



SUPREME COURT OF MISSOURI
en banc

STATE ex rel. REGINALD CLEMONS,)	
)	
Petitioner,)	
)	
v.)	No. SC90197
)	
STEVE LARKINS, SUPERINTENDENT,)	
)	
Respondent.)	

ORIGINAL PROCEEDING IN HABEAS CORPUS

Opinion issued November 24, 2015

Reginald Clemons was convicted of two counts of first-degree murder and sentenced to death for the April 5, 1991 murders of sisters, Julie Kerry and Robin Kerry. Mr. Clemons filed a petition for a writ of habeas corpus in this Court, seeking to vacate his convictions because he claims that newly discovered evidence shows that he was prejudiced when the state violated *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding material evidence. In the alternative, Mr. Clemons requests that this Court vacate his death sentences because his sentences are disproportional due to his age and lack of criminal record, new evidence that Mr. Clemons' confession was coerced, evidence that Mr. Clemons' did not directly murder the Kerry sisters but acted only as an accomplice, and because of the reduced sentence of a "more culpable" codefendant.

This Court appointed a special master under Rule 68.03 to take evidence and issue findings of fact and conclusions of law as to Mr. Clemons' allegations. After hearing

(Exhibit: A)

No. SC90197
St. Louis City Circuit Court Case No. 911-1758B
In the Supreme Court of Missouri

September Session, 2015

State ex rel. Reginald Clemons,
Petitioner,

v. HABEAS CORPUS

Steve Larkins, Superintendent,
Respondent.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here now being sufficiently advised of and concerning the premises doth consider and adjudge that the convictions and sentences for 1st degree murder issued in St. Louis City Circuit Court Case No. 911-1758B are hereby ordered vacated in conformity with the opinion of this Court herein delivered.

STATE OF MISSOURI-Sct.

I, BILL L. THOMPSON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2015, and on the 24th day of November 2015, in the above entitled cause.

*Given under my hand and seal of said Court, at the City of
Jefferson, this 10th day of December 2015.*



Bill L. Thompson, Clerk

Cynthia Z. Tucker, Deputy Clerk

(Exhibit:A)



CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

December 10, 2015

Mr. Stephen D. Hawke via inter-agency mail
Office of Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

In Re: State ex rel. Reginald Clemons, Petitioner, vs. Steve Larkins, Superintendent,
Respondent.
Missouri Supreme Court No. SC90197

Dear Mr. Hawke:

Enclosed please find the mandate and a certified copy of the opinion referenced above. By copy of this letter, I have sent a copy of mandate and certified opinion to the Office of General Counsel for the Missouri Department of Corrections.

Very truly yours,

Bill L. Thompson


BILL L. THOMPSON

cc:
Missouri Department of Corrections via inter-agency mail
Office of the General Counsel
2729 Plaza Drive
Jefferson City, MO 65102

(Exhibit: B)

State of Missouri
DEPARTMENT OF CORRECTIONS
POTOSI CORRECTIONAL CENTER

****STAFF TO INMATE CORRESPONDENCE****

DATE: January 7, 2016
TO: CLEMONS, Reginald #990102 H.U. 6A-03-2
FROM: 
Diane E. Reese, Corrections Records Officer II
SUBJECT: Missouri Supreme Court Mandate

Your correspondence has been received and please be advised that the Missouri Supreme Court Mandate vacating your conviction and sentences for first degree murder has been received. According to the mandate, within 60 days from the date the mandate was issued in this case, the state may file an election in the circuit court to retry you. If the state does not so elect, the case against you will be dismissed, and you will be discharged on this matter.

As soon as a decision is received from the St. Louis City court to retry this case or not, your record will be updated, and you will be notified.

cc: Sentence & Judgment File
Classification File

IN THE
TWENTY-FOURTH JUDICIAL CIRCUIT COURT
OF WASHINGTON COUNTY MISSOURI

STATE ex rel. REGINALD CLEMONS,)
Relator,)
V.) Case No. _____
GEORGE LOMBARDI, DOC Director,) (Instant Writ)
CINDY GRIFFITH, Warden,)
Respondents.)

INSTANT WRIT OF HABEAS: Relief

Comes Now, Reginald Clemons, Relator, pro se in the above matter, moves in this Honorable Court, seeking relief by order of release from custody enforcing Supreme Court of Missouri mandate issued on the Missouri Department of Corrections, who are in violation of the FOURTH Amendment right against unreasonable restraint of his liberties and FIFTH Amendment right against undue denial of immediate release from First Degree Murder and Death Sentence, for reasons as follows:

Relator is in the custody of George Lombardi, the Director of Missouri Department of Corrections and Cindy Griffith, the Warden of Potosi Correctional Center, located at:

11593 State Highway 0, Mineral Point, Missouri 63660.

Statement Of Facts

The Missouri Department Of Corrections continued custody and confinement restraint of Reginald Clemons liberty, under two (2) sentences of death, for two (2) counts of First Degree Murder are unlawful and illegal confinement, causing undue delay stress and anxiety.

On December 10, 2015, the Missouri Department Of Corrections received an order and mandate from the Supreme Court Of Missouri: "Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here now being sufficiently advised of and concerning the premises doth consider and adjudge that the conviction and sentence for First Degree Murder issued in St. Louis City Circuit Court No. 911-1758B are hereby ordered vacated in conformity with the opinion of this Court herein delivered." (Attached Exhibit: A)

On January 7, 2016, Diane E. Reese, Corrections Records Officer II, issued a letter in conflict with the immediate order and mandate of the Supreme Court Of Missouri. Stating: "As soon as a decision is received from the St. Louis City court to retry this case or not, your record

will be updated, and you will be notified." creating undue delay in conformity to mandate. (Attached Exhibit:B)

On June 19, 2007, Mr. Clemons received a 15-year sentence for committing violence to a department of corrections employee to be served consecutively to his death sentence. *Clemons v. Steele*, No. 4:11CV379JCH, 2011 WL 5912617, at *1 (E.D. Mo. Nov. 28, 2011). As such, Mr. Clemons shall remain in the state's custody.

Statement Of The Case

Whether or not the St. Louis City Court retries the case No. 911-1758B, has no bearing on the present legal status of Relator Reginald Clemons vacated sentences of death or First Degree murder convictions. Making the continued confinement of his person in custody under case No. 911-1758B available for habeas relief and corpus release of said confinement, to be ordered heretoforthwith.

Where the only remaining sentence adjudged as 15 years shall be recalculated for, with good time credit, from time of arrest in 2003. "Where the -- conviction and sentence in this case were vacated for lack of a factual basis, it was a declaration that the

sentence was to be regarded as though it had never existed." *Calvin v. Missouri Dept. of Corrections*, 272 S.W.3d 282, at *288 (2009). Relator's First Degree Murder convictions and death sentence should be ordered removed from Relator Missouri Department of Corrections custody and confinement classification files or records, as though it had never existed.

Relief

Wherefore, Reginald Clemons, Prays that this Court orders the production of his person before this Court for release in this matter, to be weighed and measured within 24 hours of receipt of order, to be so adjudge. With court cost and filing fees to be charged against Respondents, and any other relief this court deems necessary.

Respectfully Submitted:

Signed: This 14th day of January 2016: ~~Reginald Clemons~~ →

Reginald Clemons

Potosi Correctional Center

11593 State Highway 0

Mineral Point, Mo. 63660

CERTIFICATE OF SERVICE

I, Reginald Clemons, hereby certify that a true and correct copy of the Instant Writ of Habeas with Exhibits was mailed via institutional mail and the U.S. Postal Service, with postage paid, to the following on this 14th day of January 2016:

George Lombardi, DOC Director
Missouri Department of Corrections
2729 Plaza Drive
Jefferson City, Missouri 65109

And

Cindy Griffith, Warden
Potosi Correctional Center
11593 State Highway O
Mineral Point, Mo. 63660

Reginald Clemons
Reginald Clemons, Pro se

Records Office



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
INFORMAL RESOLUTION REQUEST

INSTITUTION USE ONLY EMERGENCY COMPLAINT

OFFENDER NAME <i>Reginald Clemons</i>		DOC NUMBER <i>998192</i>	
DATE STAFF RECEIVED IRR	COMPLAINT NUMBER	CATEGORY	HOUSING UNIT <i>6A-3</i>

COMPLAINT - ONE ISSUE - BE SPECIFIC

On December 10th, 2015, your office received an order and mandate to vacate my II counts of First Degree Murder and Death Sentence, to which your office staff have failed or refused to comply with from the Missouri Supreme Court Case No. SC90197.

STATE YOUR PROBLEM BRIEFLY

Careworker Michael Layden and Management in your office contemptuously have refused to change my custody and confinement records. Upon filing a complaint Mr. Layden has retaliated by placing me in food service for a series of harassment and abuse commencing in food service. The duty falls to you to correct my custody and confinement records and transfer where Michael

ACTION REQUESTED: STATE REMEDIES YOU ARE SEEKING

Layden refuses to: I must be transferred to a lower level institution consistent with my new time calculation.

STAFF USE ONLY

DISCUSSION OF COMPLAINT (SUMMARIZE RESULTS OF MEETING)

Due to Michael Layden's retaliator action, he is not to process this complaint, as it seeks to accomplish an action he's personally against.

<input type="checkbox"/> IRR RESOLVED BY DISCUSSION/WITHDRAWN		<input type="checkbox"/> IRR NOT RESOLVED BY DISCUSSION	
OFFENDER SIGNATURE	DATE	STAFF SIGNATURE	DATE

STAFF FINDINGS/RESPONSE

INVESTIGATING STAFF SIGNATURE	DATE	RESPONDENT SIGNATURE	DATE
REVIEWER SIGNATURE	DATE	RESULTS <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY	

YOU HAVE THE RIGHT TO FILE A FORMAL GRIEVANCE. YOU MUST FILE A GRIEVANCE FORM WITH THE DESIGNATED STAFF WITHIN SEVEN (7) DAYS FROM THE DATE YOU RECEIVE THIS RESPONSE. FAILURE TO SUBMIT A GRIEVANCE WITHIN THIS TIME FRAME CONSTITUTES ABANDONMENT.

OFFENDER SIGNATURE	DATE
--------------------	------

Parole Board

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
INFORMAL RESOLUTION REQUEST

INSTITUTION USE ONLY EMERGENCY COMPLAINT

OFFENDER NAME <i>Reginald Clemons</i>		DOC NUMBER <i>940102</i>	
DATE STAFF RECEIVED IRR	COMPLAINT NUMBER	CATEGORY	HOUSING UNIT <i>6A-3</i>

COMPLAINT - ONE ISSUE - BE SPECIFIC

*On December 10, 2015, the Missouri Supreme Court issued its mandate vacating my 1st degree murder conviction and death sentence. Case No. SC99197.
Pursuant to Case Pita v. Mo. Dept of Corr. 199 SW3d 219; Burlew v. Mo. Dept of Corr., 340 SW3d 254*

STATE YOUR PROBLEM BRIEFLY

I have asked Michael Hayden to contact your office, but he refused to take the necessary action to initiate or activate my 15 year sentence or contact others on my behalf. I am in need of having my remaining 15 year sentence recalculated in absence of my death sentence, with time credit from 2003.

ACTION REQUESTED: STATE REMEDIES YOU ARE SEEKING

I would like to know what my time credit parole calculation is in absent of my vacated sentence.

STAFF USE ONLY

DISCUSSION OF COMPLAINT (SUMMARIZE RESULTS OF MEETING)

IRR RESOLVED BY DISCUSSION/WITHDRAWN IRR NOT RESOLVED BY DISCUSSION

OFFENDER SIGNATURE	DATE	STAFF SIGNATURE	DATE
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STAFF FINDINGS/RESPONSE

INVESTIGATING STAFF SIGNATURE	DATE	RESPONDENT SIGNATURE	DATE
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REVIEWER SIGNATURE	DATE	RESULTS <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY
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YOU HAVE THE RIGHT TO FILE A FORMAL GRIEVANCE. YOU MUST FILE A GRIEVANCE FORM WITH THE DESIGNATED STAFF WITHIN SEVEN (7) DAYS FROM THE DATE YOU RECEIVE THIS RESPONSE. FAILURE TO SUBMIT A GRIEVANCE WITHIN THIS TIME FRAME CONSTITUTES ABANDONMENT.

OFFENDER SIGNATURE	DATE
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