

STATE OF INDIANA)	IN THE DEARBORN SUPERIOR COURT II
)	
COUNTY OF DEARBORN)	
)	GENERAL TERM 2015
DANIEL P BREWINGTON)	
)	
Petitioner,)	CAUSE NO. 15D02-1103-FD-084
)	
V.)	
)	
STATE OF INDIANA)	
)	
Respondent.)	

VERIFIED PETITION FOR POST-CONVICTION RELIEF

COMES NOW the Petitioner Daniel P. Brewington ("Brewington"), pro-se, and in support of this VERIFIED PETITION FOR POST-CONVICTION RELIEF, pursuant to Indiana Post-Conviction Remedies Rule 1§3, states as follows:

SUMMARY OF ARGUMENT

This petition for post-conviction relief addresses violations of Brewington’s First, Fourth, Fifth, Sixth, and Fourteenth Amendment Rights stemming from a criminal defamation action initiated by Dearborn County Prosecutor F. Aaron Negangard (hereinafter “Negangard”). Negangard made Brewington the target of a criminal defamation grand jury investigation just five days after the State of Indiana dismissed a complaint that Brewington filed against Negangard. Negangard brought the criminal defamation action against Brewington on behalf of Dearborn County Circuit Judge James D. Humphrey (hereinafter “Humphrey”) and court psychologist Dr. Edward J. Connor (hereinafter “Connor”) for making, what Negangard and his staff felt, were “unsubstantiated” and “over the top” statements against Humphrey and Connor. G.J. Tr. 338 --Note: Connor also serves as a paid professional witness for the Office of the Dearborn County Prosecutor-- Negangard prosecuted Brewington because Humphrey and Connor “just want to be left alone.” Tr. 510 Negangard argued criminalizing Brewington’s speech was necessary in order to allow Humphrey and Connor to circumvent the civil

defamation process claiming, “Judge Humphrey and Dr. Connor aren't interested in a pay date, they just want justice.” Brewington served a 2.5-year prison sentence because Negangard, who also serves as the head of the federally funded Dearborn County Special Crimes Unit, sought indictments and convictions against Brewington arguing that “the First Amendment doesn't protect lies.” Though Brewington’s petition lists several constitutional errors making a fair trial and appellate process impossible, the foundation of this petition lies in the fact the State violated Brewington’s Sixth Amendment right to counsel as well as Brewington’s right to be informed of the nature and cause of the accusation. The appointment of Bryan Barrett (hereinafter “Barrett”) by Special Judge Brian Hill (hereinafter “Hill”) provided no actual assistance for Brewington’s defense thus violating Brewington’s constitutional guarantee to counsel. To hold otherwise would convert the appointment of Barrett “into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel.” *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).¹ Other than a brief “meet and greet” on July 18, 2011 upon filing an appearance to represent Brewington, Barrett refused to meet with Brewington at any point prior to trial. Brewington could not post the \$500,000 surety and \$100,000 cash bond set by Dearborn County Superior Court Judge Sally Blankenship -- now Sally McLaughlin -- because the Deputy Prosecutor Joseph Kisor (hereinafter “Kisor”) argued, “[Brewington] intends to try this case on his blog and I think that not only could be detrimental to the State. It might even be detrimental to him.” Arraignment Tr. 20. Brewington remained detained in the Dearborn County Law Enforcement Center (“DCLEC”) for the duration of the criminal proceedings. Even in light of Brewington’s unconstitutionally high bond for criminal defamation, Barrett refused to meet with Brewington or his

¹ Special Judge Brian Hill, of Rush County Superior Court, appointed Rush County Chief Public Defender to represent Brewington. Hill was the third judge in Brewington’s case, appointing Barrett to succeed Brewington’s first public defender John Watson. Watson waited two months to withdraw as Brewington’s public defender citing a conflict of interest due to having cases before one of the “victims” in the case, Judge James D. Humphrey.

family to obtain evidence, potential witness lists, or to do any kind of general investigation. Barrett also refused to speak with Brewington's Ohio attorney, Robert G. Kelly, who volunteered to assist in Brewington's defense pro hac vice at no cost [Arraignment Tr. 25].² Barrett's absence was so blatant even Negangard stated, "[Brewington]'s um mad that his attorney hasn't talked to him." [Final pretrial hearing September 19, 2011 Tr. 78] Brewington walked into a criminal trial with no understanding as to what conduct was responsible for his indictments and seven-month incarceration while waiting for trial. In response to Brewington's pleas for charging information, evidence, and access to legal counsel, the only relief Judge Hill offered Brewington was the option of representing himself. Analysis of perceived strategy or trial performance of Barrett is irrelevant because an attorney cannot represent a defendant without attempting to communicate with the defendant. In *Brewington v. State*, 7 N.E.3d 946 (Ind. 2014) decision authored by Justice Loretta H. Rush (hereinafter "Rush"), the current Chief Justice, the Indiana Supreme Court stated Negangard's criminal defamation argument was "plainly impermissible." -- Chief Justice Loretta H. Rush authored the opinion despite serving on the Juvenile Justice Improvement Committee with Humphrey for at least seven years and continued to attend meetings with Humphrey while Rush wrote the opinion in *Brewington*. -- The Indiana Supreme Court also stated it was likely that Brewington's conviction rested upon protected speech due to the constitutionally inadequate jury instructions. The Indiana Supreme Court upheld Brewington's conviction claiming Barrett's trial strategy invited any constitutional errors. Rush speculated that Barrett "sought to exploit the prosecutor's improper reliance on 'criminal defamation' to the defense's advantage -- focusing the jury on the clearly protected aspects of Defendant's speech, and on that basis to find the ambiguous aspects of his conduct to be protected as well." supra 975. This statement alone calls for the reversal of Brewington's convictions as the Indiana Supreme Court affirmative stated that

² The website of the Hamilton County, Ohio Board of Elections currently lists Robert G. Kelly as a candidate for Judge of Hamilton County Municipal Court in the November 3, 2015 election.

Brewington stood trial for violating non-existent criminal defamation laws. The fact Barrett was forced to defend “clearly protected aspects of Brewington’s speech demonstrates how Brewington’s rights suffered throughout all phases of Brewington’s trial and appeal. Placing the burden on Brewington to defend non-criminal acts took away from his ability to develop any viable trial strategy as well as wasting vast amounts of time, money, and limited word space during the appellate process. Even in the absence of any evidence of Barrett’s thoughts of trial strategy, if Rush was correct in her assumption that Barrett was aware of Negangard improperly relied on criminal defamation target of a grand jury investigation; the same assumption would have to extend to Prosecutor Negangard, who is President of the Association of Indiana Prosecuting Attorneys, Inc. Not only does one have to assume Negangard fully understood that he made Brewington the target of a grand jury investigation for violating non-existent criminal defamation laws, one also has to assume Negangard prosecuted Brewington for speech that Negangard knew was “clearly protected.” Rush’s argument fails completely when she suggests Barrett’s trial strategy consisted of focusing on the “clearly protected aspects” of Brewington’s speech while ignoring the ambiguous aspects of the speech. Prior to the Indiana Supreme Court’s ruling in *Brewington*, no one drew any distinctions between “clearly protected” and “ambiguous” aspects so Brewington had no knowledge what parts of his speech he was to defend during trial. What the Indiana Supreme Court deemed “clearly protected” was also not apparent to the Indiana Court of Appeals decision in *Brewington v. State*, 981 N.E.2d 585 (Ind. App. 2013), which held that referring to family court judge as a child abuser is criminally punishable in the State of Indiana. If Rush assumed that Barrett knew Negangard prosecuted Brewington for conduct that was “clearly protected” then it is obvious that the Indiana Court of Appeals was fully aware of Negangard’s impermissible prosecution but rationalized why not to provide Brewington relief for his protected criticisms of Indiana court officials. The State cannot hold Brewington or his public defender to a higher constitutional standard than Prosecutor Negangard, who heads the

Dearborn County Special Crimes Unit, and/or the Indiana Court of Appeals. Brewington was unable to build a defense against “hidden threats as the “hidden threat” first appears in the opinion of the Indiana Supreme Court. As there is no record or report of any contact between the prosecution or law enforcement with the targets of the Brewington’s speech in the fifteen months prior to the grand jury proceedings, Negangard, had no reason to believe the alleged victims even viewed many of Brewington’s writings that Rush alleged contained hidden threats. Rush also stated the prosecution overlooked the difference “between threatening the targets’ reputations...and... threatening their safety.” *Brewington* supra 975, which stripped Brewington of the ability to mount a defense against the State’s case because Rush said the State did not define what parts of Brewington’s conduct were allegedly against the law. Rush’s attempts to rationalize Brewington’s unconstitutional convictions only adds weight to a reversal requirement. Contrary to Rush’s argument, the prosecution specifically argued that constitutionally protected speech lost its protection when the defamatory speech amounted to fighting words.

Rush’s cryptic attempt to affirm Brewington’s convictions by removing First Amendment protection is similar the case of *Shuttlesworth v. Birmingham*. In *Ashton v. Kentucky*, 384 U.S. 195, 86 S.Ct. 1407, 16 L.Ed.2d 469 (1966), the U. S. Supreme Court stated,

“We indicated in *Shuttlesworth v. Birmingham*, 382 U.S. 87, that where an accused is tried and convicted under a broad construction of an Act which would make it unconstitutional, the conviction cannot be sustained on appeal by a limiting construction which eliminates the unconstitutional features of the Act, as the trial took place under the unconstitutional construction of the Act.”

What separates Brewington from *Shuttlesworth* is that rather than sustain Brewington’s convictions by changing the construction or interpretation of the Indiana statute, the Indiana Supreme Court simply changed the nature and cause of the accusation the State used to indict and convict Brewington *after* Brewington had already been indicted, convicted, and served a 2.5-year prison sentence for criminal defamation. Negangard clearly argued permissible constitutional grounds

for prosecuting speech under the fighting words exception Tr. 512, but failed to argue *how* referring to a court official as a “child abuser” via internet posts was an attempt by Brewington to incite imminent violence, or how the statement was akin to yelling “fire” in a crowded theater. As the prosecution failed to raise a constitutionally plausible reason to indict or convict Brewington, Rush inserted the “hidden threat” argument as if had been presented before the grand jury and at trial and then sustained Brewington’s convictions based upon Rush’s new argument.

Brewington’s prosecution is nothing more than retaliation against Brewington on the part of many in the Indiana court system because Brewington offered harsh public criticisms of many in the system. The abundance of “oversights”, “misinterpretations of law”, and deprivation of Brewington’s rights over the course of the grand jury, criminal trial, and appellate process are intentional in nature because everyone involved in Brewington’s case knew that Brewington was a victim of Negangard’s malicious prosecution. Throughout the criminal proceedings, Judge Hill denied Brewington’s requests for legal counsel, evidence, and the knowledge of what conduct Brewington was required to defend, so additional unknown constitutional flaws may still exist that Brewington is unable to raise at this point. In building a case for Brewington’s trial strategy inviting constitutional error in the trial Rush wrote, “Defendant demonstrated significant sophistication about free-speech principles long before trial in a motion to dismiss these charges.” *supra* 978. Rush’s statement is disturbing on a number of levels, the first of which is the fact Brewington’s motion to dismiss the charges is file stamped “October 3, 2011”, the first day of trial; not “long before trial” as suggested by Rush. Rush also failed to mention Brewington filed the motion on his own as well as a Motion to Dismiss for Ineffective Assistance of Counsel, and motion to Disqualify F. Aaron Negangard and appoint Special Prosecutor. Brewington filed the motions to as a last ditch effort to address and preserve constitutional issues Barrett refused to address with Brewington. Hill addressed Brewington’s three motion during the opening minutes of trial:

Judge Hill: Let the record reflect that the State appears by Prosecuting Attorney, Aaron Negangard and the Defendant appears in person and by counsel, Bryan Barrett and this matter is scheduled for jury trial this morning and about twenty (20) or thirty (30) minutes ago I received a file marked Motion to Dismiss, Motion to Disqualify F. Aaron Negangard and appoint Special Prosecutor and Motion to Dismiss for Ineffective Assistive of Counsel. Those are pro se motions filed by the Defendant. Mr. Brewington, you have legal counsel and I'm not inclined to contemplate pro se motions. I guess, what's your uh, what are you going for here? You've got counsel to represent you to give you legal advice and make these filings. Are you're uh, indicating to me that you're wanting to represent yourself or do you want to clarify that for me please?

Brewington: No your honor. Uh, I just, Mr. Barrett hasn't met with me since July, I believe the 17th of this year. I don't have any idea of the direction of my case other than what was just explained to me just in the past few minutes before things got settled here. I still don't have some of the evidence. I don't have copies of the Grand Jury evidence. There's documents from Detective Kreinhop's investigation that are not included. There's transcripts that uh, that he said would be included in his investigation that were not included in discovery and I've never been able to obtain that information and Mr. Barrett has not communicated with me about that stuff and I just don't know the direction of my defense and he hasn't been able to meet with me, tell me anything, explain to me anything. I also do not have my medication. I take Ritalin for attention deficit disorder. It's been an issue of the defense. It's been brought up multiple times in the grand jury transcripts and without that I don't even have the ability to concentrate as hard. I have difficulties reading and that sort and Mr. Barrett waived my right to bring that up at trial as he made no objection to the motion in limine which I did not realize that a motion in limine had uh, was requesting the court to prohibit any discussion about medication that was given to me while I was incarcerated in DCLEC. So I have absolutely no idea what's going on in my case. I tried, everything that has been provided here except for the grand jury transcripts which I didn't even receive until Friday, October 23rd I believe or September 23rd.

Hill: Okay, I've listened for about three (3) or four (4) minutes I think uh by filing this, tells me you don't want counsel. You're filing motions by yourself. So you're ready to go...

Brewington: No, no, no, I want [competent] counsel. I want to know what's going on. I can't and even if I were to make a decision to do it on my

own, I don't have, I haven't been given the medication that I need that is prescribed by a doctor to do this sort of stuff, I mean to read, to process, to question and everything like that. I just, I would have raised the issue earlier except Mr. Barrett at the September 19th hearing, said that he would be in to discuss the case with me and he never appeared. He said the same thing at the hearing before that. He said that he would be in to see me and he never appeared. He said over the phone that he would be in to see me when he had the chance and he never appeared. So I haven't had the opportunity to have effective counsel. It's not that I want to do it on my own. It was a last resort effort.

Hill: Okay that was the answer to my question. Uh, Mr. Barrett, are you ready to proceed with this case today?

Barrett: Yes your honor.

The above is just a slice of an egregious pattern of events that document how the State of Indiana maliciously prosecuted Brewington for speaking out about the family court system. Hill refused to address Brewington's Motion to Dismiss for Ineffective Assistance of Counsel because Brewington filed the motion himself. The only relief Hill offered Brewington was the option for Brewington to represent himself. Brewington did everything possible to address his concerns to the courts and all levels of the Indiana Court system did everything possible to ignore Brewington while at the same time taking every opportunity to deprive Daniel P. Brewington of the most basic and fundamental rights that are guaranteed to every citizen of the United States of America. Any continued failure any attorney or judge to ignore or protect Brewington's constitutional rights is a malicious act or is out of fear of facing the same retaliatory force the State of Indiana exhibited on Brewington. Further support of this post-conviction claim is as follows: