

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JAMES SNOW,

Petitioner,

- vs -

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

No. 99 CF 1016

The Honorable Alesia A. McMillen,
Judge Presiding.

FILED
MAR 09 2011
CIRCUIT CLERK

MCLEAN
COUNTY

**MOTION TO FURTHER SUPPLEMENT THE RECORD WITH
NEWLY-DISCOVERED EVIDENCE SUPPORTING
PETITIONER'S EXISTING CLAIMS**

Now comes Petitioner James Snow, by and through his counsel THE EXONERATION PROEJCT at the University of Chicago Law School, and hereby respectfully moves to be allowed to further supplement his amended post-conviction petition with newly-obtained evidence supporting his existing claims, attached as Exhibits 1, 2 and 3 to this motion. In support of this motion, Petitioner states as follows:

1. As this Court is aware, on January 27, 2010, Mr. Snow filed an Amended Post-Conviction Petition reflecting the significant amount of new investigation and new evidence that Mr. Snow has collected supporting his innocence and supporting the other constitutional claims made in his petition. As Mr. Snow argued before this Court in response to the State's Motion to Dismiss, he has made a substantial showing of these constitutional violations and therefore is entitled to an evidentiary hearing.

2. Since the previous filings in this case, and while waiting this Court's ruling on the State's Motion to Dismiss, however, Mr. Snow and his counsel have continued investigating his

conviction and have continued to develop additional evidence to support his claims. Mr. Snow and his counsel have uncovered three additional pieces of evidence which support his claims, his opposition to the State's Motion to Dismiss, and his request for an evidentiary hearing. As with Mr. Snow's previous motion to supplement, allowing Mr. Snow to supplement the record with this information is in the interests of justice and will cause no prejudice to the State.

Affidavit of Maureen Kevin

3. As this Court knows, one of the critical claims in Mr. Snow's petition is that his lead trial attorney, Frank Picl, provided him ineffective assistance of counsel in numerous ways. (Amended Post-Conviction Petition at ¶¶ 152-72.) Mr. Snow has presented evidence that Mr. Picl made these errors because of an alcoholism problem. (*Id.* at ¶ 170.) One of the major pieces of evidence Mr. Snow previously added to the record in his prior motion to supplement was Mr. Picl's sentencing transcript in his own criminal trial, 05 CF 275, in which he pled guilty to theft and financial exploitation of an elderly person. (See Motion to Supplement, Ex. 2.) In that transcript, Mr. Picl and other witnesses described how Mr. Picl's problems began during his separation of his wife, and he began being treated for depression during Mr. Snow's pretrial proceedings. (Mot. to Supplement, Ex. 2C, Picl Sentencing Hearing, 9/27/06, at 7.)

4. To supplement the evidence already presented, Mr. Snow seeks to present the attached affidavit of Maureen Kevin, attached to this Motion as Exhibit 1. Ms. Kevin is a licensed clinical social worker and an expert in drug and alcohol abuse counseling. (Ex. 1, Kevin Aff. at ¶ 2.) She initially worked on Mr. Snow's case when the Office of the State Appellate Defender was assigned to it, and worked with Frank Picl during his representation of Mr. Snow. (*Id.* at ¶¶ 4, 7.) In her affidavit she relays her personal experiences with Mr. Picl, which confirm Mr. Snow's claims about Mr. Picl being ineffective and impaired during his representation.

According to Ms. Kevin, Mr. Picl was drinking at lunch during pre-trial preparations, and that on at least one occasion she smelled alcohol on his breath. (*Id.* at ¶9.) In her professional opinion, Mr. Picl was an alcoholic at the time. (*Id.*)

5. This affidavit is powerful corroboration of the evidence that came out at Mr. Picl's trial and the evidence of the many things he failed to do which affected Mr. Snow's trial. It presents a professional assessment from someone who has first-hand knowledge of Mr. Picl's behavior during Mr. Snow's trial, and supports a conclusion that Mr. Picl's impairments prevented him from providing Mr. Snow with effective assistance of counsel. As such, this Court should consider it along with the other evidence in the case.

Affidavit of Leigh Denison

6. Mr. Snow has also recently obtained an affidavit from Leigh Denison, attached to this Motion as Exhibit 2, an individual who provides further information about the behavior of the Bloomington Police Department Detectives who investigated this case. Mr. Denison's affidavit is further evidence that these Detectives threatened witnesses to get them to present false testimony against Mr. Snow.

7. Mr. Denison explains that he was a friend of Mr. Snow's and lived with him in Florida in the late 1990s when the Bloomington Police Department was investigating this case. (Ex. 2, Denison Aff. at ¶¶ 3-4.) He explains that in 1998 he was contacted by two detectives from the Bloomington Police Department, who threatened to charge him as an accessory if he did not say that Jamie Snow had committed this crime. (*Id.* at ¶¶ 4-5.) When he told them that Jamie Snow had never told him anything about this crime, they told him "that if I do not lie they will charge me as an accessory." (*Id.* at ¶ 6.) According to Mr. Denison, "Jamie has always told me that he had not done the crime for which he has been convicted." (*Id.* at ¶ 8.)

8. Mr. Snow's Amended Petition lays out substantial evidence that witnesses who claimed that Mr. Snow made inculpatory statements to them were subjected to various pressures and inducements to testify, and that new evidence demonstrates a pattern of misconduct by the McLean County State's Attorney's Office and the Bloomington Police Department. (Amended Post-Conviction Pet. at ¶¶ 80-148.) This pattern of misconduct, specifically improper pressure on witnesses and failure to disclose impeaching information about witnesses, is supported by the evidence Mr. Snow has previously presented, and Mr. Denison's affidavit is another piece in that puzzle. Mr. Denison's affidavit, like this other evidence, is admissible to show a plan and motive by these detectives to build a false case against Mr. Snow, and would have impeached the police testimony provided at trial. People v. Banks, 192 Ill. App.3d 986, 994 (1st Dist. 1989.) Mr. Denison's affidavit is therefore new evidence supporting Mr. Snow's actual innocence and Brady violation claims. As such, it should be allowed to supplement the other evidence Mr. Snow has already presented in support of these claims.

Information about Kevin Schaal's Federal Case and His Sentencing Deal

9. Kevin Schaal was incarcerated with Jamie Snow in Illinois. At Mr. Snow's trial, he testified that he had conversations with Mr. Snow about this crime, although he did not testify that Mr. Snow directly implicated himself. (Amended Post-Conviction Pet. at ¶ 41.) He was sentenced for a federal crime in Florida before testifying at Mr. Snow's trial, but testified on the stand that he had no idea whether the judge took his cooperation into consideration when sentencing him. (*Id.* at ¶116.)

10. When Mr. Snow filed his Amended Post-Conviction Petition he presented the limited sentencing information he had about Mr. Schaal's case, which showed that prosecutors had filed for a downward departure in Mr. Schaal's federal case because Mr. Schaal had provided

information in Mr. Snow's case, and that in fact Mr. Schaal received a downward departure on this basis. (*Id.* at ¶ 117 and Group Ex. 24.) Mr. Snow argued based on these documents, which he did not have at the time of trial, both that his trial counsel was ineffective in failing to investigate this case and impeach Mr. Schaal with these records. (*Id.* at ¶ 164.) In his previously-filed Motion for Discovery, which this Court is still considering, Mr. Snow also asked for discovery into this deal in order to obtain records about the deal that he could not obtain on his own. (Mot. Discovery, at p. 6.)

11. Mr. Snow has not been able to obtain all of the documents related to this federal case, 3:00-cr-0010-HLA-MCR, and his sentencing deal. Mr. Snow still seeks additional discovery on this topic. However, Mr. Snow has obtained further criminal case documents, attached as Group Exhibit 3 to this Motion, which further support both that Mr. Schaal received a deal in his Florida case in exchange for his testimony in Mr. Snow's trial, and also that his claim at trial that he did not know whether this was true was disingenuous at best. As such, this evidence supports Mr. Snow's pending ineffective assistance of counsel claim.

12. These records reflect that an indictment was handed down against Mr. Schaal in 1999, alleging that he was a felon in possession of a shot gun. (Group Ex. 3, Indictment.) In the Order of Detention signed by the Court in that matter, the Court reported that Mr. Schaal admitted that he used marijuana and had used methamphetamine approximately 5-6 times in the past two weeks. (Group Ex. 3, Order of Detention.) He tested positive for marijuana, opiates and amphetamines. (*Id.*) He filed a motion to change his plea on April 18, 2000, which was shortly before Mr. Snow's co-defendant's trial began (she was acquitted) and several months before Mr. Snow's trial. (Group Ex. 3, Notice of Setting Change of Plea Hearing.) He entered a plea of guilty on April 24, 2000. (Group Ex. 3, Clerk's Minutes - Change of Plea.) The Plea

Agreement he signed reflected that he agreed to cooperate with federal prosecutors. (Group Ex. 3, Plea Agreement.) Sentencing was originally scheduled for July of 2000, which was after Mr. Snow's co-defendant's trial. (Group Ex. 3, Order Accepting Plea and Scheduling Sentence.) The Federal Government then filed its Motion for Downward Departure in which it reflected that immediately after Mr. Schaal's arrest he began to cooperate, and that he was contacted by "State Attorneys from the State of Illinois regarding his testimony in a murder trial" in which he "has provided valuable information" and "has agreed to testify in that trial if called upon to do so." (Group Ex. 3, United States' Motion for Downward Departure from Sentencing Guidelines.) That Motion was granted, and Mr. Schaal was sentenced. (Group Ex. 3, Clerk's Minutes - Sentencing.) He was sentenced to the fewest possible months possible, and the Court noted that it departed downward because of the defendant's substantial assistance. (Group Ex. 3, Statement of Reasons.)

13. At the Sentencing Hearing, on July 20, 2000, Mr. Schaal's counsel laid out the reasons Mr. Schaal should receive a downward departure. The first thing his counsel mentioned to the Court was that Mr. Schaal had "attempted to meet with prosecutors in Illinois regarding a state murder case," had "offered information he has available to him regarding those proceedings" and "has offered to testify in that trial." (Group Ex. 3, Sentencing Transcript, July 20, 2000, at 4-5.) His counsel explained to the Court that Mr. Schaal was continuing to provide assistance "in that Illinois murder trial." (*Id.* at 7.) The prosecutor then responded that if Mr. Schaal's assistance on the murder "come to fruition" then the prosecutors would file a Rule 35 Motion to further reduce his sentence. (*Id.*)

14. These documents reinforce what Mr. Snow has already argued, that Mr. Schaal's downward departure in his Florida criminal case was directly related to his assistance in Illinois,

and that this was a major basis for the sentencing deal he received. Everyone, the prosecutor, his own lawyer, and the Judge agreed this was a significant factor. Further, the prosecutor stated on the record at that proceeding that Mr. Schaal might receive a further reduction in his sentence for his cooperation in that case.¹

15. This promise and the sentence he already received were major issues which Mr. Picl should have investigated and could have used to impeach Mr. Schaal's testimony on the stand. Mr. Picl could have pointed to this hearing and asked Mr. Schaal if he was testifying to receive a further downward departure. Because Mr. Picl failed to investigate this sentencing he failed to obtain necessary impeachment information on Mr. Schaal that would have further impeached his testimony. These records further support Mr. Snow's claims, and this Court should allow Mr. Snow to supplement the record with them.

Allowing Mr. Snow to Supplement the Record is in the Interests of Justice

16. In the interests of justice, counsel respectfully requests that this Court allow Mr. Snow to supplement the record with these new pieces of evidence. The issues addressed by each were referenced in Mr. Snow's Amended Petition and are evidence that Mr. Snow has told this Court he hoped to find in the future. They do not add new claims to Mr. Snow's petition, but rather support his existing claims. This Court has not ruled on Mr. Snow's petition, and Mr. Snow respectfully suggests this Court should not do so until it has considered these documents. It would not prejudice the State to allow Mr. Snow to supplement the record at this time. In fact,

¹Mr. Schaal also received a deal in a contemporaneous Florida state case in 2000-01, as reflected by the attached plea documents related to that case. (Group Ex. 3, Offers of Plea and Notice of Nolle Prosequi.) Whether this plea deal was also impacted by his cooperation in Illinois remains to be seen, and Mr. Snow requests the opportunity to conduct further discovery on these deals as well.

the post-conviction statute encourages petitioners to aggregate evidence and to have claims heard together, and thus judicial economy would be served by allowing Mr. Snow to have his claims supported by these pieces of evidence heard now rather than requiring the filing of a separate future petition to address them.

WHEREFORE, Mr. Snow respectfully requests that he be allowed to supplement the record with Exhibit 1, 2 and 3 to this Motion.

Respectfully submitted,


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