enclosed for filing and service, a copy of Appellant's Petition for Rehearing in the case referenced above, along with a Proof of Service and check for the filing fee. Opposing counsel has been copied via electronic service as indicated below.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Monica Brody
Certified Paralegal

Enclosures

Copies: via electronic mail only

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