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JUN 27 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Albert C. Burgess, Jr.,]
88539-071 N/A]
POB 7007]
Marianna, FL 32447]
Petitioner]

Case: 1:11-cv-01202
Assigned To : Kollar-Kotelly, Colleen
Assign. Date : 6/27/2011
Description: Habeas Corpus/2255

vs.]

PETITION FOR THE "GREAT WRIT" OF HABEAS

CORPUS AD SUBJICIENDUM

Harley Lappin,]
Director, Federal BOP]
320 First Street, NW]
Washington, DC 20534]
Respondent]

NOW COMES the Petitioner, pro se, and submits to this Court that he is being held in custody unlawfully based on a South Carolina conviction which is legally invalid by law.

In support thereof, the Petitioner would show this Court that he is in the custody of the Respondent. That there is no other way of invalidating the conviction in question but that he is still suffering from same and has suffered since being sentenced on August 10, 2010. The conviction was obtained by the state of South Carolina following prosecutorial misconduct wherein the police and the Solicitor lied in the search warrant to arrest this Petitioner.

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Angela D. Caesar, Clerk of Court
U.S. District Court, District of Columbia

page two

The Petitioner fought the conviction and was unsuccessful largely in part because the Solicitor of Anderson County, South Carolina and other intentionally lied to the courts in an effort to conceal their misconduct. Only in 1997 did a fair and impartial judge ascend the bench in Anderson County and rule that the police had lied in the search warrant of the Petitioner. In 2000, the ruling became the latest ruling of the South Carolina Supreme Court on the disputed search warrant. The ruling of the Circuit Court is attached for this Court to read. This order was affirmed by the South Carolina Supreme Court. No other appeals were made by the State of South Carolina.

In 2010, the Petitioner was caused to receive a much higher sentence because of the disputed and now invalid 1985 conviction he suffered as a result of the police lying in the search warrant to arrest him. However, because he had already served his sentence in South Carolina, he had no standing to challenge the 1985 conviction which is now invalid pursuant to the order and denial of certiorari by the South Carolina Supreme Court.

The Petitioner was sentenced on the basis of the prior convictions to a term of imprisonment which was five times that which was allowed for a person without the convictions. This is a manifest injustice.

The Petitioner has tried to have his conviction set aside and expunged and did so in a Writ of Corum Nobis to the South Carolina Supreme Court. That was denied. The Writ of Habeas Corpus Ad Subjiciendum is the only means left to right this wrong.

The latest ruling of the South Carolina Supreme Court is the controlling law in this case, regardless of how that same court ruled in the prior petitions of this Petitioner. Based on this ruling, which is, again, controlling law as to this issue, the Petitioner is entitled as a matter of law and fairness and JUSTICE to have the 1985 convictions reversed and expunged from his record.

This Court has jurisdiction because the Petitioner is in the custody of the Respondent. The Petitioner is subject to being transferred to any BOP Facility and to hop and skip courts would be a waste of judicial time and effort.

WHEREFORE for cause shown, the Petitioner moves this Court to issue the Writ of Habeas Corpus Ad Subjiciendum and to invalidate the 1985 convictions of the Petitioner which are causing the Petitioner to be detained illegally past the Federal Sentencing Guidelines of 51 months. The Petitioner has already served 35 months at this writing and with good time will be eligible for release in approximately nine months.

Petitioner moves for this Court to EXPEDITE this proceeding to ensure that the law of the South Carolina Supreme Court is followed.

RESPECTFULLY SUBMITTED this the 25 day of May, 2011.



Albert C. Burgess, Jr.

88539-071 N/A

POB 7007

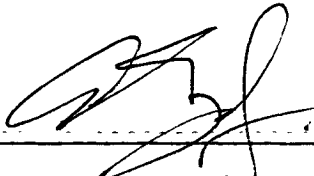
Marianna, FL 32447

DECLARATION UNDER PENALTY OF PERJURY

~~VERIFICATION~~

I, Albert C. Burgess, Jr., first being duly sworn, do state that I have read this Petition and find it true and correct. Further, that the copy of the order of the Circuit Court of Anderson County, South Carolina, attached, is a true and correct copy.

5-13-11

s. / 
Albert C. Burgess, Jr.

~~Sworn to and subscribed before me this
the ____ day of May, 2011.~~

~~_____
Notary Public for the State of Florida~~

~~My commission expires:~~

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
 William Newton Clinkscales,)
 131293,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

95-CP-04-1210

ORDER

A TRUE COPY

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Linda J. DeSheld
CLERK OF COURT

Applicant filed an Application for Post-Conviction Relief on July 26, 1995. Respondent filed an Amended Return on August 8, 1996. An evidentiary hearing on this matter was held on May 5, 1998 in Anderson, South Carolina before the Honorable Gerald C. Smoak, Circuit Court Judge. Present were Applicant, his attorney William G. Yarborough, Howard Steinberg of the South Carolina Attorney General's Office and Petitioner's trial counsel, Andrew Savage.

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At the hearing, testimony was taken. The Court also had before it a copy of the trial transcript, the records of the Anderson County Clerk of Court, and the supreme court opinion affirming Applicant's conviction.

The evidence before this Court reflects that the Applicant, William Clinkscales, is presently confined in the Cross Anchor Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Anderson County. The Applicant was charged with two counts of criminal conspiracy and two counts of criminal sexual conduct with

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a minor. The Applicant pleaded not guilty to the charges and was tried before a jury on November 20, 1985 in Anderson County before the Honorable E.C. Burnett, III. The jury returned a verdict of guilty and Applicant was sentenced by Judge Burnett to confinement for a total of fifty years; twenty years on each count of criminal sexual conduct with a minor and five years consecutive on each count of criminal conspiracy.

In his Application, Clinkscales contends that he is being held in custody unlawfully because he received ineffective assistance of counsel. Clinkscales contends that his trial counsel was ineffective because he was unaware of facts which he could have used to make a motion to suppress all evidence discovered as a result of a search of Clinkscales' residence. Clinkscales contends that the affidavit underlying the search warrant was insufficient to support a finding of probable cause and that if his trial counsel had been aware of certain facts, he would have been able to challenge the search warrant.

This Court has had the opportunity to review the record in its entirety and has heard arguments of counsel presented at the post-conviction relief hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Section 17-27-80 (Law. Co-op. 1976):

The affidavit underlying the search warrant used to search Clinkscales' residence relied on two primary sources of information: (1) evidence seized as a result of a search of Burgess' residence; and (2) information provided by Dale Todd, an

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alleged co-conspirator. Evidence establishes that this information was unreliable and that a challenge to the sufficiency of the information supporting the search warrant would most probably have been effective.

First, Clinkscales contends that his trial counsel was rendered ineffective because he was unaware that the search warrant used to search the residence of Charles Burgess, an alleged co-conspirator, was unconstitutional. Because information seized from the search of Burgess' residence was used to support a search warrant of Clinkscales' house, a challenge to the constitutionality of the Burgess affidavit was critical.

Clinkscales contends the Burgess warrant was unconstitutional because the supporting affidavit contained key factual information which, in fact, was known to be false. The affidavit claims that Burgess is a child molester, which information was largely based upon his prior convictions for child molestation. However, two of the convictions listed were, in fact, reversed by published opinion well before the affidavit was executed. A copy of the opinion, Burgess v. Griffin, 743 F.2d 1064 (4th Cir. 1984), was presented at the hearing. The opinion affirms the decision of the United States District Court for the Western District of North Carolina which reversed the convictions.

In Franks v. Delaware, 438 U.S. 154 (1978), the United States Supreme Court ruled that an affidavit challenging a facially valid search warrant may be challenged if the defendant can: (1) "make a substantial preliminary showing that a false statement

knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit," and (2) establish that the statement was necessary to the finding of probable cause. In the present case, there is evidence that the affidavit's conclusion that Burgess was a child molester was based mostly on the fact that Burgess had been convicted of child molestation on two particular occasions and was sentenced to ten years imprisonment on each conviction. There is also evidence that these convictions were reversed by published opinion well before the affiant executed his affidavit. Finally, there is evidence that the affiant's conclusion that Burgess was a child molester was critical to the finding of probable cause. Therefore, it is reasonably probable to believe that a motion to suppress any evidence produced from a search of the Burgess residence would have been granted.

Evidence seized from Burgess' residence was used to support a finding of probable cause to search Clinkscates' residence. Thus, if a motion to suppress any information discovered in the search of Burgess' home had been granted, this information could not have been used as probable cause to support a warrant to search Clinkscates' home.

Second, Clinkscates contends his trial attorney was rendered ineffective because he was unaware that Dale Todd, a co-conspirator who testified against Clinkscates in the first trial, and who provided information to the police which was relied upon to issue a search warrant for Clinkscates' residence, had been given

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immunity in exchange for his testimony. Evidence was presented at the PCR hearing that Todd's indictment for criminal conspiracy, true billed on April 22, 1985 and dismissed on May 24, 1985, was dismissed in exchange for the information Todd provided to the police about Clinkscapes.

The United States Supreme Court has adopted a "totality of the circumstances" test in which the magistrate issuing a search warrant has a duty to make a practical, common sense determination of whether there is a fair probability, based upon the circumstances set forth in the supporting affidavit, that contraband or evidence of a crime will be found in a particular place. Illinois v. Gates, 462 U.S. 213 (1983). Two relevant considerations in evaluating the information provided in the affidavit are the veracity and "basis of knowledge" of the person supplying the information. Id.

In the present case, if Clinkscapes' trial counsel had been aware that Todd, the individual supplying the information supporting the search warrant, had been given immunity for his alleged participation in the conspiracy in exchange for his cooperation with the police, he would have been able to attack Todd's veracity. If the trial court ruled that Todd's veracity was questionable, then the information provided by Todd could not have been used to support a finding of probable cause. If the court excluded information provided by Todd and evidence seized from Burgess' residence, no probable cause exists to support a search of Clinkscapes' house. Thus, a motion to suppress was of critical

importance in this case.


The Sixth Amendment to the United States Constitution guarantees effective assistance of counsel. The Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984) established a two-pronged test to evaluate ineffective assistance of counsel claims. A defendant must prove: (1) counsel's performance was deficient; and (2) this deficient performance prejudiced the defense. Id. at 687.

In the present case, counsel's performance was rendered ineffective because he was unaware of two potential challenges to the search warrant used to search Clinkscales' residence. Further, the Applicant has established that if counsel had raised these two issues in a motion to suppress, there is a reasonable probability that the defendant would not have been convicted at trial. The challenges to the sufficiency of the affidavit of the search warrant are valid, and there is a reasonable probability the trial court would have suppressed any evidence seized from the execution of the warrant. And it appears clear that without the evidence seized from the house, and information developed from that evidence, the case against Clinkscales would have been dramatically weaker. In fact, there was uncontradicted evidence at the PCR hearing that if the search warrant had been suppressed, the case against Clinkscales would not have gone to trial.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application for Post Conviction Relief be granted and that Clinkscales' conviction and sentence be set aside and the case remanded for a new trial.

IT IS SO ORDERED.



Circuit Court Judge

June 30, 1998

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Albert C. Burgess, Jr.]	
Petitioner]	
]	
vs.]	Petition for a Writ of Corum Nobis
]	
The Attorney General of South]	
Carolina,]	
<u>Respondent</u>]	

TO: The Honorable Judges of the South Carolina Supreme Court

PETITION FOR A WRIT OF CORUM NOBIS

Rule 245

The Petitioner pro se moves this Court to exercise its authority under state and federal law to correct an injustice. Petitioner has finished his state sentence that is the one under review herein yet is suffering from the same sentence by a substantial increase in his federal sentence. There is, to the knowledge of the Petitioner, no viable option to attack his 1985 convictions except this great writ.

FACTS JUSTIFYING THE WRIT

The petitioner was convicted in 1985 of Criminal Sexual Conduct with a Minor and with Conspiracy, a charge which included William Newton Clinkscales, Jr. The Petitioner filed the proper motions to set aside the sentence based on prosecutorial misconduct, which was rampant. However, the lower Court did not agree with the allegations and the Petitioner was not successful. In 1998, the Petitioner was released from custody by the state of South Carolina.

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Clinkscales in the mean time was challenging the same issues in his Motion For Appropriate Relief and the lower Court agreed with his arguments. This Court in 2000 also agreed and Clinkscales convictions were affirmed as being OVERTURNED.

The key to this order on Clinkscales was that the Court ruled that the police had lied in the search warrant of this Petitioner, in order to obtain probable cause, and when this Petitioner's search warrant was attached to the search warrant of Clinkscales, the arrest and search warrant were invalid because of those lies.

The Petitioner is suffering a substantial violation of his rights by being held accountable for this conviction that has already been called into serious legal question as to its validity. In 2000 the Petitioner tried, through several attorneys in South Carolina, to challenge his 1985 convictions but was told he did not have standing as he had completed the sentence.

Now, within one year of having the 1985 conviction used against him, the Petitioner is challenging it and by law is entitled to relief.

For the record, the Petitioner has attempted to file with the Clerk of Court in Anderson, S. C., a petition for a writ of Habeas Corpus. Although sent by certified mail to the Clerk, the Clerk has steadfastly refused to file the writ of habeas corpus or to even answer four letters sent to her office concerning the matter.

The Corum Nobis Writ is the only means the Petitioner has to challenge his 1985, constitutionally questionable conviction.

The conviction is in fact illegal.

The petitioner is entitled to relief.

The issue concerning the invalidity of the conviction is very substantial. Police misconduct was the issue wherein they lied to the Court to obtain a warrant.

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The Petitioner is no longer serving the South Carolina sentence. But, he is serving a conviction which has been enhanced by the South Carolina conviction, said enhancement being illegal.

CONCLUSION

In the interest of justice, the Petitioner moves this Court to:

1. Order the Respondent to Answer the Petition.
2. Appoint counsel for the Petitioner as he is indigent.
3. Order all the records of the case so that the matter may be fully heard.
4. For any other relief the Court may deem appropriate including summarily issuing the Corum Nobis writ invalidating the 1985 convictions of the Petitioner.

Respectfully submitted this the 1st of March, 2011.



Albert C. Burgess, Jr.

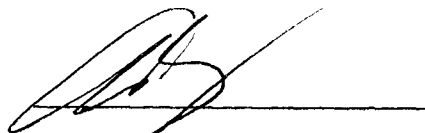
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POB 7007

Marianna, FL 32447

CERTIFICATE OF SERVICE

I do certify that a true copy of this pleading was sent by certified mail to the Attorney General of South Carolina, POB 11549, Columbia, SC 29211-1549 on this the 1st of March, 2011.



Albert C. Burgess, Jr.

The Supreme Court of South Carolina

ORDER

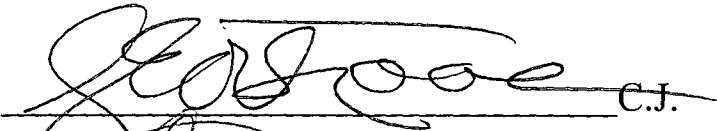
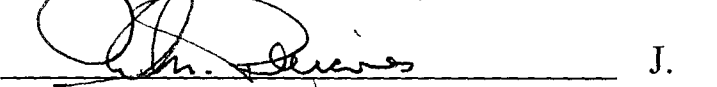


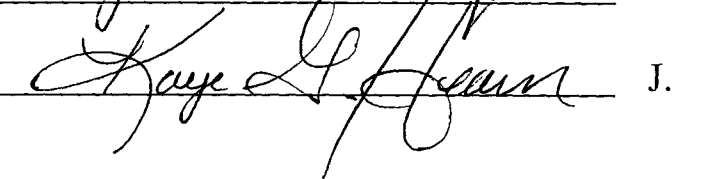
The following matters are dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's jurisdiction:

1. Hamid Demmirio, Extraordinary Circumstances for Relief Petition to Reinstate Original PCR Pleading dated February 15, 2011. Case Tracking No. 2011186186.
2. Jeffrey Lynn Chronister v. Director of Department of Corrections, Bill Byars, Attorney General, Alan Wilson, Motion for Relief from Order dated February 21, 2011. Case Tracking No. 2011186666.
3. Allen Wright, Letter to the Clerk of Court dated February 21, 2011. Case Tracking No. 2011186266.
4. Rodney Elliott v. State of South Carolina, Applicant's Petition for a Judicial Review by Affidavit Motioning for a Hearing pursuant to Administrative Order #2008-10-06-01 Issued by the S.C. Supreme Court Oct. 06, 2008 dated February 22, 2011. Case Tracking No. 2011186486.
5. Robbie Hatfield, Letters to the Chief Justice dated February 28, 2011. Case Tracking No. 2011186809.
6. Rodney McCleary, Letter to the Clerk of Court dated February

28, 2011. Case Tracking No. 2011186807.

7. Albert C. Burgess, Jr. v. The Attorney General of South Carolina, Petition for a Writ of Corum Nobis dated March 1, 2011. Case Tracking No. 2011186827.
8. Troy Waymer, Letter to the Chief Justice dated March 2, 2011. Case Tracking No. 2011186808.
9. Stanley Otis Williams, Letters to the Chief Justice, Clerk of Court, Henry McMaster, and the Honorable William P. Keesley received March 3, 2011. Case Tracking No. 2011186906.

IT IS SO ORDERED.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

March 16, 2011