

PCR

8-4-14

From: LARRY NORMAN GAMBRELL # 209770  
LIEBOW CORP. FNST.  
P.O. Box 205  
RIDGEVILLE, S.C. 29472

**RECEIVED**

AUG 07 2014

**S.C. SUPREME COURT**

DEAR HONORABLE CLERK OF SUPREME COURT

PLEASE SEND ME A TIME STAMPED COPY  
OF THIS EXPLANATION APPEAL

SINCERELY

LARRY GAMBRELL

RECEIVED

MAY 10 1964

U.S. SUPREME COURT

RECEIVED  
JUL 18 2014

INMATE TRUST FUND ACCOUNT REPORT  
for SOUTH CAROLINA COURT FILING FEES

RECEIVED  
JUL 14 2014  
Weber

SCDC-FINANCIAL ACCTG.  
INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom.  
Returned from Accounting. Do not mail this form with any payment to the Court. MAILROOM  
LIEBER CI

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): LARRY GAMBRELL CA 23

SCDC # 209770 INMATE SIGNATURE: LARRY GAMBRELL

I plan to file this action in the SC County of \_\_\_\_\_

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period\* ..... \$ 0
- (2) Twenty percent (20%) of line 1 ..... \$ 0
- (3) Account balance - current date ..... \$ 0.74
- (4) PAYMENT AMOUNT \*\*  
(lessor of line 2 or line 3)  
Enclosed check # \_\_\_\_\_ \$ 0

RECEIVED

AUG 07 2014

S.C. SUPREME COURT

\*\*NOTE to COURT: If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections  
Financial Accounting - Room 234  
PO Box 21787  
Columbia, SC 29221-1787

\* Admission date is noted here if inmate incarcerated less than six months \_\_\_\_\_

7/16/14

LARRY NORMAN GAMBRELL | IN THE STATE OF SOUTH CAROLINA  
SCDC NO. 209770 | IN THE SUPREME COURT  
PETITIONER |  
V | CASE NO. 2014-CP-39-0063  
STATE OF SOUTH CAROLINA

MOTION  
APPOINTMENT OF APPELLANT COUNSEL

PETITIONER MOVES THIS COURT FOR APPOINTMENT OF APPELLANT COUNSEL FOR THE ABOVE ENUMERATED CASE.

8-4-14  
DATE

Larry Gambrell  
LARRY NORMAN GAMBRELL  
S.C.D.C. NO. 209770  
LIEBER CORR. INST.  
P.O. BOX 205  
RIDGEVILLE, S.C.  
29472

LARRY NORMAN GAMBRELL  
S.C.D.C. No. 209770  
PETITIONER

v

STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CAND. 2014-CP-39-0063

PROOF OF SERVICE

I LARRY NORMAN GAMBRELL SWEAR UNDER PENALTY OF PERJURY  
THAT I'VE SERVED ALL PARTYS WITH SAME ENCLOSED  
COPIES BY DEPOSITING ONE COPY OF THE SAME IN THE UNITED  
STATES MAIL FIRST CLASS POSTAGE PAID AND ADDRESSED  
AS FOLLOWS

OFFICE OF ATTORNEY GENERAL  
ATTN: KAREN C. RATIGAN  
P.O. BOX 11549  
COLUMBIA, S.C. 29211

SOUTH CAROLINA COMMISSION  
ON INDIGENT OFFENSE  
P.O. BOX 11589  
COLUMBIA, S.C.  
29211

THE HONORABLE HAROLD WELBORN  
CLERK OF COURT PICKENS COUNTY  
P.O. BOX 215  
PICKENS, S.C. 29671-0215

8-4-14

DATE

Larry Gambrell

LARRY GAMBRELL

LARRY NORMAN GAMBRELL  
S.C.D.C. No. 209770

PETITIONER

V

STATE OF SOUTH CAROLINA

RESPONDENT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CA No. 2014-CP-39-0063

APPEAL FROM PICKENS COUNTY  
COURT OF COMMON PLEAS  
LETITIA H. VERDIN CIRCUIT COURT JUDGE

PETITION FOR WRIT OF CERTIORARI

LARRY NORMAN GAMBRELL #209770 APPEALS THE  
ORDER OF DISMISSAL FROM THE HONORABLE LETITIA  
H. VERDIN DATED JULY 1, 2014. PETITIONER RECEIVED  
WRITTEN NOTICE OF THIS ORDER JULY 15, 2014.

8-4-14

DATE

KAREN RAYLAW

ATTORNEY GENERAL'S OFFICE

P.O. BOX 11549

COLUMBIA, S.C. 29211

Larry Gambrell

LARRY NORMAN GAMBRELL

LIBERTY CORR. INST

P.O. BOX 205

RIOCKVILLE, S.C. 29472

ATTORNEY PRO SE.

LARRY NORMAN GAMBRELL  
S.C.D.C. No. 209770

PETITIONER

v

STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CA No. 2014-CP-39-0063

THE LOWER COURTS DETERMINATION  
WAS IMPROPER

FACT

THE P.C.R. ACT PROVIDES A VERY NARROW EXCEPTION TO ALLOW A SUCCESSIVE P.C.R. APPLICATION WHERE THE APPLICANT CAN PROVIDE A "SUFFICIENT REASON" FOR WHY THE GROUND WAS NOT ASSERTED OR WAS INADEQUATELY RAISED IN THE ORIGINAL APPLICATION.

THERE ARE SOME EXCEPTIONS TO THE GENERAL BAR AGAINST SUCCESSIVE PETITIONS. THE COURT HAS ALLOWED A SUCCESSIVE P.C.R. APPLICATION WHERE THE APPLICANT'S FIRST P.C.R. APPLICATION WAS INTERFERED WITH BY THE P.C.R. COURT OR GOVERNMENT OR THE REASONABLE UNAVAILABILITY OF THE FACTUAL BASIS

OF THE CLAIM IMPROVED COUNSEL'S ABILITY TO RAISE THE CLAIM (SEE MCCLESKEY V ZANT 499 US 467, 468 (1991)) OR WHERE SOME OTHER CIRCUMSTANCES BEYOND THE APPLICANT'S CONTROL OCCURRED (Id AT 503) -

IN PETITIONER'S CASE THE GOVERNMENT INTERFERENCE WAS THE P.C.R. JUDGE TAKING ON THE ROLE AS PETITIONER'S ADVERSARY AS THE FACTS AND P.C.R. RECORD WILL CONCLUSIVELY SHOW.

AS TO THE UNAVAILABILITY OF THE FACTS THE ATTACHMENTS WILL SHOW THAT THE COURT RECORDS, THE LIST FOR THE JURY PANEL IN 1994 WAS MISSING FROM THE CLERK OF COURTS OFFICE AND THE P.C.R. JUDGE REFUSED TO GIVE PETITIONER A CONTINUANCE TO TRY AND FIND THE DOCUMENTS [INTERFERED WITH PETITIONER'S COUNSEL DEVELOPE THE FACTS THE RECORD NOT DISPUTED SEE THE ATTACHMENTS]

AS FOR ~~THE~~ WHERE SOME OTHER CIRCUMSTANCE BEYOND THE APPLICANT'S CONTROL OCCURRED; REFUTING THAT THE P.C.R. JUDGE REFUSED THE CONTINUANCE TO LET P.C.R. COUNSEL DEVELOPE THE FACTS [SEE ATTACHMENTS]

REASONABLE SURIST COULD DIFFER AS TO WHETHER THE CLAIM OF "JUROR MISCONDUCT" COULD HAVE BEEN RAISED IN THE ORIGINAL APPLICATION

THE COURT HAS STRICTLY CONSTRUED THE TERM "SUFFICIENT REASON" HOLDING THAT IT MEANS THAT THE GROUND "COULD NOT HAVE BEEN RAISED" IN THE PREVIOUS APPLICATION

THE ATTACHMENTS CLEARLY SHOW THAT FOR GOVERNMENT INTERFERENCE OR THE REASONABLE UNAVAILABILITY OF THE FACTUAL BASIS OF THE CLAIM IMPAIRED COUNSEL'S ABILITY TO RAISE THE CLAIM, OR CIRCUMSTANCES BEYOND THE APPLICANTS CONTROL OCCURRED.

THE UNAVAILABILITY OF THE MISSING DOCUMENTS (SEE ATTACHMENT 5 AND 6)

THE P.C.R. JUDGE REFUSING COUNSEL'S MOTION FOR A CONTINUANCE UNTIL THE DOCUMENTS CAN BE FOUND TO PROVE THAT JUROR JOHN R. HEAD WAS THE SAME JOHN R. HEAD THAT TOOK A WARRANT ON PETITIONER IN 1980. (SEE ATTACHMENT 6)

(C)

THE CIRCUMSTANCE BEYOND THE PETITIONERS CONTROL TO RAISE THE GROUND OCCURRED WHEN THE P.C.R. JUDGE ~~KNOW~~ <sup>KNOW</sup> THOSE MISSING DOCUMENTS WAS THE "KEY" FACTOR IN PROVIDING THAT THE JOHN R. HEAD WHO WAS SEATED ON PETITIONERS JURY IN 1994 WAS THE SAME JOHN R. HEAD WHO HAD TAKEN A WARRANT ON PETITIONER IN 1980 DID NOT GRANT THE MOTION FOR A CONTINUANCE. (SEE ATTACHMENTS) ALSO THE P.C.R. JUDGE ABANDONED HIS ROLE AS BEING IMPARTIAL AND TOOK ON THE ROLE OF BEING PETITIONERS ADVERSARY.

PETITIONERS CLAIM THAT HE IS ENTITLED TO THE BENEFIT OF A FUNDAMENTALLY FAIR P.C.R. HEARING IS NOT CONCLUSIVELY REFUTED BY THE RECORD. THE LOWER COURTS DETERMINATION IS IMPROPER. A HEARING IS NECESSARY TO ~~THE~~ RESOLVE THIS CRITICAL ISSUE. (SEE ATTACHMENTS)

THE LOWER COURT ERRED IN GRANTING THE STATE'S MOTION FOR SUMMARY DISMISSAL BECAUSE GENUINE ISSUES OF MATERIAL FACTS EXIST. SEE HEAD, 363 SC AT 434)

## SUPPORTED FACTS

THE PETITIONER BELIEVES THE ATTACHMENTS FROM HIS ORIGINAL P.C.R (1995-CP-39-0711) TRANSCRIPT SHOWS SUPPORTED FACTS THAT THE P.C.R. JUDGE TOOK THE ROLE AS PETITIONERS ADVISORY AND INTERFERED WITH PETITIONERS COUNSEL'S ABILITY TO ESTABLISH THE FACTS THAT JUROR JOHN HEAD WAS THE SAME JOHN HEAD WHO HAD TAKEN A WARRANT ON PETITIONER FOR LARCENY IN 1980, THEREFORE THE Ground OF "JUROR MISCONDUCT" WAS NEVER RAISED IN THE ORIGINAL APPLICATION (SEE ATTACHMENT 1)

JUROR JOHN R. HEAD HAD KNOWN PETITIONER ALL OF HIS LIFE. PETITIONERS FAMILY HAD LIVED IN A HOUSE THEY RENTED FROM JUROR JOHN HEADS FAMILY UNTIL PETITIONER WAS 19 YRS OF AGE (SEE ATTACHMENT-2-LINES 1-25)

JUROR JOHN HEAD OR HIS FATHER HAD TAKEN A WARRANT FOR LARCENY ON PETITIONER IN 1980, PETITIONER SERVED TIME FOR THE CRIME. (SEE ATTACHMENT-3)

JOHN HEAD WAS SEATED AS A JUROR IN PETITIONERS 1994 TRIAL. (SEE ATTACHMENT-4)

PETITIONERS<sup>P.C.R.</sup> COUNSEL TRIED TO OBTAIN DOCUMENTS FROM THE CLERKS OFFICE TO CONFIRM WHETHER JOHN R. HEAD IN THE WARRANT IS THE SAME JOHN R. HEAD THAT WAS SEATED ON PETITIONERS JURY. (SEE ATTACHMENT-5 LINES 13-24)

THE JUDGE AMENDMENTS APPLICATION TO INCLUDE INEFFECTIVE ASSISTANCE OF COUNSEL AND FAILURE TO SEAT AND SELECT A JURY (SEE ATTACHMENT 6 LINES 3-5) NOT ~~AMENDED~~ AMENDED AS "JUROR MISCONDUCT" (SEE ATTACHMENT-1)

PETITIONERS<sup>P.C.R.</sup> COUNSEL THEN ASK FOR A CONTINUANCE UNTIL THE CLERKS OFFICE CAN LOCATE THE INFORMATION REGARDING JOHN R. HEAD (SEE ATTACHMENT-6 LINES 6-8)

EVEN AFTER PETITIONERS<sup>P.C.R.</sup> COUNSEL TOLD THE P.C.R. JUDGE THAT MR. HEAD MAY HAVE KEPT SILENT FOR SOME "VENDETTA" AGAINST PETITIONERS THE P.C.R. JUDGE STILL DID NOT GRANT A

CONTINUANCE (SEE ATTACHMENT 6 LINES 9-24)

THIS WAS BLATANT INTERFERENCE TO IMPED  
COUNSEL FROM RAISING THE CLAIM AND DEVELOPING  
THE FACTS TO LOCATE THE MISSING DOCUMENTS.  
P.C.R. JUDGE WAS NOT IMPARTIAL AND WAS  
PETITIONERS ADVERSARY. THE JUDGES ACTIONS  
RAISES THE QUESTION OF JUDICIAL MISCONDUCT  
AND DENING PETITIONER HIS RIGHT TO "FUNDA-  
MENTAL FAIRNESS" THE JUDGES ACTION TO  
A REASONABLE JURIST SHOULD BE "SHOCKING  
TO THE UNIVERSAL SENSE OF JUSTICE".

AGAIN COUNSEL ASK P.C.R. JUDGE FOR A  
CONTINUANCE TO LOCATE JOHN HEADS ADDRESS  
AND THE JUDGE ASK "AND WHAT IS YOUR POSITION"  
THEN HE ASK AND "WHAT DIFFERENCE DOES  
THAT MAKE"? (SEE ATTACHMENT 7 LINES 4-14)

AGAIN A "ROAD BLOCK" BY THE P.C.R. JUDGE.  
NO "FUNDAMENTAL FAIRNESS". ONLY ACTING  
AS ADVERSARY (EMPHASIS ADDED)

COUNSEL'S  
~~ANSWER~~ ANSWER "A TREMENDOUS DIFFERENCE  
YOUR HONOR, IF HE'S THE VICTIM OF A CRIME  
COMMITTED AGAINST HIM BY MR CAMBRELL, A  
TREMEMDOWS DIFFERENCE IF HE WAS STRAYED  
ON THE JURY (SEE ATTACHMENT - 7 - LINES 10-18)

THANKS NO TELLING WHATS GOING THROUGH  
PETITIONERS COUNSEL'S MIND. SHE HAS TO  
KNOW THIS JUDGE IS NOT GIVING PETITIONER  
A FAIR HEARING. AND I BELIEVE ANY  
REASONABLE JURY WOULD AGREE ALSO.

### POINTS AND AUTHORITIES

S.C. CODE ANN SEC. 17-27-90 (2003) ALLOWS FOR  
SUBSEQUENT APPLICATIONS IF THE COURT FINDS  
A GROUND FOR RELIEF ASSERTED WHICH "SUFFICIENT  
REASON" WAS NOT ASSERTED OR "INADEQUATELY  
RAISED" IN THE ORIGINAL SUPPLEMENT OR "AMENDED  
APPLICATION" (EMPHASIS ADDED)

PETITIONER BELIEVES THAT THE ORIGINAL  
P.I.R. TRANSCRIPT RAISES "SUFFICIENT REASON"  
FOR A SUBSEQUENT APPLICATION SHOWING

P.C.R. JUDGE ACTED IN ROLE OF ADVISORY AND COMMITTED JUDICIAL MISCONDUCT, UNDER SECTION 17-27-90 (2003) PETITIONER SHOULD BE GRANTED A SECOND P.C.R. HEARING.

REASONABLE JURIST WOULD NOT DIFFER, THAT THE P.C.R. TRANSCRIPT ESTABLISHED AN EXCEPTION TO EITHER THE STATUTE OF LIMITATIONS OR THE PROHIBITION AGAINST SUCCESSIVE P.C.R. APPLICATIONS AND THOSE FACTS ARE NOT CONCLUSIVELY REFUTED BY THE P.C.R. TRANSCRIPT. (SEE LEAMON V STATE 363 SC 432, 434, 611 SE2d 494, 495 (2005) (CITING S.C. CODE ANN SEC. 17-27-80) CF DELANEY V STATE 269 SC 555, 556, 238 SE2d 679, 679 (1977))

THE SUPREME COURT SAID IN AICE V STATE 305 SC 448, 450, 409 SE2d 392, 394 (1991) ("ANY NEW GROUND RAISED IN A SUBSEQUENT APPLICATION IS LIMITED TO THOSE GROUNDS THAT COULD NOT HAVE BEEN RAISED IN THE PREVIOUS APPLICATION")

DUE TO THE P.C.R. JUDGES JUDICIAL MISCONDUCT AND HIS ROLE AS PETITIONERS ADVISORY THE GROUNDS OF JUDICIAL MISCONDUCT COULD NOT HAVE BEEN RAISED IN THE PREVIOUS APPLICATION, ITS

CAN ONLY BE RAISED IN A SUBSEQUENT APPLICATION,  
SUCH AS THE ONE PETITIONER FILED JAN. 2014,

KEEP IN MIND PETITIONER HAS A FIRST GRADE  
EDUCATION AND THE STATE ORDERED AN MCNASHTEEN  
TEST TO BE DONE ON HIM BEFORE HIS JURY TRIAL  
IN 1994. (SEE ATTACHMENT 8 AND 9)

AS FOR THE LARGE GAP IN BETWEEN P.C.R. APPLICATIONS  
PETITIONER HAS A 1.8 LEADING LEVEL. A FRIEND  
READ THE McCLOY (2013) CASE TO PETITIONER AND  
PETITIONER HAD HIS FRIENDS TO LOOK AT THE TRANSCRIPTS  
HE HAD. THEN PETITIONER FILED HIS SUBSEQUENT  
APPLICATION.

PETITIONER HAD NO WAY OF KNOWING WHAT  
MOST OF HIS TRANSCRIPT SAID.

THERE IS NO OTHER SENSE IN WHICH THE CONSTITUTION  
CAN BE WHAT ARTICLE VI PROCLAIMS IT TO BE "LAW".  
THIS MEANS OF COURSE THAT A JUDGE NO MATTER  
WHAT COURT HE SITS MAY NEVER CREATE NEW  
CONSTITUTIONAL RIGHTS OR DESTROY OLD ONES. ANY-  
TIME HE DOES SO, HE VIOLATES NOT ONLY THE

LIMITS OF HIS OWN AUTHORITY BUT, AND FOR THAT REASON, ALSO VIOLATES THE RIGHTS OF THE LEGISLATURE AND THE PEOPLE

THE JUDGES ANSWERS WERE TAILORED TO JUSTIFY ANY COURSE OF ACTION

### JUDICIAL CONDUCT

Rule 501.

OUR LEGAL SYSTEM IS BASED ON THE PRINCIPLE THAT AN INDEPENDENT, FAIR AND COMPETENT JUDICIARY WILL INTERPRET AND APPLY THE LAWS THAT GOVERN US. THE ROLE OF THE JUDICIARY IS CENTRAL TO AMERICAN CONCEPTS OF JUSTICE AND THE RULE OF LAW. THE JUDGE IS AN ARBITER OF FACTS AND LAW FOR THE RESOLUTION OF DISPUTES AND HIGHLY VISIBLE SYMBOL OF GOVERNMENT UNDER THE LAW.

CANON 1. A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND NOT BE A DEFENDANT'S ADVERSARY, BE IMPARTIAL.

CANON 3, A JUDGE SHALL PERFORM THE DUTIES OF HIS JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

### SUMMARY

A REVIEW OF THE ATTACHMENTS WILL SHOW CONCLUSIVELY THAT THE P.C.R. (1995-CP-39-071) JUDGE DID NOT PERFORM HIS JUDICIAL DUTIES IMPARTIALLY AND DILIGENTLY. THE ATTACHMENTS CLEARLY SHOW THAT THE COURT TOOK ON THE ROLE AS PETITIONERS ADVERSARY. REFUSING TO GRANT P.C.R. COUNSEL'S MOTION FOR A CONTINUANCE, SO THE MISSING COURT DOCUMENTS COULD BE FOUND TO SHOW WHETHER ARE NOT THAT JARON JOHN HEAD WAS THE SAME JOHN HEAD WHO HAD TAKEN A WARRANT FOR LARCENY ON THE PETITIONER IN 1980. THE COURT BY NOT GRANTING THE CONTINUANCE WAS REFUSING TO LET PETITIONER DEVELOP THE FACTS AT HIS EVIDENTIARY HEARING. (SEE CANON 3 RULE 501 JUDICIAL CONDUCT)

"FUNDAMENTAL FAIRNESS" WAS DENIED TO THE PETITIONER AT HIS JURY TRIAL IN 1994, WHEN JARON JOHN HEAD "INTENTIONALLY

CONCEALED" HIS RELATIONSHIP TO THE PETITIONER  
BY REMAINING SILENT DURING "VOIR DIRE" WITH  
A POSSIBLE "VENDETTA" AGAINST THE PETITIONER.

AND "FUNDAMENTAL FAIRNESS" WAS DENIED  
TO THE PETITIONER AT HIS ORIGINAL P.C.R.  
HEARING, WHEN THE JUDGE DENIED THE  
PETITIONER TO DEVELOP THE FACTS OF HIS  
CLAIMS AND BY THE P.C.R. COURT TAKING  
ON THE ROLE OF ADVERSARY.

### CONCLUSION

FOR THE FACTS SHOWN HEREIN THE LOWER  
COURTS DETERMINATION WAS IMPROPER. A  
WRIT OF CERTIORARI SHOULD BE ISSUED AND  
THE CASE REMANDED BACK TO THE LOWER  
COURT FOR A EVIDENTIARY HEARING TO BE HELD.

8-4-14

DATE

LARRY GAMBRELL

LARRY NORMAN GAMBRELL  
S.C.D.C. No. 209770

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Attachment-3 - INDICTMENT FOR LARCENY (P. 3)

Attachment-4 - SEATING OF JUROR JOHN HEND (P. 4)

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Attachment-7 - TRYING TO LOCATE ADDRESS, TREMENDOUS DIFFERENCE, SUOR'S ADVERSARIAL QUESTIONS (P. 7)

Attachment-8-9 PETITIONER'S EDUCATION LEVEL (P. 8) 9)

degree burglary.

A notice of appeal was filed at the South Carolina Supreme Court. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Supreme Court dismissed the appeal. State v. Gambrell, Op. No. 95-MO-312 (S.C. Sup. Ct. filed October 5, 1995).

1995-CP-39-0711

The Applicant filed a PCR application on December 14, 1995 (1995-CP-39-0711). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
  - a. Lack of preparation.
  - b. Failure to vigorously cross-examine witnesses.
  - c. Lack of communication with the Applicant.
  - d. Failure to develop exculpatory forensic evidence of blood samples and semen stains.

In an "Amendment to Application for Post-Conviction Relief" filed July 12, 1996, the Applicant made the following allegations:

1. Denial of due process.
2. "[O]ne juror knew the Applicant and Applicant knew him and that there has been conflict between Applicant and this alleged juror."
3. "[T]he alleged juror was prejudicial and as well as bias toward the Applicant."
4. Trial counsel "knew that the Applicant knew the alleged juror as well as the juror knowing the Applicant."
5. Trial counsel "should of brought these issues up concerning the alleged juror to the trial courts attention and should have motioned the court for a mistrial."

An evidentiary hearing was held on April 28, 1997 at the Pickens County Courthouse. Patti Brady, Esquire represented the Applicant. The Honorable Thomas L. Hughston, Jr. denied

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )  
 )  
Larry Norman Gambrell, )  
S.C.D.C. No. 209770, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
2014-CP-39-0063

**RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief (PCR) application filed January 15, 2014, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Pickens County. The Applicant was indicted at the October 1993 term of the Pickens County Grand Jury for first-degree criminal sexual conduct (CSC) (1993-GS-39-1783), assault with intent to commit first-degree CSC (1993-GS-39-1784), two counts of kidnapping (1993-GS-39-1785, -1786), assault and battery with intent to kill (ABWIK) (1993-GS-39-1787), and two counts of first-degree burglary (1993-CP-39-1788, -1789). He was represented by E.P. "Bill" Godfrey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 1, 1994, the Honorable C. Victor Pyle, Jr. sentenced him to concurrent sentences of thirty years for first-degree CSC, thirty years for assault with intent to commit first-degree CSC, ten years for each count of kidnapping, ten years for ABWIK, and life imprisonment for each count of first-

LARRY NORMAN GAMBRELL - DIRECT EXAMINATION BY MS. BRADY

1 Q. Did you recognize Mr. Head?

2 A. Yes, ma'am.

3 Q. How did you know Mr. Head?

4 A. I know Mr. Head all my life.

5 Q. How?

6 A. My father worked for Mr. Head's father. We've  
7 lived in their house. We've knowed each other all our life.

8 Q. Did Mr. Head recognize you?

9 A. Yes, ma'am.

10 Q. How did you know he recognized you?

11 MS. COSBY: Objecting, Your Honor, to what Mr. Head  
12 did or how he --

13 THE COURT: He can testify to the facts and what he  
14 observed.

15 Q. Did the juror look straight a you?

16 A. Yes, ma'am.

17 Q. Has your appearance changed substantially since you  
18 lived in Mr. Head's house?

19 A. No, ma'am.

20 Q. How old were you when you lived in this house?

21 A. I was 18 or 19.

22 Q. Did you voice an objection about Mr. Head to Mr.  
23 Godfrey or Mr. Duncan?

24 A. To Mr. Godfrey.

25 Q. What did you tell him?

## LARRY NORMAN GAMBRELL - DIRECT EXAMINATION BY MS. BRADY

1 Q. Did they assist you in any way preparing for this  
2 trial?

3 A. No, ma'am.

4 Q. Did you have any other outside assistance in  
5 preparing for this trial?

6 A. No, ma'am.

7 Q. Sir, did you have access to a list of potential  
8 jurors from Mr. Godfrey or Mr. Duncan?

9 A. No, ma'am.

10 Q. Did you understand that you could see who was going  
11 to be on the jury? You could see the names on the list.

12 A. Yes, ma'am.

13 Q. Did you ever have access to it?

14 A. No, ma'am.

15 Q. Now, were you consulted during the jury selection?

16 A. Just they would ask me questions about did I know  
17 this juror.

18 Q. Who would ask you questions?

19 A. Mr. Godfrey.

20 Q. Now, on some of the selections, were your  
21 objections followed?

22 A. Yes, on some of them.

23 Q. When it came to juror number 39, John Head, was he  
24 called up from the jury panel and stood before you?

25 A. Yes, ma'am.



JURY SELECTION

1 (Juror was seated.)

2 CLERK: Juror number 39, John R. Head.

3 (Juror number 39, a white male, came  
4 forward.)

5 CLERK: What says the state?

*John Head*

6 MR. BARCROFT: Present Mr. Head. ←

7 CLERK: Defense?

8 MR. GODFREY: Please seat the juror.

9 CLERK: Have a seat in the jury box please.

10 (Juror was seated.)

11 CLERK: Juror number 71, Tammie A. Rockwell.

12 (Juror number 71, a white female, came  
13 forward.)

14 CLERK: What says the state?

15 MR. BARCROFT: Present Ms. Rockwell.

16 CLERK: Defense?

17 MR. GODFREY: Please seat the Juror.

18 CLERK: Have a seat in the jury box please.

19 (Juror was seated.)

20 CLERK: Juror number 42, B. E. Houston.

21 (Juror number 42, a white male, came  
22 forward.)

23 CLERK: What says the state?

24 MR. BARCROFT: Present Mr. Houston.

25 CLERK: Defense?



I N D E X

PAGE

--3

POST-CONVICTION RELIEF HEARING

WITNESSES

FOR THE PLAINTIFF:

LARRY NORMAN GAMBRELL

DIRECT EXAMINATION BY MS. BRADY --6

CROSS-EXAMINATION BY MS. COSBY -18

REDIRECT EXAMINATION BY MS. BRADY -29

EDWARD P. GODFREY, JR.

DIRECT EXAMINATION BY MS. BRADY -31

CROSS-EXAMINATION BY MS. COSBY -45

CERTIFICATE OF REPORTER -51

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
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FOR THE PLAINTIFF

1 -	WARRANT FOR GRAND LARCENY		-17
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1 application for post-conviction relief to include that.

2 THE COURT: Include what?

3 MS. BRADY: To include ineffective assistance of  
4 counsel and failure to properly select and seat a jury.

5 THE COURT: Okay. We'll allow that to be amended.

6 MS. BRADY: Thank you, sir. And number two is to  
7 allow a continuance until the clerk's office can locate the  
8 information regarding John R. Head.

9 THE COURT: What is it about him that you want to  
10 know?

11 MS. BRADY: His address and to locate him.

12 THE COURT: I mean, what is it that you have there?

13 MS. BRADY: This is a warrant from the town of  
14 Central that Mr. Gambrell had himself, and the victim in that  
15 warrant is John Head.

16 THE COURT: Why do you think that has any  
17 application to this case?

18 MS. BRADY: Well, sir, of course Judge Pyle asked  
19 if any juror had any knowledge or bias against this case.  
20 Mr. Head may have kept silent for some vendetta against Mr.  
21 Gambrell. He may not have recognized Mr. Gambrell.

22 THE COURT: Well, is it the defendant in this case  
23 that you're talking about, the indictment here, Larry  
24 Gambrell? Is that you?

25 MR. GAMBRELL: Yes, sir.

1 THE COURT: So we got the same defendant and the  
2 same John Head of Central, South Carolina in the case of  
3 larceny.

4 MS. BRADY: He was 39 years old at the time of Mr.  
5 Gambrell's trial. He would have been 26 in '92. Mr.  
6 Gambrell tells me it involved Mr. Head and his father. So  
7 they can't locate his address or identifying information to  
8 tell that it is the same John Head, the victim in that  
9 warrant.

10 THE COURT: And your position is what?

11 MS. BRADY: Well, sir, we need a continuance to  
12 find out if that John Head is the same person that was seated  
13 on that jury.

14 THE COURT: And what difference does that make?

15 MS. BRADY: A tremendous difference, Your Honor.  
16 If he's the victim of a crime committed against him by Mr.  
17 Gambrell, a tremendous difference if he was seated on the  
18 jury.

19 THE COURT: Are you saying that Mr. Godfrey knew  
20 that in some way?

21 MS. BRADY: No, sir. We don't know that Mr.  
22 Godfrey knew that.

23 THE COURT: Well, then how would he known to strike  
24 him, to not accept him or to ask him any other questions if  
25 he was a victim of a crime supposedly committed by Mr.

YOUR DIRECTOR

(7)

1 MS. BRADY: No, Your Honor. That's our case.

2 THE COURT: Thank you very much. You may step  
3 down. Anything else from the State?

4 MS. COSBY: Nothing from the State.

5 THE COURT: Anything you would like to say in  
6 summation or anything?

7 MS. BRADY: Your Honor, very briefly. It's obvious  
8 that Mr. Gambrell has a first grade education. There's  
9 consistent notes that he has a first grade education as  
10 opposed to a third grade education. There are consistent  
11 notes that show he has some type of mental disability or else  
12 the State and the defense would not have ordered the  
13 McNaghten Test to be done on him. Given his limited ability  
14 to understand the nature of the proceedings against him, it  
15 is highly likely that he didn't understand that he had a  
16 right to excuse that juror, he had a right to vehemently  
17 object to that juror being seated on his trial.

18 Of course, if Mr. Godfrey didn't know about it he  
19 couldn't excuse the juror, but that in and of itself is  
20 entirely prejudicial to Mr. Gambrell's rights to a fair  
21 trial. I think he was completely eviscerated by the system.  
22 I mean, sitting in jail ten months without a bond. His bond  
23 hearing was 1-29 of '94. Mr. Godfrey conducts that bond  
24 hearing. Preliminary hearing, Mr. Godfrey doesn't have the  
25 benefit of a preliminary hearing. Then one month later he's

## EDWARD GODFREY - CROSS-EXAMINATION BY MS. COSBY

1           A.    I advised him of his rights, and I told him that it  
2 was my opinion that he would end up hurting himself more by  
3 testifying than not testifying. I also advised him that  
4 whether he testified or not testified was his decision and no  
5 one elses.

6           Q.    And he made that decision knowingly, intelligently  
7 and voluntarily?

8           A.    He made it as knowingly as Larry can make.

9           Q.    Okay.

10          A.    Larry has difficulty understanding, but I really  
11 believe he understood what we were talking about.

12          Q.    Did you place pressure or coercion on him not to  
13 testify?

14          A.    No, ma'am.

15          Q.    And basically your recommendation was because he  
16 had prior sex crimes?

17          A.    Yes, ma'am.

18          Q.    And when you first came to this county, you  
19 vigilantly pursued this case?

20          A.    Yes, ma'am. I found it appalling that someone  
21 could be arrested in June of '93 and still be in jail in  
22 January of '94 and not have a bond and never get a trial.

23                   MS. COSBY. Thank you, Mr. Godfrey. Nothing  
24 further, Your Honor.

25                   THE COURT: Anything on redirect?

1 A. Yes, ma'am.

2 Q. You can add?

3 A. A little bit, not much.

4 Q. Where did you complete -- or did you complete first  
5 grade?

6 A. No, ma'am. I never did complete first grade.

7 Q. Why did you stop?

8 A. I went to school, but I never did learn how to read  
9 or write.

10 Q. What is the last grade you completed?

11 A. The last time I was tested, it was still first  
12 grade.

13 Q. First grade level. What is the last grade you  
14 completed in school?

15 A. It was first grade.

16 Q. Now, your testimony is that from the time you were  
17 six years old, you were not in school?

18 A. I was in school, but I never could get over that  
19 first grade level.

20 Q. I understand that. I appreciate that, but what is  
21 the last grade you went physically to school?

22 A. I went to Simpson at Easley, but I don't know what  
23 grade they call it. I know I was still in first grade level.

24 Q. Do you have any learning disabilities?

25 A. I never have been able to read and write.

## LARRY NORMAN GAMBRELL - DIRECT EXAMINATION BY MS. BRADY

1 Q. Are you dyslexic?

2 A. No, ma'am. I don't know.

3 Q. Have you been tested for mental capacity for your  
4 understanding of right and wrong?

5 A. They sent me to Columbia, and they said I was  
6 capable to go to trial.

7 Q. Who sent you to trial?

8 A. It was before I went to trial.

9 Q. Before you went to this trial?

10 A. Yes, ma'am.

11 Q. Who arranged for you to go to Columbia?

12 A. I believe it was Cheryl Aaron.

13 Q. Do you remember the phycologist that tested you in  
14 Columbia?

15 A. No, ma'am. I don't know her name.

16 Q. Mr. Gambrell, did you have any family available to  
17 you while you were in jail?

18 A. No, ma'am.

19 Q. Where's your family?

20 A. Well, my mother and father died right before I got  
21 arrested on this crime thing. My mother died, then my dad  
22 died three days after she did.

23 Q. Did you have any brothers or sisters?

24 A. Two sisters and two brothers, but I talk to them on  
25 the phone, but that's about it.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )  
 )  
Larry Norman Gambrell, )  
S.C.D.C. No. 209770, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2014-CP-39-0063

CONDITIONAL ORDER OF DISMISSAL

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
JUL 10 PM 2:25

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 15, 2014. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Pickens County. The Applicant was indicted at the October 1993 term of the Pickens County Grand Jury for first-degree criminal sexual conduct (CSC) (1993-GS-39-1783), assault with intent to commit first-degree CSC (1993-GS-39-1784), two counts of kidnapping (1993-GS-39-1785, -1786), assault and battery with intent to kill (ABWIK) (1993-GS-39-1787), and two counts of first-degree burglary (1993-CP-39-1788, -1789). He was represented by E.P. "Bill" Godfrey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 1, 1994, the Honorable C. Victor Pyle, Jr. sentenced him to concurrent sentences of thirty years for first-degree CSC, thirty years for assault with intent to commit first-degree CSC, ten years for



each count of kidnapping, ten years for ABWIK, and life imprisonment for each count of first-degree burglary.

A notice of appeal was filed at the South Carolina Supreme Court. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Supreme Court dismissed the appeal. State v. Gambrell, Op. No. 95-MO-312 (S.C. Sup. Ct. filed October 5, 1995).

**1995-CP-39-0711**

The Applicant filed a PCR application on December 14, 1995 (1995-CP-39-0711). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
  - a. Lack of preparation.
  - b. Failure to vigorously cross-examine witnesses.
  - c. Lack of communication with the Applicant.
  - d. Failure to develop exculpatory forensic evidence of blood samples and semen stains.

In an "Amendment to Application for Post-Conviction Relief" filed July 12, 1996, the Applicant made the following allegations:

1. Denial of due process.
2. "[O]ne juror knew the Applicant and Applicant knew him and that there has been conflict between Applicant and this alleged juror."
3. "[T]he alleged juror was prejudicial and as well as bias toward the Applicant."
4. Trial counsel "knew that the Applicant knew the alleged juror as well as the juror knowing the Applicant."
5. Trial counsel "should of brought these issues up concerning the alleged juror to the trial courts attention and should have motioned the court for a mistrial."

An evidentiary hearing was held on April 28, 1997 at the Pickens County Courthouse.

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).



Patti Brady, Esquire represented the Applicant. The Honorable Thomas L. Hughston, Jr. denied and dismissed the PCR application by order filed June 12, 1997.

The Applicant filed a notice of appeal. Tara S. Taggart, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court denied the petition for writ of certiorari on November 5, 1999.

### Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (9:00-0593-23RB). The Respondent submitted a motion for summary judgment on May 15, 2000. The Honorable Wallace W. Dixon, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated October 13, 2000. On March 29, 2001, the Honorable Patrick M. Duffy, United States District Judge, issued an order granting the motion for summary judgment.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 12, 2003, the Court of Appeals dismissed the appeal because it was not timely filed.

## II.

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

1. Juror misconduct.
  - a. "Fact issue remained whether claim of juror misconduct in failing to disclose during voir dire that his father had in fact filed an arrest warrant against [the Applicant]."

In an "Amendment to P.C.R." filed on February 3, 2014, the Applicant makes the following allegation:



1. Miscarriage of justice established because of juror misconduct.

In a "Brief Upon a Non-Waiver of Juror Misconduct Issue 17-27-90" filed February 14, 2014, the Applicant makes the following allegation:

1. "[D]id not knowingly and intelligently waive juror misconduct issue pur to 17-27-90 PCR statute."

### III.

This Court finds this matter should be summarily dismissed because the Applicant failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads:

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 Applicant was convicted of the offenses he challenges in this application on March 1, 1994 and his appeal was dismissed on October 5, 1995. This application was filed on January 15, 2014, which was many 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. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law."

### IV.

This Court further finds the current application should also be dismissed because it is



successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737

(1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

This Court notes the Applicant argues he is entitled to an evidentiary hearing based upon the holding of McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). This Court finds this argument is without merit. This Court notes the Applicant was aware of a potential issue of juror misconduct when he filed the amendment to his first PCR application because he raised this



issue at that time. This Court further notes this issue was addressed in the prior PCR action, PCR appeal, and federal habeas corpus actions. This issue is summarily dismissed.

VI.

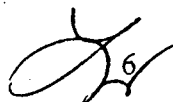
Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Pickens County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 1 day of July, 2014.



\_\_\_\_\_  
Letitia H. Verdin  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.



LARRY NORMAN GAMBRELL # 20091790-CA-23

LIEBER Conn. Inst.

P.O. Box 205

RIDGEBVILLE, S.C. 29472

AMS

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