

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

RONALD LEE BELL,

On Habeas Corpus.

CAPITAL CASE

No. S105569

(Former related appeal: S004260;
first related petition: S015786;
second related petition: S044466)

**PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S
BRIEF ON THE MERITS RE: REPORT OF REFEREE**

Reference Hearing, Superior Court
Contra Cost County, State of California
No. 21631

HONORABLE THOMAS M. MADDOCK, REFEREE

SUPREME COURT
FILED

MAY 14 2007

Frederick K. Ohlrich Clerk
Deputy

MARGARET LITTLEFIELD
State Bar # 110938
Law Offices of Michael Satris
Post Office Box 337
Bolinas, CA. 94924
Telephone: (415) 868-9209
Fax: (415) 868-2658
Email: satris@sbcglobal.net

Attorney for Petitioner
RONALD LEE BELL

RECEIVED

MAY 14 2007

CLERK SUPREME COURT

TOPICAL INDEX

	<u>Page#</u>
TABLE OF AUTHORITIES	ii
PETITIONER’S BRIEF IN REPLY TO RESPONDENT’S BRIEF ON THE MERITS RE: REPORT OF REFEREE	1
BACKGROUND	2
ARGUMENT	6
CONCLUSION	6

TABLE OF AUTHORITIES

State Cases

In re Clark (1993)
5 Cal.4th 7504, 6

People v. Duvall (1995)
9 Cal.4th 4644

California Statutes

Evidence Code §§ 450-4522

California Rules of Professional Conduct

Rule 5-27005

Miscellaneous Authorities

Hertz & Liebman, Fed. Hab. Corpus Practice & Proc. (5th ed. 2005)
§ 11.3b4
§ 11.64
§ 11.7b4
§ 11.7c4

MARGARET LITTLEFIELD, SBN 110938
Law Offices of Michael Sattris
P. O. Box 337
Bollinas, California 94924
Tel: (415) 868-9209
Fax: (415) 868-2658
E-mail: sattris@sbcglobal.net

Attorney for Petitioner Ronald Lee Bell

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

RONALD LEE BELL

on Habeas Corpus.

CAPITAL CASE

No. S105569

**PETITIONER'S BRIEF IN
REPLY TO
RESPONDENT'S BRIEF
ON THE MERITS RE:
REPORT OF REFEREE**

In this short reply, petitioner Ronald Lee Bell ("Bell") addresses one aspect only of the respondent's brief on the merits on submission of the report of the referee ("Merits Brief"), filed April 11, 2007: respondent's pervasive, derisive accusation that the within proceedings were unethically prosecuted in bad faith and for purposes of delay. The tone of respondent's brief is beneath him, and the unseemly conclusions he draws from the incomplete history of proceedings that he has set forth are offensive.

BACKGROUND

Respondent sets forth a somewhat lengthy history of proceedings in this case, including ones in the United States District Court for the Northern District of California. (Merits Brief, pp. 1-5, 11-20.)¹ Bell does not dispute the general outline of those proceedings as set forth by respondent, except that he fills in certain omissions which clarify the history of the case.

On April 4, 1991, Bell filed his first federal petition, in pro per, consisting of approximately one page of text. The United States District Court on October 2, 1991, appointed Marshall Krause and Hilda Scheib to represent Bell in those proceedings.

On June 11, 1992, now represented by counsel, Bell filed an amended federal habeas petition. (See also Merits Brief p. 11.) On October 15, 1992, the district court issued an order requiring Bell to exhaust state remedies.

On January 20, 1995, through counsel, Bell filed a second state habeas petition to exhaust state remedies. (See also Merits Brief pp. 12-13.)² This Court denied the petition on June 21, 1995.

¹ Many of the assertions from Bell's federal proceedings set forth by respondent are not contained in the record of the reference proceedings. Although they would be subject to judicial notice pursuant to Evidence Code sections 450-452, respondent has not made such a request. Accordingly, where necessary, Bell will similarly refer to the record of federal court proceedings without a request for judicial notice.

² In the middle of page 13, respondent suggests that in his 1995 state court petition, Bell concealed the existence of a declaration bearing the name Dorothy Dorton. This of course was an impossibility as that document and the information it contained did not exist until April 7, 2001.

On July 2, 1998, the federal court ordered Bell to file an amended petition after exhaustion of state court remedies.

On July 27, 1998, Marshall Krause filed a motion to be relieved as counsel, which the district court granted effective September 11, 1998.

On October 9, 1998, Margaret Littlefield and Geoffrey Rotwein were substituted in as counsel in the federal court proceedings.

On March 21st and 24th, 1999, co-counsel Geoffrey Rotwein submitted information to the district court that he had discovered a conflict of interest that he believed required his withdrawal as counsel. On April 11, 1999, the district court allowed Mr. Rotwein to withdraw as counsel and appointed Roger Hurt³ as co-counsel to represent Bell in federal court.

On March 17, 2000, Bell filed a second amended petition for writ of habeas corpus in federal court, and on June 26, 2000, filed another amended petition for writ of habeas corpus after the district court granted respondent's motion to dismiss the amended petition for failure to exhaust state court remedies. In those petitions, filed prior to Littlefield and Hurt's in depth review of the existing files and records and case planning based thereon, counsel made factual assertions of actual innocence (see Merits Brief pp. 14-15) pending further investigation and determination of the validity of that claim.

³ As this Court is aware, Mr. Hurt tragically and unexpectedly died in June of 2006, before completion of the reference proceedings in which he played the primary role.

General federal habeas practice is to file petitions that plead factual allegations without providing supporting documents, an entirely different procedure than that for filing habeas corpus petitions in the California courts. (Compare Hertz & Liebman, Fed. Hab. Corpus Practice & Proc. (5th ed. 2005) §§ 11.3b, p. 635, 11.6, pp. 651-652, 11.7b and 11.7c, pp. 656-661 on federal habeas practice, with, generally, *In re Clark* (1993) 5 Cal.4th 750 and *People v. Duvall* (1995) 9 Cal.4th 464 on California habeas practice.)

From October 16, 2000, through January 29, 2001, Littlefield and Hurt conducted in tandem an in-depth review of the existing files and records generated in the Bell case from its inception on automatic appeal in the Office of the State Public Defender to involvement of the California Appellate Project through the end of Mr. Krause's representation.⁴ In the course thereof counsel considered the declarations of Wanda Diane Moore, Leroy Kelly, and Tonia Moore that had been obtained many years earlier by Bell's investigators, Melody Ermachild and Pamela Siller.

Littlefield and Hurt pursued their own investigation of the case during which time on April 7, 2001, they were informed that a woman named Dorothy Dorton contacted and met with Ermachild and Siller about Bell at a Carrows Restaurant. The investigators prepared a document of the conversation which the woman signed.

⁴ This review of the files and records is documented in billings submitted to the district court.

That document, along with ongoing reinvestigation of the Moores and Kelly, compelled counsel to conclude that these facts stated a prima facie case for relief on claims of actual innocence/false testimony. Counsel therefore set forth with some specificity, for the first time, the facts of the actual innocence/false testimony claims in a motion for evidentiary hearing filed in the district court on September 24, 2001.

Before further investigation and factual development could proceed in the federal proceedings, the district court on January 8, 2002, found the factual assertions regarding the actual innocence/false testimony claims to be insufficiently exhausted in state court, and directed that Bell do so in order to litigate them in the federal court proceedings.

Bell filed his exhaustion petition on the actual innocence/false testimony claims in this Court on April 2, 2002, initiating the within proceedings.

During the course of the reference proceedings Bell's counsel were unexpectedly confronted with developments that caused them to withdraw the declarations of Tonia Moore, Dorothy Dorton, and Wanda Diane Moore pursuant to California Rules of Professional Conduct, rule 5-2700.

No such developments presented themselves with regard to Leroy Kelly, and Bell maintained and maintains every confidence in the veracity of Leroy Kelly's declaration and evidentiary hearing testimony.

ARGUMENT

Contrary to respondent's skewed assertions in his brief on the merits, the above history shows that Bell — throughout these proceedings — ethically addressed the claim of actual innocence/false testimony, further investigating it and presenting it only when the cumulative nature of facts of actual innocence, coming from a range of sources, convinced counsel they stated a prima facie case for relief. (See, e.g., *In re Clark, supra*, 5 Cal.4th at pp. 781-782.) This did not occur until after April 7, 2001.

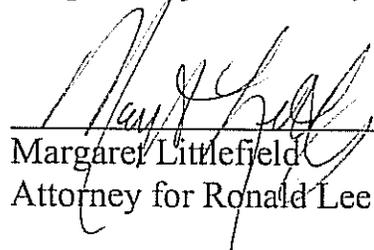
In response to the other assertions in respondent's Merits Brief, Bell reiterates and relies on his brief of exceptions to the report of the referee.

CONCLUSION

For the foregoing reasons, and those set forth in Bell's brief of exceptions, the Court should not adopt the report of the referee.

Dated: May 11, 2007

Respectfully submitted,



Margaret Littlefield
Attorney for Ronald Lee Bell

In re Ronald Lee Bell on Habeas Corpus
California Supreme Court No. S105569
Contra Costa County No. 21631

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Marin County. I am over the age of eighteen years and not a party to the within above entitled action. My business address is P.O. Box 337, Bolinas CA.

On May 11, 2007, I served the within **PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S BRIEF ON THE MERITS RE: REPORT OF REFEREE** on the interested parties in said action causing to be placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Post Office box addressed to the parties as follows:

Mr. Ron Matthias
Office of the Attorney General
State of California
455 Golden Gate Ave, #11000
San Francisco, CA 94102
(Counsel for Respondent)

Mr. Douglas MacMaster
Deputy District Attorney
Contra Costa County
P.O. Box 670
Martinez, CA 94553

Clerk, Superior Court
County of Contra Costa
P.O. Box 911
Martinez, CA 94553

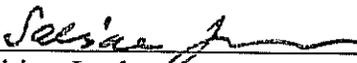
Mr. Ronald Lee Bell
San Quentin S.P.
P.O. Box C-02401
San Quentin, CA 94974

H. Sinclair Kerr Jr.
Kerr & Wagstaffe LLP
100 Spear St., #1800
San Francisco, CA 94105
(Trial Counsel)

Ms. Mary Jameson
Automatic Appeals Unit Supervisor
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 11, 2007.


Sabine Jordan