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Sample motion for reconsideration maryland

Today, the defense filed its Motion for Reconsideration to the Court of Appeals of Maryland in the Adnan Syed case. In this first post on the Motion, I will (1) explain how the Motion will be handled; and (2) describe (what I find to be) the Motion's most compelling argument. Rule 8-605 Rule 8-605(a) of the Code of Maryland tells us that Except as otherwise provided in Rule 8-602(e), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion. By filing its Motion for Reconsideration today, the defense has complied with Rule 8-605(a) by filing within 30 days after the Court of Appeals filed its 4-3 opinion denying Adnan a new trial. The State currently has no right to file a response to the defense's Motion for Reconsideration, and, if that remains that case, that's very good for the State. As 8-605(a) makes clear, the Court of Appeals of Maryland ordinarily will not grant motions for reconsideration that would change the decision in the case without requesting a response. The Court of Appeals of Maryland should review the defense Motion for Reconsideration in conference at the end of April, and, shortly thereafter, we should hear whether (1) they have denied the Motion; or (2) they have requested a response by the State. Next, Rule 806(f) tells us that A motion for reconsideration shall be granted only with the consent of at least half the judges who concurred in the opinion. If a motion for reconsideration is granted, the Court may make a final disposition of the appeal without reargument, restore the appeal to the calendar for argument, or make other orders, including modification or clarification of its opinion, as the Court finds appropriate. I reallllllly don't like this subsection. Because four judges concurred in opinion to deny Adnan a new trial, two of those judges must vote to grant the motion for reconsideration. I don't get this logic. Adnan lost on a 4-3 vote. Imagine that one judge in the majority reads the Motion for Reconsideration, realizes that (s)he made a mistake, and realizes that this mistake led to an incorrect vote. That would obviously be enough to get Adnan a new trial, with a 4-3 vote in Adnan's favor; however, without a second judge from the majority agreeing to grant the Motion, the Motion for Reconsideration would be denied. That said, if there are two judges who grant the Motion to Reconsider, the judges might modify their opinion without oral arguments or might schedule new oral arguments. Argument 4 The Motion for Reconsideration advances four arguments, and I think the fourth argument is the strongest. I discussed the possibility of this argument in a prior post. Basically, the argument goes as follows: (1) the State argued at the reopened PCR proceeding that, if alibi witness Asia McClain had testified, they could have claimed that Adnan killed Hae Min Lee after 2:36pm, with the 3:15pm call on Adnan's call log being the "come and get me" call; (2) "The postconviction court [Judge Welch] firmly rejected the idea of an alternative timeline and stated as a fact the following: "[T]he Court finds that the State committed to the 2:36 pm. timeline and thus the Court will not accept the newly established timeline;" (3) Judge Welch supported this factual finding by reviewing the trial record and noting that the jury couldn't have accepted a 3:15pm "come and get me" call because 14+ minutes of actions came between the "come and get me" call and the 3:21pm call on Adnan's call log; (4) "This fact was enshrined by the Court of Special Appeals, which 'agree[d] with the postconviction court's rejection of the State's attempts to alter its timeline of the murder;'" (5) This fact was accepted by "the State itself, which abandoned its alternate-timeline argument by the time the case reached this Court; (6) The Court of Appeals disturbed this factual finding by concluding that there was no prejudice based on the failure to contact/call Asia McClain because "the jury could have disbelieved that Mr. Syed killed Ms. Lee by 2:36 p.m., as the State's timeline suggested, yet still believed that Mr. Syed had the opportunity to kill Ms. Lee afier 2:40 p.m.;" (7) The Court of Appeals is not supposed to disturb factual findings unless they explain why those findings are clearly erroneous; (8) The Court of Appeals did not explain why Judge Welch's factual finding was clearly erroneous; (9) Judge Welch's factual finding was not clearly erroneous; and (10) The overruling of this fact was of paramount importance because it represents the only plausible way that the failure to contact the alibi witness could have not prejudiced Syed. These ten points tie into one of the reasons for granting a motion for reconsideration: Under Rule 8-605(b)(1), a Motion for Reconsideration should be granted if "the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued." Here, this clearly seems to be the case. Judge Welch made a factual finding, and the Court of Appeals disturbed this factual finding without determining that it was clearly erroneous. Simply put, the Court of Appeals screwed up, and there's no real room for dispute under points (1) through (9). The only real question is whether the error by the Court of Appeals changes the outcome and should lead to a new trial. The Court of Appeals should grant the Motion for Reconsideration precisely so it can answer that question. So, that's the good news. The bad news is that the defense is asking the Court of Appeals to acknowledge that they made an error when there is no higher authority to hold their feet to the fire (barring a defense Hail Mary being heard by the United States Supreme Court). The Court of Appeals of Maryland should acknowledge their mistake and give the appeal a second look. Realistically, however, it's a real long shot that the Court will grant this Motion. (I will address the other three arguments in a future post). -CM

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