

FILED

IN THE MISSISSIPPI COURT OF APPEALS

FEB -4 2016

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NATHANIEL WALDEN

APPELLANT

VS.

CAUSE NO. 2014-CP-00165-COA

STATE OF MISSISSIPPI

APPELLEE

ORIGINAL

MOTION FOR REHEARING

The Appellant files this motion pro se, to ask the above court on rehearing to consider its previous ruling on direct appeal in light of the following:

I.

WHETHER THE INFERIOR TRIAL COURT HAD THE AUTHORITY TO OVERRULE THE SUPERIOR MISSISSIPPI SUPREME'S COURT APPLICATION TO LEAVE, WHEN IT DENIED THE PCR WITH ONLY THE SAME INFORMATION THAT THE SUPERIOR COURT HAD BEFORE IT WHEN IT GRANTED THE LEAVE?

ARGUMENT

1. The inferior trial court erred when it denied the PCR without any additional information than the superior Mississippi Supreme Court had when it granted the Application To Leave.

FACTS

1. The appellant was granted application to leave to file a PCR on ineffective assistance of counsel in the trial court.
2. Without an evidentiary hearing or any other new developing of the record, the trial court denied the PCR.
3. The inferior trial courts ruling equates an overruling of the superior Mississippi Supreme Courts ruling of the Application To Leave and it

was also error for the Court of Appeals to affirm the ruling.

4. The inferior trial court's denial of the PCR also suggests that the superior Mississippi Supreme Court practice in judicial economical waste, and "pass the buck" rulings.
5. Common sense and Common law dictates that the Supreme Court granted the application, because it had a substantial showing of a denial of a State or Federal right.

LAWS IN SUPPORT OF ARGUMENT

1. "In considering a successive motion seeking post-conviction collateral relief, the Supreme Court will deny relief unless the claims are not procedurally barred and they make a substantial showing of the denial of a State or Federal right." Grayson v. State, 118 So. 3d 118 (Miss. 2013).
2. "In granting the application the Court in its discretion may: a) where sufficient facts exist from the face of the application, motion, exhibits, the prior record and the State's response together with any exhibits submitted with those documents, or upon stipulation of the parties, grant or deny any or all relief requested in the attached motion." Miss. Code Ann. 99-39-27(7)(a).
3. "A court may not use statute governing judicial examination of motion and records to summarily deny a motion if the Supreme Court has granted permission to file the motion in the trial courts, pursuant to statute governing leave to proceed in trial court." Porter v. State, 983 So. 2d 1225 (Miss. 2007).
4. "Trial court was not authorized to summarily deny motion to vacate conviction and sentence after Supreme Court granted movant's application for leave to file motion for post-conviction relief." Hymes v. State, 703 So. 2d 258 (Miss. 1997).
5. "Judicial economy could also call for not granting the motion because a "passing the buck" effect would occur where this court, having

received the case, would send it back to the trial court who could ultimately send it back to this Court on appeal for determination on the merits. This kind of go-going does not serve judicial economy notions." *Vielee v. State*, 653 So. 2d 920, 923 (Miss. 1995). When the above law is applied the present case. It's clear that the court did not grant the application to have it summarily dismissed.

CONCLUSION

The trial court erred by overruling the Mississippi Supreme Court's Application To Leave by denying the PCR based on the same information that the application was granted. It also must be noted again that the appellant has done everything in his indigent, illiterate powers to secure the plea information from the State, and the trial attorney who is believed to be in federal prison. Also, this author (who is not the same as the illiterate appellant) find it incredible that he has to argue to the COA that the Mississippi Supreme Court did not abuse it's discretion by granting the leave, because that is what the affirmation of the trial courts ruling is implying.

REMEDY SOUGHT

The appellant ask that the trial court erroneous denial of the PCR be reversed and remanded back to the trial court where the trial attorney and state attorney's may be summoned to court and sworn under oath in relationship to developing the record to prove that his constitutional right to an effective attorney was denied.

RESPECTFULLY SUBMITTED this the 2ND day of February, AD, 2016.

By: Nathaniel Walden
Nathaniel Walden #124890
MSP, Unit 30-D
Parchman, MS 38738

CERTIFICATE OF SERVICE

I, Nathaniel Walden, aver that a copy of the above Motion For Rehearing was delivered via United States Postal Service, postage prepaid, to:

HON. JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI
POST OFFICE BOX 220
JACKSON, MS 39205-0220

HON. MURIEL ELLIS
SUPREME COURT CLERK
STATE OF MISSISSIPPI
POST OFFICE BOX 249
JACKSON, MS 39201-0249

CERTIFIED, this the 2ND day of February, A.D., 2016.

By: Nathaniel Walden
Nathaniel Walden #124890
Pro se, Petitioner
MSP, Unit 30-D
Parchman, MS 38738