

RE: BELL v S.C.
* PETITION FOR REHEARING * USCA 4 No. 18-6068
No: 18-8679

ATTENTION HONOURABLE CLERK OF CT.:

6-25-19

THIS DATE I RECEIVED A REPLY TO A LETTER RECEIVED ON JUNE 10TH.... PLEASE TAKE NOTE OF LIMITED ABILITIES ON THIS END OF THE ROPE.

ACCORDING WHAT I WAS ABLE TO FIGURE OUT: THE MAIN FACTORS OF THIS "ILLEGAL CONFINEMENT" LIES IN THESE LIMITED PAGES SHOWING THIS APPEAL HAS NEVER RECEIVED "DUE PROCESS OF THE LAW" ACCORDING TO THE CONSTITUTION OF SOUTH CAROLINA; AS WELL AS THE U.S. CONSTITUTION.

IN GOOD FAITH, I PRAY THAT TELLING THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH WILL RELEASE THE APPLICANT IN THIS "GROSS MISCASTORAGE OF JUSTICE" FROM PRISON.

I NEVER LIED IN WHAT I'VE WRITTEN, NOW YOU WILL BE ABLE TO READ THE "ACTUAL DOCUMENTS" WORD FOR WORD.

I SINCERELY THANK GOD FOR THIS OPPORTUNITY.

JOHN JAMES BELL #192526, AND SE.

I HAVE ASKED FOR HELP PERFECTING THE LEGAL STANDARDS OF RULE 44... BUT NO LAW AGENCY HAS ANSWERED MY REQUESTS: S.C. LEGAL AIDE / ACTUAL INNOCENCE PROJECT / THE DNA GROUP AT 40 WORTH ST. - 7TH FL. MAY GOD HELP MY RESOLVE IN THIS.

* I AM UNABLE TO HAVE THIS COPIED "WITHOUT" HAVING MISSED THE 15 DAY DEADLINE... THIS IS THE "ORIGINAL EFFECTS" OF RULE 44.*

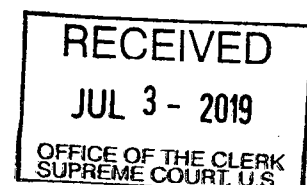


TABLE OF CONTENTS -

1) COVER LETTER / 6-25-19 RECEIVED 15 DAY "DEADLINE".
"PETITION FOR REHEARING" - LAW LIBRARY "DEADLINE PASS."

2) RECORD OF "PRELIMINARY HEARING": 11-15-91

A - PRETRIAL MOTIONS BY BOTH VIRGINIA HERRICK AND JOHN W. WEEKS [WHICH INCLUDE: TESTIMONY VIA HYPNOSIS TO BE "EXCLUDED"; MOTION EXERCISING "5TH & 6TH AMENDMENT RIGHT; EXCLUDING VICTIM'S PICTURES POST MORDUM: WRIT OF "SUPERSEDEAS"; RESPONSE ORDER AND "REMITTITURE"; CONCLUDING WITH "BRADY MOTION OF DISCLOSURE OF EVIDENCE."

A - POST CONVICTION APPEALS BY ATTORNEY CLARK W. MCCANTS, III.

B - ORDER DISMISSING APPLICATION FOR P.C.R.

* MAXTON RULING REQUIRING THE "TWENTY-FIVE" FEE TO BE HEARD *

1) SHOWING DENIAL IN EACH OF THE P.C.R. BY SAME JUDGE REPEATEDLY:
DOYET A. EARLY, III

PETITION FOR REHEARING -

1) ARGUMENT CITING JACKSON, RICHTER, PADILLA AND STRICKLAND V. WASHINGTON.

2) LETTER TO STATE OPPOSING THE DNA TESTING TO SEND TRIAL TRANSCRIPT: WHAT WOULD THE TRANSCRIPT PROVE EITHER WAY: "OBSTRUCTION OF JUSTICE" NEVER STOPPED OCCURRING IN THIS MISCARriage OF JUSTICE.

* ENCLOSED IS THE RULE 44 REQUIREMENTS FOR THE PETITION FOR REHEARING. *

PETITION FOR REHEARING APPELLATE RULE 44.

1) ARGUMENT.

2) CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED.

3) § 17-23-90

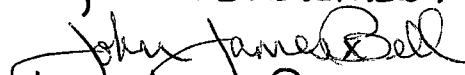
4) REASONS FOR GRANTING THE PETITION.

A - CORRESPONDENCE REQUIRING THE TRIAL TRANSCRIPT :
1992-GS-02-0396 / JOHN JAMES BELL.

- IN CONCLUSION -

DUE PROCESS AND THE "EQUAL PROTECTION" OF THE LAW
NEVER DREW THE ATTENTION OF ANY OF THE PREVIOUS
APPELLATE COURTS.

IN GOOD FAITH, THE TRUTH FAILED TO FREE ME INITIALLY,
IN THE NAME OF ALMIGHTY GOD, LET THE REAL FACTS FREE ME!


JOHN JAMES BELL, PRO SE.

Post Office Box 1151 / FAIRFAX, S.C. 29827

JUNE 26TH, 2019 / 21:13.49

* I NEVER FACED MY ACCUSERS ... NOT EVEN THE ARRESTING
OFFICER DURING "PRELIMINARY HEARING": NO DUE PROCESS! *

ARGUMENT

ACCORDING TO NEVADA V. JACKSON, 133 S. CT. 1990 [6-3-2013]:

"A FEDERAL HABEAS COURT MAY 'OVERTURN' A STATE COURT'S APPLICATION OF FEDERAL LAW ONLY IF IT IS SO 'ERRONEOUS' THAT THERE IS NO POSSIBILITY 'FAIRMINDED JURISTS' COULD DISAGREE THAT THE STATE COURT'S DECISION 'CONFLICTS' WITH THE SUPREME COURT'S PRECEDENTS". * 28 U.S.C.A. § 2254 [d][1] *

"THE CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS A MEANINGFUL 'OPPORTUNITY' TO PRESENT A 'COMPLETE DEFENSE'."

* "OBSTRUCTION OF JUSTICE" CLAIM PRESENTED IN THIS APPEAL *

HARRINGTON V. RICHTER, 131 S. CT. 770 [1-19-2011]:

PADILLA V. KENTUCKY, 130 S. CT. 1473 [3-31-2010]: "ADEQUACY OF REPRESENTATION". "IT IS THE SUPREME COURT'S RESPONSIBILITY UNDER THE CONSTITUTION TO 'ENSURE' THAT 'NO' CRIMINAL DEFENDANT, WHETHER A CITIZEN OR NOT, IS LEFT TO THE MERCIES OF INCOMPETENT COUNSEL. U.S.C.A. CONST. AMEND. 6.

CASE IN POINT: STRICKLAND V. WASHINGTON, 104 S. CT. 2052.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PETITIONER WOULD LIKE TO ADDRESS THIS HONOURABLE COURT WITH RIGHTS NOT BEING PROTECTED BY LAW; AND THEY ARE AS FOLLOWS: SOUTH CAROLINA CODE ANN § 17-28-60; § 17-28-90 IN ASSIGNING ATTORNEY TO "CURE FAILURE TO PERFECT APPEAL" UNDER SC CODE ANN § 18-1-100 "IN GOOD FAITH".

ACCORDING TO RULE 407: PROFESSIONAL CONDUCT [RULE 3.B].

* SPECIAL RESPONSIBILITIES OF A "PROSECUTOR" * [COMMENT: "A PROSECUTOR HAS THE RESPONSIBILITY OF A "MINISTER OF JUSTICE" AND NOT SIMPLY THAT OF AN "ADVOCATE"; THIS RESPONSIBILITY CARRIES WITH IT "SPECIFIC OBLIGATIONS" TO SEE THAT THE DEFENDANT IS ACCORDED "PROCEDURAL JUSTICE" AND THAT "GUILT" IS DECIDED UPON THE BASIS OF "SUFFICIENT EVIDENCE.""]

ACCORDING TO SOUTH CAROLINA CODE ANN § 17-23-60: "ACCUSED HAS "RIGHT TO COUNSEL", TO PRODUCE "WITNESSES" AND "PROOFS", AND TO "CONFRONT WITNESSES" [ALL OF THESE GUARANTEES WERE ABSENT DURING PRELIMINARY HEARING HELD NOVEMBER 19TH, 1992 DENYING "DUE PROCESS"]

* SUBPOENA REQUIREMENT WAS MADE KNOWN TO APPOINTED LEGAL AIDE: MR. PAUL ANDREW ANDERSON DID NOT SEE ANY NEED TO SUBPOENA "WITNESSES" TO SUPPORT THE EFFORT PETITIONER MADE TO BE "EXONERATED" IN THIS APPEAL *
CASE IN POINT: "NO EXPERT TESTIMONY" AND "NO CONTEMPORANEOUS OBJECTIONS" CAUSING AN ACUTE DENIAL OF "DUE PROCESS" GUARANTEE.

SOUTH CAROLINA CODE ANN § 17-23-90 ["SPEEDY TRIAL" DENIAL OF DUE PROCESS]
COPY OF THIS STATUTE IS INCLUDED HEREIN.

ODUM V STATE, 337 SC 256/523 SE 2d 753 [NOVEMBER 15TH, 1999].

* RULES CIV. PROC. RULE 71.1 [d, g]: CRIMINAL LAW "NATURE OF REMEDY" - ALL APPLICANTS ARE ENTITLED TO A FULL AND FAIR OPPORTUNITY TO PRESENT CLAIMS IN ONE POSTCONVICTION RELIEF APPLICATION. [EXCUSES FOR FAILURE TO RAISE ISSUE IN PREVIOUS POST-CONVICTION PROCEEDING: "IN ORDER TO BE ENTITLED TO A "SUCCESSIVE POSTCONVICTION" RELIEF APPLICATION, THE APPLICANT "MUST" ESTABLISH THAT THE GROUNDS RAISED IN THE SUBSEQUENT APPLICATION COULD NOT HAVE BEEN RAISED IN THE PREVIOUS APPLICATION." CODE 1976, § 17-27-90].

"THE APPLICANT REQUESTED AND WAS "DENIED" AN OPPORTUNITY TO SEEK APPELLATE REVIEW; OR THE RIGHT TO APPELLATE REVIEW OF A "PREVIOUS POST-CONVICTION RELIEF ORDER WAS NOT KNOWINGLY AND INTELLIGENTLY WAIVED." CODE 1976, § 17-27-90; RULES CIV. PROC., RULE 71.1 [G].

14-3.3. (1980), with respect to participation of trial judge in plea bargain process prior to taking of actual plea, is sound. *Harden v State* (1981) 276 SC 249, 277 SE2d 692, cert den 454 US 970, 70 L Ed 2d 388, 102 S Ct 518).

The voluntariness of a confession must be determined not only by the judge in voir dire or in camera examination, but also by the jury as an issue.

Ex parte Cobb (1977, DC SC) 448 F Supp 886, affd without op (CA4 SC) 568 F2d 774.

"Confession", under South Carolina law, is restricted to an acknowledgment of guilt, and does not apply to a misstatement of fact from which guilt may be inferred. *Ex parte Cobb* (1977, DC SC) 448 F Supp 886, affd without op (CA4 SC) 568 F2d 774.

§ 17-23-90. Indictment and trial of persons committed for treason or felony; consequences of failure to indict.

If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term to be brought to his trial shall not be indicted some time in the next term after such commitment, the judge of the circuit court shall, upon motion made in open court the last day of the term either by the prisoner or anyone in his behalf, set at liberty the prisoner upon bail, unless it appear to him, upon oath made, that the witnesses for the State could not be produced at the same term. And if any person committed as aforesaid, upon his prayer or petition in open court the first week of the term to be brought to his trial, shall not be indicted and tried the second term after his commitment or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

HISTORY: 1962 Code § 17-509; 1952 Code § 17-509; 1942 Code § 1048; 1932 Code § 1048; Cr. P. '22 § 135; Cr. C. '12 § 117; Cr. C. '02 § 90; G. S. 2323; R. S. 90; 1679 (1) 119.

Cross references—

As to right to speedy trial, see SC Const, Art 1, § 14.

As to right of bail before conviction, see SC Const, Art 1, § 15.

As to constitutional provision regarding treason, see SC Const, Art 1, § 17.

As to what constitutes a felony, see §§ 16-1-10, 16-1-30.

As to person entitled to the benefit of the writ of habeas corpus, see § 17-17-10.

As to right of bail after conviction, see §§ 18-1-80, 18-1-90, 18-3-50.

Research and Practice References—

21 Am Jur 2d, Criminal Law §§ 241-256.

The Current Role of the Presumption of Innocence in the Criminal Justice System. 31 SC L Rev 357.

ALR and L Ed Annotations—

Illness or incapacity of judge, prosecuting officer or prosecution witness as justifying delay in bringing accused speedily to trial—state cases. 78 ALR3d 297.

Adequacy of defense counsel's representation of criminal client regarding speedy trial and related matters. 6 ALR4th 1208.

Continuances at instance of state public defender or appointed counsel over defendant's objections as excuse for denial of speedy trial. 16 ALR4th 1283.

REASONS FOR GRANTING THE PETITION

- 1) STATE DENIED PETITIONER "DUE PROCESS" OF SC CODE ANN § 17-23-90.
- 2) STATE DENIED PETITIONER "DUE PROCESS" OF SC CODE ANN §§ 17-27-80; 17-27-90; 17-27-100.
- 3) STATE APPOINTED ATTORNEY FELL BELOW SET STANDARDS FOR DEFENSE COUNSEL WHICH ALLOWED ITS REPRESENTATION "PREJUDICE PETITIONER".
* NO INVESTIGATIVE PURSUIT DENYING "DUE PROCESS" OF BRADY RULE *
- 4) STATE APPOINTED ATTORNEY FAILED TO ACCESS THE VALUE OF THE FBI DNA TEST REQUIREMENT TO CLAIM "CONCLUSIVE DNA PROOF" GIVEN FOR THE AUGUST 27TH, 2014 DNA TEST HEARING: WITHOUT THIS INFORMATION THIS "INEFFECTIVE REPRESENTATION" CAUSED THIS ACTION WITHIN THIS PETITION SEEKING TO ACHIEVE THIS DENIAL OF "DUE PROCESS" OF AMEND SIX OF THE UNITED STATES CONSTITUTION.
* ATTACHED TO THIS PETITION IS THE FREEDOM OF INFORMATION FOR FBI TESTS *

CASE IN POINT: THE CHALLENGE OF A DNA CONNECTION RESULTING IN CONVICTION CAME ABOUT JANUARY 9TH, 2009. [ACCORDING TO US V MAC DONALD, 641 F.3D 596: "NEWLY DISCOVERED EVIDENCE", A COURT "MUST" MAKE ITS DETERMINATION ON A SUCCESSIVE MOTION TO VACATE OR SET ASIDE SENTENCE BASED ON "NEWLY DISCOVERED EVIDENCE" UNBOUNDED BY THE RULES OF "ADMISSIBILITY" THAT WOULD GOVERN THE TRIAL, BASED ON ALL THE EVIDENCE, INCLUDING THAT ALLEGED TO HAVE BEEN "ILLEGALLY ADMITTED" AND THAT TENABLY CLAIM TO HAVE BEEN "WRONGLY EXCLUDED", OR TO HAVE BEEN "AVAILABLE" ONLY AFTER THE TRIAL"... THE COURT "MUST" CONSIDER "ALL THE EVIDENCE" OLD AND NEW, "INCRIMINATING" AND "EXCULPATORY", WITHOUT REGARD TO WHETHER IT WOULD NECESSARILY BE ADMITTED UNDER "EVIDENTIARY RULES".

RECEIVED 9-29-16



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 26, 2016

Mr. Donald J. Zelenka, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: John James Bell v. State
Appellate Case No. 2014-002196

RECEIVED

NOV 01 2016

SC Court of Appeals

Dear Counsel:

In its brief, the State cites to portions of Bell's trial transcript that were not included in the record on appeal and the State asks the court to take judicial notice of the transcript.

* At this time the Court is requesting that the State submit the remainder of Bell's trial transcript as a supplemental record on appeal in accordance with the South Carolina Appellate Court Rules (SCACR). This supplemental record is due within fifteen (15) days of the date of this letter. *

DNA APPEAL

Very truly yours,

V. Claire Allen, Deputy

CLERK

CASE IN POINT: RULES OF CIVIL PROCEDURE [APPEALS AND ARBITRATION]
* RULE 241 [CONTENT: THE ENTIRE LOWER COURT RECORD] *

1992-GS-02-0396 / 2014-002196

cc: John James Bell, 00192526
Paul Andrew Anderson, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire

**Additional material
from this filing is
available in the
Clerk's Office.**