

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Horry County  
Court of Common Pleas

**RECEIVED**

Steven H. John, Circuit Court Judge

APR 1 2013

2009-CP-26-5609

ROBERT BURKE CARTER 235165

Petitioner

S.C. SUPREME COURT

v

STATE OF SOUTH CAROLINA

Respondent

Response to Motion to Dismiss

I am asking for the consideration of this court to recognize my position of being forced to act in my own behalf in trying for so many years to defend against the injustice of having been wrongfully prosecuted and convicted of a sexual assault that I did not commit. My constitutional right to due process and fundamental fairness as well as effective assistance of legal counsel has been denied me from the time I was first arrested and entered into the criminal justice system, which was February 1, 1995.

I have tried my best through the years with every motion or brief I have ever submitted, to properly cite the true merits of my case in hopes of winning a new trial and righting a terrible wrong. As a pro-se inmate I cannot always meet the demands put upon me by the state in order to defend what I know to be true against the Attorney General's Office at this level, without some consideration by this court and some effective legal help.

After my trial and conviction I was represented by Mr. Rauch Wise from Greenwood S. C. He took the time to learn the facts of my case and was able to see the many problems of how I was prosecuted and convicted. He handled my appeal to the Appellate court and the State Supreme Court. He was very diligent in my behalf and his efforts should have gotten my conviction reversed.

I was finally granted a post conviction relief hearing (pcr) on March 24, 2005. My attorney for that hearing was a good man but mainly a parole attorney who did not properly prepared for my appeal. This was supposed to be my best chance at getting a new trial. I was confident that a new trial would exonerate me. In spite of my attorney not presenting or doing nearly enough of what could have been done, when the pcr hearing was over there were many facts and issues of merit that should have easily gotten me a new trial. We were very confident that Judge Breeden understood the merits of the appeal and that he was certain to render a favorable decision.

For some reason over two years and three months passed before we heard anything from the court. We were concerned about the length of time but confident that Judge Breeden had understood the facts and would be favorable when a decision was rendered. It was on May 23, 2007, that we received

news that a 47 page document denying me every issue of merit contained in the pcr record. To us this kind of decision was impossible. Judge Breeden had appeared fair and impartial and would never have made such a decision as was rendered based on the pcr hearing. Something was seriously wrong with all of this. The 47 page of order of dismissal did not correspond at all with the actual facts and issues as were documented in the 210 page pcr transcript. To us, no unbiased judge could have written or agreed to any part of it's content.

Less than two weeks after this May 23, 2007 decision, my parents were able to get in touch with our state representative, (at the time) Mr. Bill Witherspoon. Mr. Witherspoon came to my parents' house with another family member Charles Hucks, and listened to what they had to say about what had just happened. Mr. Witherspoon told them that he knew Judge Breeden personally and agreed to speak with him on my behalf. Mr. Witherspoon returned to my parents about a week later with Mr. Hucks and discussed with us his conversation with Judge Breeden. The relevant parts are as follows:

When Mr. Witherspoon asked Judge Breeden about the recent pcr decision in question he didn't remember the case or the decision.

He stated that Judge Breeden had to ask him for the case number so he could refresh his memory of which case it was.

He said that Judge Breeden stated "if it's the case I'm thinking of, the attorney general (Henry McMaster) really wanted it bad.

He said that the Judge said that he did remember signing a parole eligibility order, and that he would check on that as well.

When Mr. Witherspoon contacted Judge Breeden again, after he had time to check the case situation Judge Breeden indicated that he was not going to discuss the case because, in his words "It was done and there was nothing he could do about it now."

Judge Breeden said that he was not going to meet with Mr. Witherspoon or with Charles either, if it involved anything further about this particular pcr decision.

Mr. Witherspoon said that Judge Breeden, in a final thought, said to him that Robert needed to find a good lawyer because he had a terrible trial lawyer.

The above conversation between Mr. Witherspoon and Judge Breeden took place less than two weeks after the Judge was supposed to have carefully reviewed my case and signed off on it. My family has documentation to support the above statements.

My pcr attorney was not going to pursue an appeal of this very bad decision because it added even more controversy to all of the Solicitor's wrongdoing at the trial level. Even my appeal attorney, Rauch Wise seemed to back away from helping me after this.

I was left to submit a notice of appeal pro-se and submit the file to The Appellate Defense for indigents, in Columbia. My case was assigned to Ms. Wanda Carter in September of 2007. My parents attempted to contact Ms. Carter in the beginning to offer her any helpful information or facts that they could. She was not receptive to any assistance from them about anything and said she would be in touch if she needed anything. She never did. Ms. Carter for some reason, kept my file for almost six months and did no research at all. She sought no input of any kind from my pcr attorney, Tommy Thomas, nor my appeal attorney, Rauch Wise.

There was no more contact with Ms. Carter until she notified my parents by letter dated January 22, 2008, that she had already filed a Johnson Petition with the court claiming that my case was without any merit, and for that reason she asked the court to remove her from the case. I was informed by her that if I was not happy with what she had done, that I was free to plead the merits of my appeal to the State Supreme Court on my own. That is what I was left to do. My pro-se appeal to The State Supreme Court was submitted on March 7, 2008. It was diverted to the Court of Appeals and denied without proper review on April 23, 2008.

From that point efforts by my parents to obtain proper legal help for me were futile. As soon as any attorney would learn that my conviction and appeal process involved addressing wrongdoing by the state at every level, they were not willing to properly take on my appeal. This includes Ms. Carla Graybert-Lowenstien. Her coming forward and claiming to be my attorney of record, and paid in full to represent me was not true. My parents have documents and emails to support this.

At this point, and based on the facts that my 1<sup>st</sup> post conviction relief petition was such an unjust decision based on a complete misrepresentation of the facts by The Attorney General's Office, the states highest prosecutor, and no one else, my only remaining hope was to submit a 2<sup>nd</sup> pcr petition pursuant to Rule 60 b, © of The South Carolina Rules of Court. Which is what I had to do pro-se on June 8, 2009. That pro-se appeal was diverted to the Court of Appeals and denied like everything else, with no consideration at all.

It is now become clear that The Attorney General's Office has control of everything and has acted to obstruct justice and to deny me all due process throughout my appeal process including everything before the May 2007 decision, and everything I have had to submit after the 2007 decision.

The office of the Attorney General as well as every other officer of the court has a duty to seek and find the truth and not prosecute and maintain a guilty conviction, particularly when there exists many facts and evidence to suggest otherwise. That has been what I and my family have faced for the past 18 years. I maintain that I am innocent and have been wrongfully prosecuted and convicted of a Sexual assault that I did not commit.

The Attorney General's Office is intent on condemning every avenue of recourse I try to find. Their current position is that my 2<sup>nd</sup> pcr request was invalid because it is successive and without any rule or justification to support it. They have misinformed Judge Steven John as to everything about my 2<sup>nd</sup> pcr appeal as well as my briefs in support of what I had to do. Their claims of my pro-se motion to the court being hybrid and a nullity, because I was represented by Ms. Graybert-Lowenstein are false as well. My

family has information and documents(Receipts and emails) to confirm that she was never my attorney as to taking up my appeal (just like other attorneys, when she saw that my appeal involved pointing fingers at wrongdoing by the state, she too declined to proceed with it. She did represent me at my Feb. 2010 parole hearing and was paid \$750.00 for that. She was not my attorney of record beyond that date.

My appeal documents were all timely submitted to the best of my ability and have been previously cited properly as timely filed. There is so much more that needs to be considered and much of it has been documented in previous appeals and briefs that were ignored, not by the courts but by The Attorney General's office.

I am pleading with this State Supreme Court to please not let my appeal go un-noticed again. Every trace of fundamental fairness, or constitutional due process and justice have been completely denied me for all of these years.

I am pleading with this court to grant me proper recourse and the deserved opportunity for a new trial based on the following ;

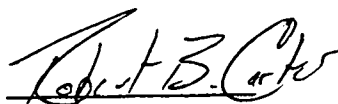
Rule 60 b © of the South Carolina Rules of Court

Rules 3.8 and Rule 8.4 of the rules of professional conduct

United States Constitutional Amendments numbers 5, 6, and number 14 as to due process and to ineffective assistance of counsel.

I am requesting that this current pcr case and this brief be reviewed by The State Supreme Court and not diverted to the Court of Appeals for review, as was the appeal of my 1<sup>st</sup> pcr decision.

Very respectfully submitted,

  
4-11-13