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STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

Tony Moore, Jr., #188313)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS S.C. SUPREME COURT
FOR THE 16th CIRCUIT

C/A No. 2021-CP-44-268

RESPONSE IN OPPOSITION TO
CONDITIONAL ORDER OF DISMISSAL

The Applicant, Tony Moore, Jr., is a pro se litigant who is not trained in the jurisprudence of the law, respectfully asks this Honorable Court to liberally construe the proceedings.

The applicant has received this Court's Conditional Order of Dismissal and presents the following response in opposition to the order.

INTRODUCTION

Applicant Moore is currently serving a life sentence for a murder conviction in Union County on March 23, 1995. The circuit court which convicted and sentenced Moore, along with Moore's counsel was unaware of the latest structured error due to false, incomplete answers from a seated juror who expressed a personal bias towards the applicant before and during trial.

CURRENT APPLICATION

The applicant has filed previous applications for post-conviction relief, that is extensively argued by the state and at this point, had to seek the permission from the SC Supreme Court's Chief Justice, Hon. Beatty. Permission by ORDER was ORDERED.

Constitutional Law:

The Sixth and Fourteenth Amendments of the U.S. Constitution guarantee a criminal defendant a fair trial by a panel of impartial and indifferent jurors. S.C. Constitution, Art. 1, §3 and 14. "To safeguard these rights, it is required that the jury render its verdict free from outside influences of whatever kind of nature." State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct.App. 1993).

Statutory Law:

S.C. Code Ann., Title 14-7-20:

"The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has

any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the case, he must be placed aside as to the trial of that cause and another must be called." SEE: State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002).

ARGUMENT

During the jury qualification and impaneling, the court gave each juror (prospective) a direct instruction not to say or discuss the case with anyone (T.T. page(s) 23 line 1-9, T.T. page(s) 70 line 18-25, page(s) 71 line 1-25, page 72 line 1-5). Juror Woodrow Smith failed to honor his oath, gave false and incomplete answers to specific questions that would have subjected him to a challenge or strike. Juror Smith failed to acknowledge that he and his family has held a personal grudge against the applicant's family because of acts of the applicant's father. Juror Smith surely recognized the applicant's father sitting directly behind the applicant for both days of the trial. Juror Smith also did not inform the court that he was communicating with his first-blood cousin before and during the trial, Micheal Porter. A serious charge has been made against the juror.

It has been over a century since the first known case involving a juror bragging about violating a criminal defendant's constitutional rights to a fair trial by an impartial jury due to juror misconduct.

In State v. Foster, 80 S.C. 347, 61 S.E. 564 (1908), a South Carolina landmark case, a juror had determined to convict the defendant before trial commenced. In support of the defendant motion for a new trial, the defendant's counsel presented affidavits of persons who swore that the juror after trial declared to their intentions, formed before any evidence was offered, to convict the defendant without respect to the testimony. The solicitor submitted an affidavit from the juror which denied the remarks. The South Carolina Supreme Court stated that, "The issue to the defendant is life or death. the charge made under oath against the juror is a most serious one, affecting not only the life of the defendant, but the integrity of the jury box."

The State has not put one iota piece of evidence to contradict the charge against the juror, and the defendant feels that he has exceeded his demonstration. The applicant is confined to a prison cell, without counsel to investigate, depose the juror in question or speak with other witnesses/jurors regarding the external influence on part of the biased juror Smith. The applicant implies that his right to call, confront, and have witnesses to testify in his favor is denying him compulsory process, and is an abuse of discretion.

Because Juror Smith gave partial answers during the voir dire does not cure or correct his blatant disregard of the court's instruction not to discuss the case with anyone and express his bias to convict the applicant before the case was submitted to the jury. The court or it's official cannot adequately do their jobs and screen out prejudices without full answers to specifically asked questions.

In McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623 (2013), the S.C. Supreme Court reversed and remanded McCoy for an evidentiary hearing. The court held that, "in the context of PCR allegations involving juror misconduct, the stand-

ard and five pronged newly discovered evidence test, as set forth in Clark, has no application and should not be used as a basis for summary dismissal. Rather, juror concealment claims are governed by the analysis set forth in Woods, and such cases-by-case determinations are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed."

The right to challenge a juror for cause belongs to the defense alone. In cases like the present one, where a juror's partiality is in question after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual juror bias. State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003) quoting Remmer v. U.S., 347 U.S. 227, 74 S.Ct 450, 98 L.E. 654 (1954).

The State's Motion to dismiss is absurd. There is no statute of limitations on latent juror bias or misconduct, unless a defendant knew or was aware of the misconduct and did not bring it to the court's attention. State v. Aldret, 333 S.C. 307, 315, 509 S.E.2d 811 (1999), and did not challenge it. The S.C. Supreme Court in McCoy looked at Delaney v. State, 264 S.C. 555, 556, 238 S.E.2d 679 (1977) (Where an application alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the court, a question of fact is raised which can only be resolved by a hearing).

NOTE: With emphasis, In Barnes v. Joyner, 751 F.3d 229 (4th Cir. 2015), (An external influence affecting a jury's deliberation violates a criminal defendant's right to an impartial jury; especially troubling are private communication between a juror and a third party...private talk, tending to reach the jury by outside influence, is constitutionally suspect).

Anonymous Letter:

An author's decision to remain anonymous is an aspect of the freedom of speech protected by the First Amendment. U.S.C.A. 1. The First Amendment ensures that persons may speak as they think on matters vital to them, and noxious doctrines may be refuted and their evil averted by the courageous exercise at the right to free discussions.

In order to have a society in which public trials can be openly and vigorously debated, it is not necessary to allow the individual brutalization of innocent victims like the applicant, who demands that he be tried by an impartial jury. Or, nor shall a court turn a blind eye or death ear to the public's outcry for justice.

The juror's outrageous conduct and clear disobedience of the court's instructions not to discuss the case or form an opinion, caused the applicant great injury, and the court now compounds that injury by depriving the applicant of a judgment that acknowledges the wrong he is forced to suffer for over 26 years. For any trial defendant to not be allowed to openly and freely exercise his challenges or strikes as he sees fit is a blatant denial of fundamental fairness.

The applicant must not be held any longer in violation of his 14th, 13th, 8th, 6th, and 5th Amendment rights under the U.S. Constitution.

The State argument in its Return and Motion to Dismiss page 10 of 12 argued State v. Aldret, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1995). In Aldret, the Court stated, "It has long been the rule in this State that a juror's testimony is

not admissible in order to prove either his own conduct or that of a fellow jurors. Recently, however, this Court has moved away from the traditional rule, holding juror testimony regarding internal jury misconduct may be admissible if necessary to ensure fundamental fairness." The State opened and invited the applicant to argue that the sworn testimony of juror Debra Whitlock must be re-introduced in this cause of action. T.T. volume 2 of 2 pages 628-642. Juror Whitlock's testimony blatantly shows a complete disregard on part of the jury during deliberation, and towards the applicant's constitutional right to an impartial jury.

CONCLUSION

The applicant is entitled to a new trial and/or any other relief this Honorable Court deems and appropriate.

Respectfully,

Tony Moore Jr. #188313

Tony Moore, Jr., 188313
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS

C/A No. 2021-CP-44-00268

Tony Moore, Jr., #188313)
Applicant,)

CERTIFICATE OF SERVICE

v.)

State of South Carolina,)
Respondent.)

1. I am the applicant in the above-captioned action.
2. I affirm that on this *9* day of *February*, 2022, I have served one (1) original response to the Union County Clerk of Court, Union County Post Office Box 703, Union, SC 29379, and the respondent at: Office of the Attorney General, Micheal J. Neubauer, Esq., PCR Division Sixteenth Circuit, P.O. Box 11549, Columbia, SC 29211.
3. Such response in this above-captioned matter on the above named persons by depositing same in the U.S. mail postage paid.

S/ Tony Moore, Jr. #188313
Tony Moore, Jr. 188313
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA
COUNTY OF UNION

IN THE COURT OF COMMON PLEAS
16th JUDICIAL CIRCUIT

Tony Moore, Jr., # 188313,
Applicant,

FILED

CIA No.: 2021-CP-44-218

2022 MAR 29
ADDITION TO APPLICANT'S RESPONSE
TO CONDITIONAL ORDER OF DISMISSAL

v

State of South Carolina,
Respondent.

The Applicant, Tony Moore, Jr., acting Pro Se, files this addition to his Response in opposition to the Conditional Order of Dismissal filed by the Respondent.

It is the States position that Applicant's issue of Juror Misconduct discovered post-trial is not considered "Newly discovered evidence", rather a separate basis for a new trial. By citing McCoy v. State Works Against the State, and in Applicant's favor. In McCoy, McCoy sought relief through a successive Post Conviction Relief (PCR) Application that just as in Applicant's successive PCR, cited "Juror Misconduct" The States argument fails because McCoy states that "evaluating the merits of Juror misconduct postconviction claim is a fact intensive inquiry which is most appropriately conducted after a hearing. South Carolina Supreme Court Justice Kittredge filed his opinion for the benefit of the bench and the bar to clarify the proper legal standard for claims involving Juror misconduct. Applicant McCoy argued his successive PCR should not of been summarily dismissed for the exact same reasons that Applicant Moore is arguing in his PCR and this court found summary dismissal was incorrect because a genuine issue of material fact existed as to whether Applicant's claim

19. Successive, or barred by statute of limitations.

For the benefit of the bench and bar, the State Supreme Court addressed the frequent but erroneous application of the standard newly discovered evidence framework in summary dismissing PCR claims involving juror misconduct. Where a PCR applicant alleges juror misconduct, we regret the application of the Clark five pronged newly discovered evidence standard, as it does not lend itself to properly evaluating a claim of juror misconduct. In addition, the Clark framework is not conducive for determining whether a PCR applicant is entitled to a hearing where intentional juror misconduct concealment is alleged.

Therefore, in the context of PCR allegations involving juror misconduct, the standard five-pronged newly discovered evidence test set forth in Clark has no application and should not be used as the basis for summary dismissal. Rather, juror concealment claims are governed by the analysis set forth in Woods, and such case by case determinations are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed. State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). Juror failure to disclose information during voir dire is without justification, i.e., intentional, juror bias will be inferred, and it prevents defendant's intelligent use and exercise of peremptory challenges as is his right under the Six and Fourteenth Amendments of the United States Constitution.

Applicant Moore would remind this honorable court that the McCoy v. State case that the State cites; the decision of the court was in favor of Applicant McCoy as his case was "reversed and remanded."

Applicant Moore and his counsel did not choose to not remove juror Smith and allowed

him to sit on the Jury during Applicant's trial as Respondent alleges. Petitioner and his Counsel made a decision based on voir dire questions that Juror Smith answered at the time that we now find that Juror Smith intentionally withheld vital information from voir dire and in fact, he violated the Judge's direct order and instructions not to discuss the case with anyone until it's conclusion. Applicant has succeeded in establishing prejudice as it is inferred through Juror Smith's intentional concealment of information during voir dire and his violation of the Judge's order and instructions not to discuss the case with anyone. Finally, the State claims that Applicant has failed to "present any testimony" from the Juror in question, however, in order for that "testimony" to happen, a hearing must be held.

CONCLUSION

Applicant Moore contends he has met his burden of *prima facie* showing and is entitled to relief. Accordingly the Applicant makes Motion for his conviction to be vacated and in the interest of justice, be awarded a new trial and any other relief the Court deems appropriate.

St Tony Moore
Tony Moore, Jr. # 188313

Pro Se Applicant
4848 Goldmine Hwy.
Kershaw SC 29067

Kershaw South Carolina
March 7, 2022

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF: UNION

11th JUDICIAL CIRCUIT

Tony Moore, Jr. #188313
Applicant,

FILED CLERK: 2021-CP-44-2168

2022 MAR 31 A 11:46

v

CERTIFICATE OF SERVICE

State of South Carolina,
Respondent.

I, Tony Moore, Jr. am the Applicant in the above action and hereby certifies that a copy of Applicant's Addition to Applicant's Response in Opposition to Respondent's Conditional Order of Dismissal has been served on: Union Co. Clerk of Court, P.O. Box 703, Union SC, 29379 and the Office of the Attorney General, Michael J. Neubauer Esq. P.O. Box 11549, Columbia SC, 29211, by depositing said materials in the United States Mail.

Kershaw South Carolina
March 7 2022
DATE

S/ Tony Moore
Tony Moore, Jr. #188313
Pro Se Applicant.
Kershaw Comm. Inst.
4848 Goldmine Hwy.
Kershaw SC. 29067