

In The South Carolina Supreme Court

Kandy Gilliard #275605
-VS-

2012-CP-10-0383

The State of South Carolina

Appeal No:
Appellant's Brief
Exhibit (A)

The record on appeal contains the following documents to be incorporated on Record of Appeal.

- 1- PCR Application with defense. (18 pages)
- 1- letter from Attorney General Office (1 page)
- 1- letter from Clerk of Court (Charleston) Notice of Entry of Judgment (1 page)
- 1- Conditional Order of dismissal (5 pages)
- 1- Return and motion to dismiss (6 pages)
- 2- Motion To Response To Summary Judgment (4 pages)
- 1- letter from Supreme Court of South Carolina (1 page)
- 1- document from Charleston Clerk of Court (1 page)

RECEIVED

APR 01 2013

S.C. SUPREME COURT

Sworn To And Before me on this
27th day of March 2013.

Notary for the State of South Carolina Vickie R. Padgett

My Commission Expires August 25, 2015

In The South Carolina Supreme Court

Appeal: From Charleston County

Court of Common Pleas

Chief Administrative Judge

Roger M. Young, Sr.

Kandy Gilliard #275605

-vs-

The State of South Carolina

2012 -CP-10-0383

Appeal No:

Proof of Service

Attorney General

Att: Asleigh Wilson

P.O. Box 11549

Columbia, SC. 29211

Kandy Gilliard #275605

C.G.G.C.I.

4450 Broad River Rd.

Columbia, SC.

29210

Mr. Daniel E. Shareous

P.O. Box 11330

Columbia, S.C.

29211

RECEIVED

APR 01 2013

S.C. SUPREME COURT

IN THE SOUTH CAROLINA SUPREME COURT

Exhibit A-2

Kandy Gilliard #275605
- vs -
The State of South Carolina

Notice Of Intent
To Appeal under
S.C.A.C.R. Rule 203
Pursuant to Rule 207

The Appellant files this Notice Of Intent to Appeal, the final Order Of Dismissal of her (PCR.) claim. PCR was denied with prejudice by the Honorable Judge Roger Young (2) in Charleston County on this 27th day of March 2013.

Respectfully,
Kandy Gilliard
275605

Sworn TO and Subscribed Before Me
This 27th day of March 2013
Vickie R. Padgett
My Commission Expires August 25, 2015

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

14



KANDY GILLIARD
#275605 CGGCI
4450 BROAD RIVER RD
COLUMBIA SC 29210-4012

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Conditional Order of Dismissal

CASE NO: 2012CP1000383

Kandy Gilliard VS South Carolina State of

This judgment was entered on the 12th day of February, 2013, and a copy mailed first class on Monday, January 28, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

AW 9

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
)
 Kandy Gilliard, #275605,)
)
)
 Applicant,)
)
)
 v.)
)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-10-0383

FILED
 2013 JAN 23 PM 12:19
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

CONDITIONAL ORDER OF DISMISSAL

In response to the post-conviction relief application filed January 17, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2000 term of the Charleston County Grand Jury for murder (2000-GS-10-2467) and strong arm robbery (2000-GS-10-2468). She was represented by Melissa Gay, Esquire. On June 1, 2001, the Applicant proceeded to trial after which she was found guilty as indicted. She was sentenced by the Honorable James E. Lockemy to confinement for a period of her natural life and ten years concurrent.

A timely Notice of Appeal was filed on Applicant's behalf. Applicant's appellate counsel, Robert Dudek, Esquire, petitioned to be relieved as counsel and filed an Anders brief with the Court. The South Carolina Court of Appeals affirmed Applicant's conviction and

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sentence. State v. Gilliard, Op. No.2004-UP-296 (S.C. Ct. App. filed May 5, 2004). The Applicant subsequently filed a petition for writ of certiorari, which was denied by the South Carolina Supreme Court on July 8, 2004. On August 19, 2004, the South Carolina Supreme Court denied the Applicant's petition for rehearing.

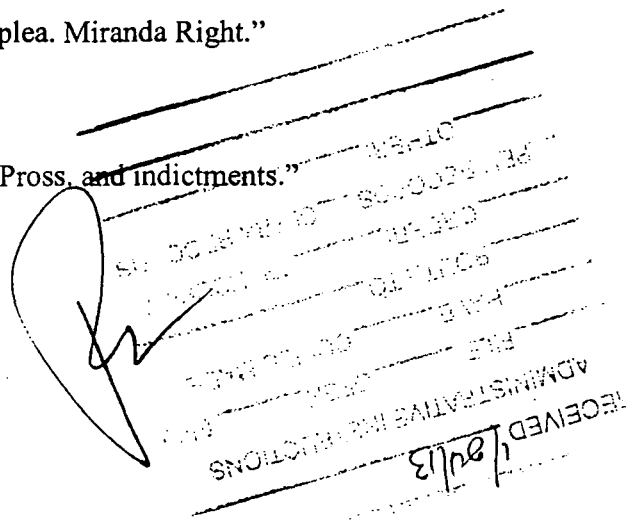
Applicant subsequently filed an application for post conviction relief on February 15, 2005 (2005-CP-10-0619). The Applicant alleged that she was being held in custody unlawfully for the following reasons:

1. "Trial counsel was ineffective in preparing and representing me at trial."
2. "Lackadaisical effort by Appellate Defender Attorney Robert M. Dudek."

The Respondent made its Return on August 16, 2005. An evidentiary hearing into the matter was convened on March 14, 2007 and reconvened on June 14, 2007 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by William Runyon, Esquire. Jeanette Van Ginhoven, Esquire, of the South Carolina Attorney General's Office represented the Respondent. The Honorable Roger M. Young denied and dismissed the application with prejudice by written Order filed July 23, 2007.

In her current application for post conviction relief, the Applicant alleges she is being held involuntarily for the following reasons:

1. Subject matter jurisdiction.
 - a. "Co-defendant pled guilty to Murder and Arm Robbery before my trial."
2. "Dismissal of indictment, pre-indictment delay 18 USCA."
3. Entrapment.
 - a. "Presence at crime scene, Co-defendant plea. Miranda Right."
4. "Nolle Pross. 5th Amendment USCA."
5. "Self Incrimination."
6. Ineffective assistance of counsel.
 - a. "Attorney failed to charge jury on Nolle Pross. and indictments."



II.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to her prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why she could not have raised his current allegations in her previous application for post-conviction relief; therefore, she has failed to meet the burden imposed upon her. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

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This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses she challenges in this Application on June 1, 2001. This Application was filed on January 17, 2012, which was almost 10 years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

Additionally, this Court intends to summarily dismiss the application as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v.

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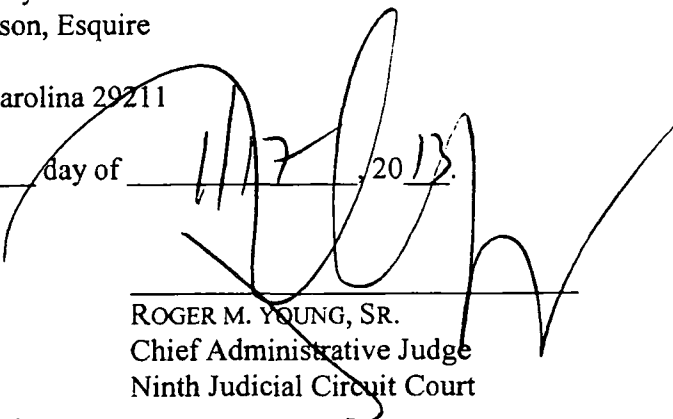
USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*

The Applicant had a full opportunity to litigate all current allegations in prior proceedings and did in fact make similar allegations in her prior application for relief. The other grounds present allegations that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court will summarily dismiss these claims as barred by *res judicata*.

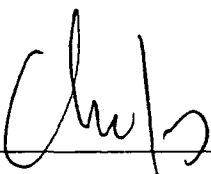
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Ashleigh Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this _____ day of 11/17, 2013.



ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit Court


_____, South Carolina

In The South Carolina Supreme Court

Kandy Gilliard # 275605
- vs -

2012-CP-10-0383
Appeal No:

The State of South Carolina

Table of Authorities

10th Amendment USCA / Ineffective Assistance
14th Amendment USCA / Denied Due Process
Of Law.

S.C. Code Ann (17-27-45(A)) Supp. 2000..

Case -vs- State, 277 S.C. 474 289 S.E. 2d 431 (1982)

S.C. Code Ann (17-27-150) Supp. 2001

Wilson -vs- State, 438 S.C. 215, 559 S.E. 2d 581 (2002)

S.C. Code Ann (17-27-100) (1985) Quoting cases

Scott -vs- State, 334 S.C. 248, 513 S.E. 2d 100 (1998)

Holland -vs- State, 332 S.C. 111, 470 S.E. 2d 378 (1996)

Odum -vs- State, 337 S.C. 256, 523 S.E. 2d 581 (2002)

S.C.A.C.P. PCR Right Rule 71.1 S.C.A.C.R.

Federal Rule Civ. P. Rule 59@.

Austin -vs- State, 305 S.C. 453, 409 S.E. 2d (395)

In The South Carolina Supreme Court

Kandy Gilliard #275605

2012-CP-10-0383

-vs-

Appeal NO:

The State of South Carolina

Issue Raise For Review

Whether the Appellant, was denied Due Process Of Law under the 14th Amendment U.S.C.A., on Theory of Ineffective Assistance Of Counsel. Failure to File a Notice Of Intent to Appeal Final Order Of Dismissal of PCR claim.

Respectfully,

Sworn To and Subscribed

Before me on

This 27th day of March 2013

Jickie R. Padgett

My commission Expires August 25, 2015

In The State of South Carolina Supreme Court

Kandy Gilliard #275605

2012-CP-10-0383

- VS -

Appeal No:

The State of South Carolina

Statement Of Fact

P.C.R. Attorney Mr. William Runyon failed to officially notify the appellant the final order of dismissal, of her P.C.R. claim.

P.C.R. Attorney Mr. William Runyon also failed to file a Notice of Intent to Appeal, the Order of dismissal of her (P.C.R. claim)

Final Statement: 14th Amendment Rights USCA. Violation. The appellant was prejudice by the attorneys professional misconduct, which deprived her of Due Process of Law to the 14th Amendment USCA. The appellant did not sign any waivers, to prevent The South Carolina Supreme Court from reviewing the lower courts ruling in this case at bar. Therefore, the appellant is entitled to have a second P.C.R.

Kandy Gilliard # 275605

2012-CP-10-0383

-VS-

Appeal NO:

The State of South Carolina

Appellant's Brief

The (appellant) was denied Due Process of law under the 14th Amendment USCA. PCR. Attorney Prejudice (her) claim. The attorney's actions was in violation with the state and Federal Statute. Which is guaranteed to every convicted person. The PCR. Courts records must be reopened to ensure that the (appellant) was advised and or was not deprived of her Federal Civil Rights. Which cannot be denied to her by the U.S. Constitution.

1. Quoting - Brannon - vs - State, PCR Court must make record of instruction revealing the Trial Judge Colloguy's instruction and Trial Attorneys testimony of Rights, to waive PCR., whether it was freely giving or involuntary giving. The records will reveal the facts of the 1st PCR. claim to determined whether counsel was negligent in the presentation of the (Petitioners) PCR. claim which deprived her of a right to have her case reviewed by the Supreme Court.² Pursuant to S.C.R.P. Rule 71.1(g) PCR. Rights. Quoting Case laws.

3. Case - vs - state, the Supreme Court held that previous successive PCR. claims has been allowed; where there is a unique combination of facts exists.

4. Quoting - (Supp. 2000) S.C. code Ann: 17-27-45(A) Summary Judgement would be in violation without and Evidentiary hearing under this statute.

5. S.C. Code Ann: 17-27-150 (Supp. 2001)

6. Quoting - Wilson - vs - state; In Wilson - vs - state the

In The South Carolina Supreme Court
Kandy Guilliard # 275605
-vs-
The State of South Carolina

2012 CP-10-0383
Appeal No:
Appellants Brief - page 2
Affidavit of Service

Exhibit 5

Supreme Court Ruled, the (Wilson) did not knowingly and freely waived her records to a Direct Appeal.

7. Scott-vs-State, The Supreme Court, reviewed the PCR court and ruled that, there must be probative evidence must exist to secure the PCR courts ruling.⁸ Quoting, Holland-vs-State, in Holland-vs-State,

Supreme Court held, that the PCR courts finding will not be upheld, if not supported by Probative Evidence.⁹ Quoting Odom-vs-State, In Odom-vs-State, Supreme Court held; that the (Statute of limitation) Does Not Apply. The

(Appellant) was entitled to (his) one bite of the apple, to have his PCR. reviewed by Supreme Court. Supreme court, found that (Austin) did not waive his rights to appeal denial of his PCR. claim.¹⁰ Quoting S.R.C.P. Rule 71.1(g) PCR Rights.¹¹ Pursuant to Federal Rule CP. Rule 59(e)

The Supreme Court has the Power to alter or set aside the lower courts rulings, after a valid showing of legal technical errors of substantive evidence of the courts. Colloquy, revealing the PCR. Records showing that the (Appellant) was never served and No appeal was posted by Attorney in violation of Due Process of law under the US. Constitutional Amendment 14th U.S.C.A.

In The South Carolina Supreme Court

Kandy Gilliard #275605

2012-CP-10-0383

-vs-

Appeal NO:

The State of South Carolina

Appellants Brief - page 3

Affidavit of Service

12. Quoting Austin -vs- State, In Austin -vs- State, the Supreme Court found that Austin did not knowingly or freely waived his rights to appeal his PCR claim.

Respectfully,
Kandy Gilliard
#275605

Sworn to and Subscribed Before me
this 27th day of March 2013.
Jieba R. Padgett

My Commission Expires August 25, 2015

IN THE SOUTH CAROLINA SUPREME COURT

Appeal From Charleston County
 The Honorable Judge Roger M. Young Sr.
 The Courts Of Common Pleas

Kandy Gilliard #275605 2012-CP-10-0383
 -vs- Appeal NO:
 The State of South Carolina Affidavit of Service

I Kandy Gilliard #275605, declare under penalty of perjury that I have submitted a notice of ~~intent~~ to Appeal to the S.C. Supreme Court clerk's office, Mr. Daniel E. Shearouse on this 27th day of March 2013.

Respectfully,
 Kandy Gilliard
 #275605

Mr. Daniel E. Shearouse
 P.O. BOX 11330
 Columbia, SC, 29211

Sworn to and subscribed Before Me
 This 27th day of March 2013
Nieba R. Padgett
 My Commission Expires August 25, 2015

IN The South Carolina Supreme Court

In re) Kandy Giuliard #275605

Appeal No:

The State ^{VS-} of South Carolina

Affidavit of Service

I Kandy L. Giuliard #275605 declare under penalty of Perjury that I have served a photo copy of the Notice of Intent To Appeal on Mr. Alan Wilson, at the Attorney General's Office, at P.O. BOX 11549 Columbia, SC. 29201 on this 27th day of March 2013.

Respectfully, Kandy Giuliard #275605

Sworn to and Subscribed

Before me this 27th day of March, 2013Vivian R. Padgett

My Commission Expires

August 25, 2015

State of South Carolina

County of Charleston

In re) Kandy Gilliard #275605
- vs -

The State of South Carolina

In The Court of Common Pleas

9th Judicial Circuit

2012-CP-10-083

The Applicant files this
Notice and Motion
Under Federal Rule
C.P. Rule, 77, 79

Affidavit of Service

To: Chief Administrative Judge:
Honorable Roger M. Young Sr.

To: Clerk of Court's of Common Pleas

Subject: Final Deposition Order of P.C.R.
Claims.

Date: March 25, 2013

Dear Mr. Daniel E. Sharekus, Clerk
of Court. I submitted my response to
the Order of Dismissal of my PCR on February
13th, 2013. It has been over a period of (30)
thirty days, since I've submitted the response
Order. I'm requesting to know the current
status of my PCR; Also I'm requesting
a clock copy of all the pleadings that I've
submitted on my behalf pursuant to Federal
Rule C.P. Rule 77, 79. The clerk has an
obligation to stamp and photo copy all

State of South Carolina

In The Court Of Common Pleas

County Of Charleston

4th Judicial Circuit

In re) Kandy Guilliard # 275605

2012-CP-10-0383

^{vs}
The State of South Carolina

The Applicant files this
Notice And Motion
Under Federal Rule
C.P. Rule 77, 79

Page 2 continuance

Affidavit of Service

Original Documents before deposition in
Record or in the file. Therefore, I am
requesting, that your office respond to
my request within (5) five business days
after receipt of this notice.

Mr. Shareous, I am awaiting these
documents in order to file a notice
of Intent To Appeal. The Final Order,

cc
Notice sent to
Mr. Daniel E. Shareous
P.O. Box 11330
Columbia, SC 29211

Respectfully
Kandy Guilliard
#275605

Attorney General Asleigh Wilson
PO Box 11549
Columbia SC 29211
Charleston County Clerk
100 Broad Street Suite 106
Charleston, S.C. 29401

Sworn to and subscribed before me on
this 27th day of March 2013.

Vibha R Padgett my commission expires August 25, 2015

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

From: Clerk of Court, Charleston County, South Carolina.

The enclosed document is being returned for the following reason(s):

- The document is not signed / notarized. # 3rd page
- The filing fee is insufficient. The correct amount is: _____
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- The check or money order must be made payable to the Clerk of Court.
- This case is ended Date ended: _____
Reason ended: _____
- Your check must be signed.
- Inmate litigation must comply with S. C. Code of Laws, Title 24, Chapter 27.
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at www3.charlestoncounty.org.
- The required **new case** coversheet is not included. (SCCA234) July 1, 2004
- The required **motion/order** coversheet is not included. (SCCA/233)-Jan. 15, 2003
- The required **order (Form 4)** coversheet is not included. (SCRCP Form 4C)-Oct. 17, 2011
- Other: _____

Please make the necessary corrections and return this document for filing. Thank you for your assistance.

Staff initials MB

Date 2-11-13



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

February 5, 2013

Ms. Kandy Gilliard #275605
CGG Correctional Inst.
4450 Broad River Road
Columbia, SC 29210

Re: The State v. Gilliard
2005-CP-10-00619

Dear Ms. Gilliard:

This will acknowledge receipt of your letter dated January 29, 2013. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in your behalf in the above matter. We are forwarding a copy of your letter to your counsel of record for any assistance he may be able to give you.

Very truly yours,

CLERK

/bs

CC: C. Alan Runyan, Esquire (with enclosure)

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED

BPC

PRESORTED
FIRST CLASS



14



KANDY GILLIARD
#275605 CGGCI
4450 BROAD RIVER RD
COLUMBIA SC 29210-4012

FEB 01 2013

MAIL ROOM

*REC'D
2-4-13
K. Gilliard*

AKI-SAB 29210



STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

Kandy Gilliard # 275605 Plaintiff(s))

vs.)

The State of South Carolina Defendant(s))

(Please Print)

Submitted By: Kandy Gilliard # 275605

Address: 4450 Broad River Road
Columbia, S.C. 29210
Camille Griffin Graham Corr. Inst.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP- 10 - 0383

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 ___-CP-___-___ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstatement Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex/Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: Kandy Gilliard

Date:

STATE OF SOUTH CAROLINA)
County of Charleston)

IN THE COURT OF COMMON PLEAS

Kandy Billiard #275605)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

JULIE J. ARMSTRONG
CLERK, C.J. & G.S.

JAN 17 2012

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention _____
2. Name and location of Court which imposed sentence 9th Circuit Court
Charleston - General Sessions
3. Name(s) of co-defendant(s) (if any) Brian Johnson
Benjamin Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2000-GS-10-2467, Murder, Life

(b) 2000-GS-10-2468, Armed Robbery 10 yrs.-con.

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 2001

(b) June 2001

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty YES

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Supreme Court

ii. Courts Of Common Pleas

iii. South Carolina Courts Of Appeals

(b) the result in each such Court to which you appealed:

i. Denied

ii. Denied

iii. Denied

(c) the date of each such result:

i. May 5th 2004

ii. July 8th 2004 and August 19th 2004

iii. July 23rd 2007

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. OP. No. 2004-UP-296 (S.C. Ct. App.)

ii. August 19th 2004 Petition for Rehearing

iii. Dismissed (2005-CP-10-D619)

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Subject-Matter Jurisdiction

- (a) Dismissal of Indictment, Pre-Indictment Delay 18 USC
- (b) Entrapment, Nolle Pross. 5th Amendment USCA
- (c) Self Incrimination, Ineffective Counsel (6th Amendment) USCA

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Co-defendant Plead Guilty to Murder & Arm Robbery before
- (b) Presence at crime scene, Co-defendant plea. Miranda ^{my trial} Right.
- (c) To testify in court, Attorney failed to charge Jury on
Nolle Pross. & Indictments

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Direct Appeal Jury Trial
 - ii. Post Conviction Relief
 - iii. Appeal Post Conviction Relief
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. South Carolina Supreme Court
 - ii. Charleston County General sessions, Char., SC.
 - iii. South Carolina Courts of Appeals Col., S.C.

iv. N/A

(c) the disposition thereof:

i. Denied

ii. Denied

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Entrapment, Nolle Pross. Attorney did not raise the defense,
- (b) Ineffective Assistance. Appellate Council did not raise the defense
- (c) Miranda Rights violated before Trial, during Trial, Attorney failed to charge the jury on issues, and defect delayed indictment.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Malisa Gaye, Esquire, Trial Attorney
Charleston, SC
- ii. Robert Dudek, Appellate Defense Attorney
Columbia, SC
- iii. William Runyon P.A., PCR Attorney

(b) the proceedings at which each such attorney represented you:

- i. Jury Trial
General Sessions Court
- ii. Direct Appeal
South Carolina Supreme Court
- iii. Post Conviction Relief, Action Denial Appeal
Courts of Common Pleas

19. State clearly the relief you seek in filing this application:

Fast + Speedy Trial within 90 days "Jury Trial"
Injunction Relief on Charges. Lesser Charge.
Re-Open the State's evidence "Motion To Compell Evidence"

20. Are you now under sentence from any other court that you have not challenged?

N/A
N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Kandy Gilliard #275005, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kandy Gilliard

SWORN to and subscribed before me this 12th day of December, 2011.

Peggy Kyle Hub (L.S.)
Notary Public

My Commission Expires: 11/23/2014

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kandy Gilliard #275605, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kandy Gilliard
Applicant

SWORN or affirmed to and subscribed before me this
12th day of December, 2011.

Peggy Kelleher
Notary Public

My Commission Expires: 11/23/2014

The State of South Carolina
In The County of Charleston

In The Courts of Common Pleas
4th Judicial Circuit

Inre #275605 Kandy Gilliard

Exhibit A Page 1

The State of ^{-VS-} South Carolina

Applicants Statement of Facts

The "Applicant" States the following facts concerning how she has been entrapped for the crimes of Murder and Armed Robbery. The "Applicant" states that she was with the employee at the store. The (Co-defendant) implicated her as co-conspirator in the crime. Video of the store will reveal that the "Applicant" was used and held against her own free will in the crime. Trial transcripts, revealed that "Applicant" did try to prevent the murder or any physical harm by pulling (Co-defendant) off of the victim.

The "Applicant" was forced to cooperate in the robbery. "Applicant" fled from the (Co-defendant) because she feared he would harm her, as well as, he'd harmed the employee of the store.

The "Applicant" further states that under the Nolle Pross. Doctrine or Statute, The State accepted a guilty plea of the (Co-defendant) for Murder which would bar the State from charging her with murder.

Under this statute and other statutory provisions, whenever a person pleads guilty to any crime, the court issues judgement as defined whenever a person admitted he has committed a crime, because the Co-defendant plead guilty and was sentenced to 30 years. The Indictment for murder against the applicant has to be DISMISSED. Meaning the "state could not prosecute" the applicant for murder because of the confession of the co-defendant that he committed the murder, which frees her of the burden. However, the state used Co-defendants, confession and guilty plea to entrap the "applicant" as a co-conspirator of the crime. Defense Attorney failed to charge the jury on the following charges. Dismissal of Indictment for Pre-Indictment Delay, when Co-defendant "admitted to killing the victim, with a written statement confessing that he had killed the victim and entered a guilty plea for murder. The State failed to Squash the murder indictment against the applicant" and allowed the indictment for murder to remain as is on the applicants indictment, which was in violation of the 5th and 14th amendments, U.S.C.A. Under 18 U.S.C.A. 3161 (1990 Act) The "Applicant" argues this statute, because

Applicant's Statement Of Facts Exhibit A page 2

Co-defendant plead guilty and had a speedy trial, whereas the "applicant's" trial wasn't heard for nearly 2 years. Therefore, the State had ample time to file a motion to Amend the Applicant's Indictment to a lesser Included Offense, which was never offered. Yet, the Attorney for the "applicant" failed to charge the jury on Indictment a Nolle Pross. Statute, whereas the co-defendant, again admitted that (he) had killed the victim and not the applicant (Kandy Gilliard). The applicant further states that Defense Attorney failed to charge the jury on Nolle Pross. Statute. Defense Attorney, failed to charge the jury to bring back a verdict for "A Motion Not Withstanding the Verdict to find the "Applicant" Not Guilty of The Murder of the victim.

Defense Attorney, failed to charge the jury on Entrapment Statute, because the "Applicant" was used to assist the co-defendant in the crime, she was charged for the crime. The Defense Attorney failed to charge the jury to bring back a verdict of Not Guilty for Armed Robbery, because the "co-defendant" Confessed to the Armed Robbery as well. The Defense Attorney failed to charge the jury to bring back a verdict of Not Guilt. on Murder and Armed Robbery but charged the "jury" on Conspiracy After the fact of murder and ~~Armed Robbery~~ because (Applicant) did not call police...

#215605 Kandy Gilliard
December 12, 2011

Sworn to and Subscribed
before me on this 12th Day
of December 2011

Notary Public For The State Of
South Carolina Peggy Kyle York

My commission expires 11/23/2014

EXHIBIT B

The State of South Carolina
In The County Of Charleston
In re) # 275605 Kandy Gilliard
VS
The State Of South Carolina

In The Courts Of Common Pleas
9th Judicial Circuit
The "Applicant" files this brief in support
of her Post Conviction Relief Application.
Under the 5th and 14th Amendment U.S.C.
Exhibit B

The "Applicant" Brief in support of her P.C.R. second Application.

For A First Defense: In Affective Assistance of Trial Counsel and Appellate Defense Counsel... Trial Counsel negligence fell below the horn of legal representation's when counsel failed to obtain Qualified Expert Witness to testify in court, Concerning the Trauma and the After Effects of the Murder "which caused the "Applicant" to suffer from Depression Disorders. Whereas this condition was found at her P.C.R. hearing when trial court Judge Ordered A Continuance and for a psychological Examination of the "Applicant"; Who was Examined by the S.C. Dept. of Mental Health on May 22, 2007 "Attending Physician was Dr. Michael Cross, who issued the opinion that the "Applicant" suffered from Depression, which was contrary to Dr. Wong's finding of no alleged mental illness, Mens. REA. However, both (Dr.'s) issued a written opinion absent a court room - testimony. The "Appellate" Defense Attorney, Mr. Robert Dudek, failed to comb the record for any legal technical errors and submitted A Defective Appeal Brief "Anders Brief" to prevent and to Concealed the "Applicants" Conviction. However, the Appellate Defense Attorney failed to perfect her Appeal and failed to submit a legal argument or record of Appeal.

For a second defense: Entrapment statute, Defense consists of three distinct elements; ① Idea for commission of Crime must originate with state Agent; ② Coercion and deceit, Agents under persuasion of "co-defendant" to implicate the "Applicant" as his co-conspirator.

For a third defense: Nolle Pross. Statute or Doctrine, co-defendant confessed plead guilty to Murder and Armed Robbery, which release the "Applicants of Murder and Armed Robbery.

The State of South Carolina
In The County of Charleston
In re) # 275605 Kandy Gilliard
VS
The State of South Carolina

In The Courts of Common Pleas
9th Judicial Circuit
Exhibit B Applicant Brief
Affidavit of Service

For A Fourth Defense: Miranda Rights was violated, Police questioned Co-defendant and "Applicant" absent an attorney to obtain a Confession Statement.

For A Fifth Defense: Confession obtained in violation of 4th Amendment U.S.C.A. Denied Due Process of a Fair Trial and Denied a Right to a fair PCR Hearing, without the store video tape being entered in for the jury to determine the facts in the case, and self In-crimination to be a witness against herself.

CITING CONSTITUTIONAL LAWS: 5th, 6th and 14th Amendments U.S.C.A.
5th Amendment - Miranda Rights violation and Self-Incrimination
6th Amendment - U.S.C.A. Attorney False Representation
14th Amendment - U.S.C.A. Denied Equal Protection. Due Process of Law.
Entrapment Statute, Nolle Pross. Doctrine 18 U.S.C.A. 3161 Delay Indictment, Defect Indictment (90) Statute.

Kandy Gilliard
#275605 Kandy Gilliard
Dec. 12, 2011
Date

Sworn to and subscribed before me
On this 12 Day of December 2011
Notary Public For The State of South Carolina
Peggy Kyle Johnson

11/23/2014
MY Commission Expires

The State of South Carolina
 In The County of Charleston
 In re) # 275605 Kandy Gilliard
 VS
 The State of South Carolina

In The Common Pleas Courts
 9th Judicial Circuit
 Motion For A Fast And
 Speedy Trial
 18 U.S.C.A. 3161-3174 (1988) Act
 14th Amendment U.S.A.

The above captioned "Applicant" hereby moves on her own accord, petitioning the court to enter an order granting her a fast and Speedy Trial in the above reference case.

For a first defense: The "Applicant" states that she is entitled to have a jury trial on the merits of her 2nd P.C.R. Application, based on the following facts.

① The "Applicant" counsel did not acquire any witnesses or evidence for the "Applicants" Trial. ② There was no Independent Outside Expert Opinion concerning the "Applicants" Mental State during the course of her P.C.R. hearing and conflicting the testimony of Dr. Cross and Dr. Wong's alleged Expert Opinion absent any physical "Scientific Proof" of X-Rays, M.R.I.'s showing any form of Damage to the "Applicants Brain," which would cause the "Applicant" to become disillusional and disfunctional in addition with being or having (Bezzard) behavior in lieu of being diagnosed with depressive disorders by Dr. Micheal Cross open court testimony is needed.

For a second defense:

The Rights to ~~be~~ a speedy trial is provided for by the 14th Amendment and 14th Amendment to the U.S. Constitution, the S.C. Constitution Art. 1 & 14 DOGGETT -v- U.S. 112 S. Ct. 2686 (U.S. 1992) STATE -v- CHAPMAN 344 S.E. 2d. 611 (S.C. 1986), And SC Code Ann Law: section: 17-23-909 (1996 as amended)

For a third defense:

The "Applicant" raises the Entrapment Defense

The State of South Carolina
In The County of Charleston

In re) #275605 Kandy Gilliard
- VS -

The State of South Carolina
Exhibit C-2

In The Common Pleas Courts
9th Judicial Circuit

Motion For A Fast And
Speedy Trial
18 U.S.C.A. 3161-3174
(1988) Act. With Amendment U.S.C.A.

For A Fourth Defense:

The Applicant raises the Noke Pross. STATUTE.

Now therefore "the Applicant" moves that this court Order
her release "if" the solicitor or attorney General does
not set this case for trial within the (30) days time
frame not to exceed (90) days after receipt of this
Notice.

The "Applicant" states that she wishes to avail herself
of the rights to a speedy trial contained in the Federal
and State Constitution, and other Statutory Provisions and
Applicable Federal and State Case Law.

Kandy Gilliard
#275605 Kandy Gilliard

December 12, 2011

Sworn to and subscribed before me

On this 12 day of December 2011

Notary Public For The State of South Carolina
Peggy Kyle York

my Commission Expires
11/23/2014

Exhibit D

The State of South Carolina
In The County of Charleston

In The Court of Common Pleas
9th Judicial Circuit

In re #275605 Kandy Gilliard
vs
The State of South Carolina

AFFIDAVIT
OF
SERVICE

I, #275605 Kandy Gilliard, certify that I have
submitted the following documents
along with (1) P.C.R. Application

- 1. Statement of Fact (Exhibit A) 2 pages
- 1. Brief Exhibit (B) 2 pages
- 1. Motion for a fast and Speedy Trial (Exhibit C)
2 pages
- 1. Affidavit of service (Exhibit D)
- 1. Table of Authorities (2) pages (Exhibit D-1+D-2)
- 1. Letter in reference of PCR action (Exhibit E)

Kandy Gilliard
#275605 Kandy Gilliard
December 12 2011

Sworn To And subscribe
before me on this 12 day
of December 2011
Notary Public For The State of South Carolina.

Peggy Kye Holm

11/23/2014
My Commission Expires

The State of South Carolina
In The County of Charleston
In re) # 275605 Kandy Gilliard

In The Courts of Common Pleas
9th Judicial Circuit
Exhibit D-1
Table Of Authorities case law

- vs -
The State of South Carolina

① 18 U.S.C.A. (1988 Act.) United States -v- Scott
437 U.S. 82, 98, N. 1198. 9. Ct. 2187, 2197, N. 11, 57.
L. Ed. 2d. 65 (1978) "The Dismissal of an Indictment
for preindictment delay, represents a legal judgement
that a "Defendent," although criminally capable, may not
be punished, because of a supposed Constitutional
violation, Id. At. 98. 98 9. Ct. at 2179

② Estelle -v- Smith, 451, U.S. 454, 462, 101. S. Ct.
1866 L. Ed. 2d. 359. The 5th Amendment prevents
a person from being compelled in any criminal
case to be witness against himself. To maintain
that sentencing proceedings are not part of
any criminal case is contrary to the Fed. R. of
Crim. Procedure and to common sense. PP. 1313, 1314
Citing - Mitchell -v- U.S. 199 S. Ct. 1307 (1999 case law)

③ Nolle Pross. Doctrine Defense. Co-defendent
admitted to the killing of the victim, signed
an affidavit and plead guilty, also testified of
"Applicants" Trial that he (killed) the victim, Offered
a plea deal of 30yrs. S.C. constitutional law, and
or common law statute.

④ Miranda Rights: violated under S. C. R. Crim,
Rule 408 State used information gained through
the interrogation of defendent and co-defendent, during,

The State of South Carolina
In The County of Charleston
In re) # 275605 Kandy Gilliard

In The Courts of Common Pleas
9th Judicial Circuit
Exhibit D-2
Table of Authorities Case law

The State of ^{-vs-} South Carolina

The Investigation to breach terms of a plea agreement for the co-defendant "If" he would not testify. Plea Agreement, NO LIFE SENTENCE
⑤ Subject-Matter Jurisdiction, of the Court to sentence the "Applicant" for Murder when the codefendant entered a plea agreement during his arrest and throughout his preliminary hearing, as well as, at the closing and sentencing of his bench trial. The State agreed to (30) years Guilty Plea, in exchanged for testimony to "Entrap" the "Applicant" which makes the Indictment against the "Applicant" IN VALID, and the Entrapment Defense, as well as, Nolle Pross. Defense is a legal Argument which makes it unlawful and illegal to prosecute the "Applicant" for a Murder she did NOT commit. The Indictment is Invalid, Fraud by the Court. Under false claim Doctrine and under 18.U.S.C.A. 1503, 1504, Tampering with the jury, falsifying the record, model Penal code. 224. 18.U.S.C.A. 1504, 2071, 2073. Also false statement, false Swearing model Penal code. 241.2 Smith-V-State 66. GA. APP. 669. 19, 55. 2d. 168, 169.

275605 Kandy Gilliard
December 12, 2011
Kandy Gilliard

Sworn to and subscribed
before me on this 12th Day of December 2011
Notary Public for the State of South Carolina

Peggy K. Nichols
my Commission Expires
11/23/2014

(Exhibit E)
State of South Carolina

Charleston County
101 Meeting Street, Suite 400
Charleston, SC 29401
Phone (843) 958-1900
Fax (843) 958-1905



Berkeley County
300-B California Avenue
Moncks Corner, SC 29461
Phone (843) 723-3800 ext. 4529
Fax (843) 719-4588

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

October 27, 2010

Kandy Gilliard #275605
Camille Griffin Graham Correctional Institution
4450 Broad River Road
Columbia, South Carolina 29210

RE: Your Correspondence Regarding a PCR Action

Dear Kandy Gilliard:

We received your letter dated October 22, 2010, regarding your Post Conviction Relief (PCR) action. We understand your confusion and unfortunately, cannot offer much assistance. We can, however, confirm that our records also show this action as dismissed per Order of the Honorable Roger Young, on July 23, 2007.

To obtain a copy of the Order of Dismissal or additional information on this matter, please contact your attorney, the Attorney General's Office, or the Charleston County Clerk of Court. Your PCR number as shown in our records is 2005CP100619.

Sincerely,

A handwritten signature in cursive script that reads "Scarlett A. Wilson" followed by a flourish.

Scarlett A. Wilson
Solicitor

SAW/nwn



ALAN WILSON
ATTORNEY GENERAL

January 15, 2013

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad St. Ste 106
Charleston, SC 29401

Re: Kandy Gilliard, #275605 v. State of South Carolina
2012-CP-10-0383

Dear Ms. Armstrong:

Enclosed please find the original Return and Motion to Dismiss of the Respondent in the above-captioned case for filing in your office.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh

Enclosures

PCR Application

SCDC Records

AppellateRecords

cc: Kandy Gilliard, # 275605

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2012-CP-10-0383
)	
Kandy Gilliard, #275605,)	
)	
Applicant,)	
)	
v.)	RETURN AND MOTION TO DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

The Respondent, making its Return to the Application for post-conviction relief filed January 17, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2000 term of the Charleston County Grand Jury for murder (2000-GS-10-2467) and armed robbery (2000-CP-10-2468). Melissa Gay, Esquire, represented the Applicant. On June 1, 2001, the Applicant proceeded to trial and was found guilty as indicted. The Honorable James Lockemy sentenced him to confinement for life for murder and 10 years for armed robbery.

The Applicant filed a timely Notice of Appeal. Applicant's appellate counsel Robert Dudek, Esquire, petitioned to be relieved as counsel and filed an Anders brief with the Court. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Gilliard, Op. No. 2004-UP-296 (S.C. Ct. App. filed May 5, 2004). The Applicant subsequently filed a petition for writ of certiorari, which was denied by the South Carolina Supreme Court on

July 8, 2004. On August 19, 2004, the South Carolina Supreme Court denied the Applicant's petition for rehearing.

Applicant subsequently filed an application for post-conviction relief (PCR) on February 15, 2005. In his application for PCR, the Applicant requested relief on the following grounds:

1. "Trial counsel was ineffective in preparing and representing me at trial."
2. "Lackadaisical effort by Appellate Defender Attorney Robert M. Dudek."

The Respondent made its Return on August 16, 2005. An evidentiary hearing into the matter was convened on March 14, 2007 and reconvened on June 14, 2007 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by William Runyon, Esquire. Jeanette Van Ginhoven, Esquire, of the South Carolina Attorney General's Office represented the Respondent. The Honorable Roger M. Young denied and dismissed the application with prejudice by written Order filed July 23, 2007.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Subject Matter Jurisdiction
2. "Dismissal of indictment, pre-indictment delay 18 USCA"
3. Entrapment
4. "Nolle Pross. 5th Amendment USCA"
5. "Self-Incrimination"
6. Ineffective Assistance of Counsel
 - a. "Attorney failed to charge jury on Nolle Pross. and indictments."

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Order of Dismissal from the Applicant's prior PCR, and the Applicant's appellate records.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses she challenges in this Application on June 1, 2001. This Application was filed on January 17, 2012, which was almost 10 years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Chief Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

Ash R. Wilson
Attorneys for the Respondents

Columbia, South Carolina

January 15, 2013

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

)

2012-CP-10-0383

)

KANDY GILLIARD, #275605)

Applicant,)

)

vs

)

AFFIDAVIT OF SERVICE BY MAIL

)

STATE OF SOUTH CAROLINA,)

Respondent.)

)

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kandy Gilliard, #275605
 Graham Correctional Institution
 4450 Broad River Rd
 Columbia, SC 29210

DATED this 15th day of January, 2013



Anne Henley, Legal Assistant

For Respondent

State of South Carolina
County of Charleston

Court of Common Pleas
2012-CP-10-0383

Kandy Gilliard #275605

-VS-

The State of South Carolina

The Petitioner - Response to
Order of Dismissal

Affidavit of Service

I certify under penalty of perjury that I've
served Attorney General Mr. Alan Wilson a copy
of the Notice to Respond to the Order of Dismissal
of my PCR application.

CC: Attorney General
Chas. County clerk of Court

Attorney General
Alan Wilson / Ashleigh Wilson
P.O. Box 11549

Columbia, S.C. 29201

Respectfully,
Kandy Gilliard #275605
February 5, 2013

County of Charleston

2012-CP-10-0383

Kandy Gilliard #275605

The Petitioners Response to
Order Of Dismissal or Motion

The State ^{-VS-} of South Carolina

For Summary Judgment Order.

The Applicant files this opposition of the States motion
For Summary Judgment or Order Of Dismissal of
(her) 2nd PCR claim.

Ground (1)

The applicant raises the motion to alter the
Judgement under Fed. R. CP. Rule 59E to set aside the
final order of the States motion to Dismiss her claims,
based on the lack of Evidence to show that (she) was
notified, absent any valid showing of proof, that (she)
waived her rights to appeal (1st) PCR claim.

Ground (2)

Motion to Re-Open the State's Evidentiary hearing. Trial
Transcripts of PCR hearing under Fed Rule Civ. P. Rule 10.

Ground (3)

Motion to compel final Order of PCR claim which
was filed Feb. 15, 2005 and disposed of July 23, 2007

Ground (4)

Motion for (Attorney William Runym) to appear
for testimony as to why he failed to send
the (applicant) a copy of the order and why he failed
to file a Notice of Intent to Appeal. Also, as to why he
failed to inform and advise the (applicant) of her rights
to appeal and to show whether the (applicant) signed any waiver
to have her (PCR) reviewed by the Supreme Court.

Ground (5)

The (applicant) was denied Due Process of Law under the 14th Amendment U.S.C.A.

Randy Gilliard #215000
-vs-
The State of South Carolina

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4th Amendment USCA
5th Amendment USCA
6th Amendment + 14th Amendment US

The (Petitioner) P.C.R. Counselor (Mr. Runyon) failed to file a notice of Intent to appeal final Order denying her PCR application. Therefore, the (Petitioner) is entitled to have a second (PCR claim) because it was her Counselor's fault who prejudiced her rights to seek a review of her (PCR) in violation of her Federal Civil Protective Rights, which is guaranteed to her by the United States Supreme Court, which cannot be denied by the laws of this State and the U.S. Constitutional Law.

Quoting - Weathers - v - state, 39 SC. 59, 459. S& 2d, 838.
The Petitioner's claim cannot be denied on the basis of the Statute of limitations because the (State) has shown that the (Petitioner's) attorney (Mr. Runyon) was appointed as counsel, appear for the evidentiary Hearing and also represented and presented his facts in the merits of the (Petitioner's) case, yet the Courts records does not show that (Mr. Runyon) filed any Notice of Intent to appeal, nor tells that the (Petitioner) signed any (waivers) to waive her rights for review by the Supreme Court. Quoting - ODOM - v - State, 337, SC. 256, 523. S& 2d. 753 (1999). The South Carolina Supreme Court, has carved out an exception to the Statute of limitation for when an Applicant did not knowingly and voluntarily waived (his) rights to appeal, from (his) P.C.R. Application. Successive Applications under S.C. code Ann; 17-27-90) is not allowed except when there are an unique combination of facts exists to support the claim. Quoting - Case - v - state, 277, SC. 474, 289, S& 2d. 413. (1982) in Case - v - state, the Supreme Court granted 2nd PCR claim. She (Petitioner) states further that Summary Judgment is not applicable in this case at bar. without an (Evidentiary Hearing) under S.C. code Ann 17-27-45A. (Supp 2000) The issue again on the States use of the Statute of limitation is in violation of a State and Federal

Kandy Gillard #275605

- vs -

The State of South Carolina

Table of Authorities

4th Amendment USCA

5th Amendment USCA

6th Amendment + 14th Amendment
USCA

Continued page 2

Civil Protective Right of the (Petitioner).

This is to say that, a state statute of is in violation of the (petitioner) Federal Civil Protected Rights, which cannot be denied. The (petitioner) is entitled to Due Process of Law under the 5th and 14th Amendment USCA

Therefore, the (Defense Attorney) Prejudice the (applicant's) rights to appeal and placed her into a Juxta-position situation. The (applicant) was also denied of Appellate Counsel Assistance from the denial of her P.C.R. claim pursuant to S.C.R.C.P. Rule 71

4-12



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CI
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C, SC
29210

South Carolina Supreme Court

Attention: Mr. Daniel E. Shareous

PO Box 11330

Columbia, SC

29211

SCDC
29 2013
ROOM

