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March 12, 2014


Daniel Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: Ajaron Gamble #00257354 v. State of South Carolina
Case No.: 2011-CP-22-1174

Daniel:

Enclosed is the Order of Dismissal, Notice of Appeal and request for transcript. I have enclosed an extra copy of the notice and request. Please file the Notice of Appeal and request and return a clocked copy of each in the envelope provided.

Please feel free to contact our office should you have any questions.


Bobby G. Frederick
Attorney at law

RECEIVED

MAR 14 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

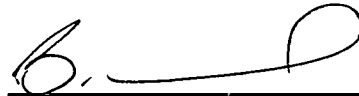
Case No. 2011-CP-22-1174

Ajaron Gamble #00257354.....Appellant,
v.
The State.....Respondent.

NOTICE OF APPEAL

Ajaron Gamble appeals the denial of post conviction relief in this case.
The Order of Dismissal was served on Appellant on February 25, 2014.

March 12, 2014



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Other Counsel of Record:
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal and request for transcript to the following recipients by depositing a copy of it in the United States Mail, postage prepaid, on March 12, 2014, addressed to:

Daniel Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Office of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

Attorney General's Office
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Columbia, SC 29211
Attorney for the Respondent

March 12, 2014



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Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Ajaron Gamble, #257354,)

Case No. 2011-CP-22-1174

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2014 FEB 21 AM 11:52
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 14, 2011. Respondent made its Return and Motion to Dismiss on or about October 14, 2011. The Court convened an evidentiary hearing into the matter on August 29, 2013, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Matthew S. Swilley, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Testifying at the hearing were: Raymond C. Fischer, Esquire ("trial counsel"); Tupelo Humes ("the victim"); Eugene Rivens ("the juror"); Shanen Grate; and Bill Frontz. The Court also reviewed the application, the return, Applicant's memorandum of law in support of PCR, Applicant's records from the South Carolina Department of Corrections, the Georgetown Clerk of Court's records regarding Applicant's conviction, and excerpts from the trial transcript. The Court also had before it the exhibits introduced at the hearing.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. In October 1998, the Gerogetown County Grand Jury

indicted Applicant for armed robbery (1998-GS-22-810) and possession of a weapon during commission of a violent crime (1998-GS-22-814). Raymond C. Fisher, Esquire, represented Applicant. In March of 1999, Applicant was tried before the Honorable Paula H. Thomas and a jury. The jury found Applicant guilty of both offenses, and Judge Thomas sentenced him to thirty (30) years for armed robbery and five (5) years for possession of a weapon during commission of violent crime.

A notice of appeal was timely filed, and Ann Pearce, Esquire, perfected the appeal with the filing of an Anders brief. The South Carolina Court of Appeals affirmed the convictions in on November 29, 2000, State v. Gamble, 2000-UP-727 (Ct. App. filed Nov. 29, 2000), and the case was remitted to the circuit court.

Applicant filed his first application for PCR on October 19, 2001 (2001-CP-22-761). An evidentiary hearing was held before the Honorable B. Hicks Harwell in July of 2004. The Applicant was represented by Toni T. Pennington, Esquire. On September 9, 2004, an order denying relief was filed. No timely appeal was filed; however, on November 10, 2004, the Applicant filed a second Application for PCR alleging that he was entitled to a PCR appeal pursuant to Austin v. State¹ (2004-CP-22-920). An order granting the Austin appeal was filed on November 22, 2004. Thereafter, a timely notice of appeal was filed with the South Carolina Supreme Court, and Aileen P. Clare, Esquire, perfected the appeal with the filing of a petition for writ of certiorari. On December 6, 2006, the Supreme Court granted review Judge Harwell's denial of relief and ordered briefing on one of two issues. However, on November 5, 2007, certiorari was dismissed as improvidently granted. The case was remitted to the circuit court on

¹ 305 S.C. 453, 409 S.E.2d 395 (1991)

November 21, 2007. By order dated January 9, 2008, the Supreme Court denied Applicant's *pro se* motions for reconsideration and reinstatement.

II. ALLEGATIONS

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

1. "After discovered evidence (January 24, 2011)
 - a. A juror who was seated at trial did not disclose a longstanding relationship with the alleged victim in the case."

Applicant filed a document on or about December 6, 2011, titled "Supplement to Application for Post-Conviction Relief and Incorporated Memorandum of Law." In this document, Applicant alleged the juror intentionally concealed his relationship with the victim. Respondent moved for dismissal at a hearing on April 26, 2012. The court denied the motion at that time to allow Applicant an opportunity to present testimony in support of his allegation of newly discovered evidence. The court granted respondent leave to re-raise the motion to dismiss after the presentation of Applicant's case.

III. SUMMARY OF TESTIMONY

Trial counsel testified he would have struck the juror if he knew the juror had a personal relationship with victim. On cross-examination, he admitted he does not remember the jury selection process in this particular case. However, trial counsel did testify the clerk always provided counsel with a list of potential jurors which included addresses and occupations.

The victim testified he grew up in Georgetown and lived in the same neighborhood most of his life. He testified he has known the juror for fourteen (14) years. He also testified he is familiar with the juror's children. The victim further testified he worked with the juror at

Georgetown Steel at the time of trial. On cross-examination, he admitted he and the victim worked in different departments at Georgetown Steel at the time of the trial. The victim further testified he did not develop a close personal relationship with the juror until they began working in the same department shortly after the trial concluded. The victim testified he recognized the juror when he stood up during jury selection, but that he did not tell the solicitor or any court staff that he knew the juror.

The juror testified he lives in a close knit, working class neighborhood. He stated that he did recognize the victim when he was introduced prior to trial because his children knew victim. He further testified that he approached the bench and informed the judge he knew the victim and did not want to be on the jury. The juror stated the judge asked if he could be fair and impartial, to which he responded he could. He further testified he felt he could be fair because he also knew the grandfather of the co-defendant. In response to this Court's inquiry, the juror again testified the trial judge questioned him about whether he could be a fair and impartial juror. The juror further testified that he could not see the victim's house from where he lived and therefore would not have seen the police responding to the crime scene. Furthermore, he testified he heard nothing about the case until he came to court the day of trial.

Grate testified she is friends with Applicant. She testified she lives in the same neighborhood as the victim and the juror. She testified the juror's children and the victim waited at the bus stop together. She further testified she had seen the victim and the juror together before. Grate contends she discovered juror was on Applicant's jury when she reviewed the transcript at Applicant's behest in 2010.

Frontz testified he was a private investigator retained by Applicant. He testified he interviewed the victim and the juror. His interview revealed the victim did not appear to know the juror by his full name, but he was familiar with him. Frontz further testified the juror and the victim lived a few houses apart. Frontz also testified the juror did not previously mention having spoken to the judge at trial.

Applicant testified he was living a couple streets over from the victim at the time of trial. He did not know the juror at the time of trial, but if he had known the juror lived near the victim he would have brought it to trial counsel's attention. He testified he did not become aware the victim and the juror potentially knew each other until he gave Grate a copy of the transcript to review in 2010. On cross examination, Applicant admitted he did know the victim prior to the crime. He also admitted he first received a copy of the transcript in 2001.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

A. After Discovered Evidence

The Court finds Applicant has failed to meet his burden of showing newly discovered evidence should allow him to proceed on a successive and untimely PCR action. S.C. Code Ann. section 17-27-45(C) provides that allegations of newly discovered evidence must be raised "within one year after the date of actual discovery of the facts by the applicant or after the date

when the facts *could have been ascertained by the exercise of reasonable diligence.*” (emphasis added). The Court finds Applicant could or should have discovered his claim regarding the alleged relationship between the victim and juror well before September 14, 2010. Trial counsel testified he would have been provided a list of potential juror’s addresses and occupations prior to jury selection. That information would have put Applicant on notice that the juror lived near the victim and that they had the same employer. Furthermore, Applicant claims he did not uncover the alleged relationship between the victim and the juror until someone else reviewed the transcript. However, Applicant testified he received a copy of the transcript of his trial in 2001. Thus, the alleged relationship between the victim and the juror could have ascertained by the exercise of reasonable diligence as early as the date of trial and as late as 2001. Therefore, the Court finds the allegations regarding juror misconduct are barred as being filed outside one (1) year statute of limitations.

B. Juror Misconduct

Even if the Application is not barred by the statute of limitations, the Court finds Applicant has not established an actual case of juror misconduct. “[A] new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges.” McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013) (citing State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998)). Here, Applicant has not proven the juror intentionally concealed any information from the trial court.

First, the trial judge never asked the jury panel if any potential jurors knew the victim or had any personal or work relationship with the victim. (See Trial Transcript, p. 19-26; see also p. 57). Instead, they were asked whether they were “*related by blood or connected by marriage*” with any of the witnesses, including the victim. (See Trial Transcript, page 19, lines 20-22). The juror could not have concealed his alleged relationship with the victim if he was never directly asked about any work or personal relationship. See State v. Burgess, 391 S.C. 15, 19 n.2, 703 S.E.2d 512, 514 n.2 (Ct. App. 2010).

Furthermore, the Court finds extremely credible the juror’s candid testimony he told the trial judge about his relationship with the victim in an effort to avoid jury duty. A review of the record does not reveal any such admission, but there are off-record conversations during jury selection. (See Transcript, page 22, line 13; page 25, line 11) Furthermore, the official transcript does not include the qualification of the jury pool that would have occurred prior to the calling of the case. The juror testified he approached the bench, spoke with the judge about working with the victim, and was questioned about his ability to be fair and impartial. Therefore, the Court finds the juror did not conceal his relationship with the victim, but rather brought it to the trial judge’s attention.

Regarding that relationship, the mere fact the juror worked with the victim did not automatically disqualify him from jury service. See Burgess, 391 S.C. at 18, 703 S.E.2d at 514. Rather, the determining factor is whether the juror can remain fair and impartial. Id. The juror testified he told the judge he could be fair and impartial, and that he was in fact fair and impartial at trial. He further testified he did not have a close personal relationship with the victim until after the trial, when they began to work in the same department. In light of the other questions

asked at *voir dire* regarding the potential jurors' knowledge of the crime and their ability to be fair and impartial, the Court finds the juror did not intentionally conceal any information that would have affected the outcome of Applicant's trial. Therefore, Applicant has not established he is entitled to a new trial on the basis of juror misconduct.

V. CONCLUSION


Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, Respondent's motion to dismiss is granted and this application for post-conviction relief is denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
- 2.
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of January, 2014.



THE HONORABLE J. CORDELL MADDOX, JR.
Presiding Judge

Anderson, South Carolina

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