

FORM 5

STATE OF SOUTH CAROLINA )

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

) 2017CP2305901

) ENTERED COMPUTER

Jerald Denton Gaskins, Jr. № 362923 )

v. )

) APPLICATION FOR

State of South Carolina )

) POST-CONVICTION RELIEF

19 OCT 25 AM 1:39  
COURT CLERK'S OFFICE

**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: McCormick Correctional Facility
2. Name and location of Court which imposed sentence: Court of General Sessions,  
Greenville, SC
3. Name(s) of co-defendant(s) (if any): None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013-GS-23-03231
  - (b) 2013-GS-23-03232
  - (c) 2013-GS-23-03233
  - (d) 2013-GS-23-03234
  - (e) 2013-GS-23-03235
  - (f) 2013-GS-23-03236
  
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) a, b, d, e above - February 15, 2015 - 20 years
  - (b) f above                      February 15, 2015 - 5 years
  - (c) c above                      February 15, 2015 - 15 years
  
6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty \_\_\_
  - (b) after a plea of not guilty
  - © after a plea of nolo contendere \_\_\_
  
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 Court of Appeals
    - ii.
    - iii. -
  - (b) the result in each such Court to which you appealed:
    - I. Convictions affirmed
    - ii. \_\_\_
    - iii. \_\_\_
  - © the date of each such result:
    - I. April 19, 2017
    - ii. \_\_\_
    - iii. \_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- I. 2017-UP-166
  - ii. —
  - iii. —
9. If you answered “no” to (7), state your reasons for not so appealing:
- (a) —
  - (b) —
  - © —
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial counsel failed to object to improper questions by the prosecutor concerning text messages with Walt Mucienko and a minor and an alleged incident with another minor when there was no factual basis for the questions.
  - (b) Trial counsel failed to interview and call several witnesses who could have refuted much of the testimony of the witnesses against me.
  - (c) Trial counsel failed to investigate and obtain records from various sources that could have refuted much of the testimony against me.
  - (d) Trial counsel failed to introduce family court records that would have established the ground for my divorce and therefore the cross examination by the state would have been proven to be inaccurate.
  - (e) Trial counsel failed to object to the quesitons by the state as to alleged drug dealing which had no basis in fact.
  - (f) Trail counsel failed to introduce the pleadings from the divorce which would impeach the testimony of my ex-wife.
  - (g) Trial counsel failed to supboena my medical doctor to prove I was alergic to latex.
  - (h) Trial counsel failed to object to the improper testmony of Dr. Mary Fran Crosswell.
  - (i) Appellate counsel failed to perfect an appeal to the South Carolina Supreme

Court on the issue of the admissibility of other bad act under 404b.

- (j) Trial counsel failed to object to the questions by the solicitor concerning an alleged charge pending against me that was brought by Angelina Campbell.
  - (k) Trial Counsel failed to object to the hearsay testimony of Officer Robert Perry when he testified as the statements the minor child as to the details of the alleged sexual assault. The statements are hearsay and trial counsel should have objected.
  - (l) Trial counsel failed to object to the testimony of Officer Robert Perry when he gave an opinion as an expert to the delayed disclosure of sexual abuse when he had not been qualified as an expert in this field.
  - (m) During the direct examination of Officer Paul Floyd, the assistant solicitor elicited a response that minor child had identified myself as the alleged suspect. This hearsay testimony was not objected to by my trial counsel.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) At numerous times on cross examination the prosecuting attorney asked questions which had no basis in fact and no objection was raised by trial counsel. This testimony can be found in the transcript of the trial on pages 454 to 455; 424 to 430; 431 to 447.
  - (b) The names of numerous witnesses were provided to trial counsel who failed to interview or call these witness. These witness would have proven that the alleged incident could not have happened under the circumstances described by the complaining witnesses.
  - (c) Had trial counsel obtained lease agreements and cell phone records much of the testimony of the complaining witness could have been refuted. In addition trial counsel failed to obtain record that a jeep vehicle alleged used in this alleged incident had been wrecked before the incident.
  - (d) The prosecuting attorney cross examined me at length about the ground for divorce as being one year separation. The prosecuting attorney cross examine me as if the ground were one year separation. Transcript at 460. Had trial counsel produced the divorce records to which he had access, the jury would have know

that I was being truthful.

- (e) During her cross examination, the prosecuting attorney asked me "You're not supplementing that by selling pills or pot" Transcript at 442, ll 10-11. This was improper character evidence. My trial counsel failed to object to the question and move for a mistrial as no curative instructino could have erased the prejudice. There was no basis in fact for this question.
- (f) At the trial my ex-wife testified that I had filed for divorce on the ground of one year separation. My trial counsel failed to impeach her with a copy of the divorce pleadings which would have shown the divorce was on the ground of adultery. The trial court ruled that trial counsel could recall my ex-wife and impeach her with the pleadings, but counsel failed to do so. Tr. at 374, ll 15-25. Trial counsel also could have simply had me identify the pleadings that I filed and then introduce the pleadings but he failed to do this or attempt to do this. Had trial counsel attempted to do this and been denied , then the issue would have been preserved for appeal.
- (g) During the trial the complaining witness testified that I used a condom during the alleged sexual encounters. My lawyer knew, because I had provided him with a medical statment, that I was alergic to latex and would break out in a rash if I came in contact with latex. My trial counsel failed to bring my medical doctor to court to terstify as to my allergy.
- (h) During the trial, the state called Dr. Mary Fran Crosswell to testify. She testiifed that the examination was noral in that "She had normal hymenal tissue." Tr. at 337, ll 11-12. Notwithstanding this normal examination, Dr. Crosswell testiifed that the examination was consistent with sexual abuse. This testimony was more prejudicial tha probative and an objection should have been raised. Furthermore, Dr. Cresswell was improperly testified as to what the complaining witness told her. Dr. Cresswell was not a treating physican and as such the medical hisotry form the complaining witness was not relevant.
- (i) Appelalte counsel failed to perfect the Petition for Writof Certiorari on the issue of the admisibility of the other alleged bad act. Appellate counsel should have known that *State v. Perez* had been argued before the South Carolina Surpeme

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Court on November 30, 2016 and one of the issues argued in that appeal was whether *State v. Wallace* should be overturned. Had appellate counsel filed the petition my case would have been on direct appeal at the time of the issuance of the *Perez* opinion and my case would have been bound by it.

- (j) During my cross examination, the assistant solicitor asked me if I had a pending charge against me brought by Angelina Campbell. Any such pending charge was not relevant to the matter pending in the court and unduly attacked my character. This testimony is found on pages 445 and 447. The discussion about the charge ended when my defense counsel made an objection that "There's arguing at this point." The trial judge sustained the objection but trial counsel did not ask for a mistrial nor did he ask the trial judge to instruct the jury to disregard the questions and answers.
- (k) During the testimony of Officer Robert Perry, the state asked numerous questions as to the statements made by the minor child which elicited more than statements about the time and place as permitted by Rule 801(d)(1)(D) of the South Carolina Rules of Evidence. This testimony is found on pages 346 - 347, where Mr. Gaskin is named as the suspect in the report and pages 348 - 351 where Mr. Gaskin is again named and some details are also set out.
- (l) During the testimony of Officer Robert Perry he was asked whether the delayed disclosure of child sexual abuse was common or uncommon. Officer Perry had not been qualified as an expert in delayed reporting of child sexual abuse and therefore the question called for an opinion for which he was not qualified to answer.
- (m) On page 58, during the direct examination of Officer Paul Floyd, the assistant solicitor elicited a response that minor child had identified myself as the alleged suspect. This hearsay testimony went beyond that which is permitted by Rule 801(d)(1)(D) of the South Carolina Rules of Evidence. This hearsay testimony was not objected to by my trial counsel.

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

- (a) any petition in a State Court under South Carolina Law?

- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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. \_\_\_
- ii. \_\_\_
- iii. -
- iv. \_\_\_

(b) the name and location of the Court in which each was filed:

- I. \_\_\_
- ii. \_\_\_
- iii. \_\_\_
- iv. \_\_\_

(c) the disposition thereof:

- I. \_\_\_
- ii. \_\_\_
- iii. \_\_\_
- iv. \_\_\_

(d) the date of each such disposition:

- I. \_\_\_
- ii. \_\_\_
- iii. \_\_\_
- iv. \_\_\_

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

- I. \_\_\_
- ii. \_\_\_

- iii. \_\_\_
- iv. \_\_\_
- 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?  
No
- 15. If you answered "yes" to (14) identify:
  - (a) which grounds have been presented:
    - I. \_\_\_
    - ii. \_\_\_
    - iii. \_\_\_
  - (b) the proceedings in which each ground was raised:
    - I. \_\_\_
    - ii. \_\_\_
    - iii. \_\_\_
- 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) Trial Counsel raised no objection\_
  - (b) same
  - (c) same
  - (d) same
  - (e) same
  - (f) same
- 17. Were you represented by an attorney at any time during the course of:
  - (a) your arraignment and plea? Yes
  - (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? Yes

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. Randall L. Chamber  
804 Laurens Road  
Greenville, SC 29607  
(803) 298-0001
    - ii. J. Falkner Wilkes  
114 Whitsett St.  
Greenville, SC 29601  
(864) 282-1292
    - iii. C. Rauch Wise  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010
  
  - (b) the proceedings at which each such attorney represented you:
    - I. initial plea, pretrial motions, trial and sentencing
    - ii. appeal to the South Carolina Court of Appeals
    - iii. preparation of this amended application for Post Conviction Relief

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

New trial

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

No

STATE OF SOUTH CAROLINA )  
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VERIFICATION

County of McCormick )

I, Jerald Denton Gaskins, Jr., 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.

  
\_\_\_\_\_

SWORN to and subscribed before me this 24  
day of October 2018.

  
\_\_\_\_\_  
Notary Public (L.S.)

My Commission Expires: 12/7/2019