

11-12-14

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MAIL ROOM CONTAINING THE SIGNED FINAL ORDER
OF DISMISSAL YAFF 2014-CP-39-0063 SIGNED BY
THE HONORABLE LETITIA H. VARDIN ON 9-25-2014

RESPECTFULLY
LARRY CAMBREVI

RECEIVED

NOV 21 2014

S.C. Supreme Court

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

PETITIONER

vs.

STATE OF SOUTH CAROLINA
RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case No. 2014-CP-39-0063

NOTICE OF 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 FINAL
ORDER OF DISMISSAL FROM THE HONORABLE LETITIA
H. VERDIN DATED 9-25-2014 PETITIONER RECEIVED
WRITTEN NOTICE OF THIS ORDER 11-12-2014

11-15-2014 DATE

KAREN RATIGAN
ATTORNEY GENERAL'S OFFICE
P.O. 11549
COLUMBIA, S.C. 29211

LARRY GAMBRELL
LARRY NORMAN GAMBRELL
LIBERTY CORR. INST
P.O. Box 205
RIOBLEVILLE, S.C. 29472
ATTORNEY: PRO SE

RECEIVED

NOV 21 2014

S.C. Supreme Court

Clerk of Court
PICKENS COUNTY
P.O. BOX 215
PICKENS, SC 29671

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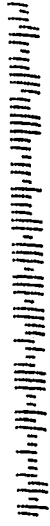
NOV 10 2014

WARDEN'S OFFICE
LIEBER, C.I.

Larry Gambrell # 204770

P.O. Box 205

Ridgeville, S.C. 29472



29472020505

LARRY NORMAN GAMBRELL

S.C.D.C. No. 209770

PETITIONER

VS

STATE OF SOUTH CAROLINA

RESPONDENT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Case No. 2014-CP-39-0063

MOTION TO APPOINT APPELLATE COUNSEL

PETITIONER MOVES THIS HONORABLE COURT FOR AN ORDER TO APPOINT APPELLATE COUNSEL FOR THE ABOVE ENUMERATED CASE.

I SO MOVE

11-15-14 DATE

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

LARRY GAMBRELL

LARRY NORMAN GAMBRELL
S.C.D.C. No. 209770
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ROCKVILLE, S.C. 29472
ATTORNEY; Pro Se.

RECEIVED

NOV 21 2014

S.C. Supreme Court

LARRY NORMAN CAMBRIELL
S.C.D.C. 209770

PETITIONER

VS

STATE OF SOUTH CAROLINA
RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CAVW. 2014-CP-39-0063

PROOF OF SERVICE

I LARRY NORMAN CAMBRIELL SWEAR UNDER PENALTY OF PERJURY THAT I HAVE SERVED THE RESPONDENT WITH TRUE COPY'S AND THAT A COPY OF THE NOTICE OF APPEAL HAS BEEN SERVED WITH THE CLERK OF COURT OF PICKENS COUNTY BY DEPOSITING THE SAME IN THE UNITED STATES MAIL FIRST CLASS POSTAGE PREPAID AND ADDRESSED AS FOLLOWS:

OFFICE OF ATTORNEY GENERAL

ATTN: KAREN C. RATIGAN

P.O. BOX 11549

COLUMBIA, S.C. 29211

THE HONORABLE HAROLD WOLFSON

CLERK OF COURT

P.O. BOX 215

PICKENS, S.C. 29671

LARRY CAMBRIELL

LARRY NORMAN CAMBRIELL

11-15-14 DATE

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

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

✓

CA No. 2014-CP-39-0063

STATE OF SOUTH CAROLINA

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 LETTING PETITIONER'S COUNSEL DEVELOPE THE FACTS THE RECORD NOT DISPUTED SEE THE ATTACHMENTS]

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

REASONABLE JURIST 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 APPLICANT'S 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~~ ^{KNOW} THOSE MISSING DOCUMENTS WAS THE "KEY" FACTOR IN PROVIDING THE PETITIONER 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 AS 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 ~~RESOLVE~~ 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 ADVERSARY 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^{P.C.R.} 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^{P.C.R.} 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^{P.C.R.} 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 JUDGE'S ACTIONS
RAISES THE QUESTION OF JUDICIAL MISCONDUCT
AND DENING PETITIONER HIS RIGHT TO "FUNDAMEN-
TAL FAIRNESS" THE JUDGE'S 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
~~PLEASE~~ ANSWER "A TREMENDOUS DIFFERENCE
YOUR HONOR, IF HE'S THE VICTIM OF A CRIME
COMMITTED AGAINST HIM BY M7 CAMBRELL, A
TREMENDOUS DIFFERENCE IF HE WAS SKATED
ON THE SURF (SEE ATTACHMENT - 7 - LINES 10-18)

THERE'S 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 JURIST 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.C.R. TRANSCRIPT RAISES "SUFFICIENT REASON"
FOR A SUBSEQUENT APPLICATION SHOWING

(4)

P.C.R. JUDGE ACTED IN ROLE OF ADVERSARY 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 STATE 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, 64 SE2d 494, 495 (2005) (CITING S.C. CODE ANN SEC. 17-27-80) CF DEJANUZY V STATE 269 SC 555, 556, 238 SE2d 679, 679 (1977))

THE SUPREME COURT SAID IN AICK 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. JUDGE'S JUDICIAL MISCONDUCT AND HIS ROLE AS PETITIONER'S ADVERSARY THE GROUNDS OF JUDGE'S MISCONDUCT COULD NOT HAVE BEEN RAISED IN THE PREVIOUS APPLICATION, IT

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 ORDER^{ED} AN MCNASHEN
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 PIECOY (2013) CASE TO PETITIONER AND
PETITIONER HAD HIS FRIEND 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 DISSEY OLD ONES. ANY-
TIME HE DOES SO, HE VIOLATES NOT ONLY THE

LIMITS OF HIS OWN AUTHORITY BUT, AND FOR THAT
PERSON, 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 JUNON SOHN HEAD WAS THE SAME SOHN 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 JUNON SOHN 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.

11-15-14

DATE

LARRY GAMBRELL
Larry Gambrell

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

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(A.2)

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

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Attachment-7 - Trying to locate address, TREMENDOUS
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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 Anders¹ 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

¹ 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.

The State of South Carolina

County Of PICKENS

INDICTMENT FOR LARCENY

At a Court of General Sessions, convened on the 4th day of January,
19 82, the Grand Jurors of Pickens County present upon their oath:

That LARRY GAMBRELL

did in Pickens County on or about the 16th day of July,
19 80, feloniously take and carry away the personal goods of John Head, Central, S.C.

of the value of more than ~~one~~ ^{two hundred} ~~hundred~~ dollars described as follows: approximately five hundred
(500) aluminum pallets

with intent to deprive the owner permanently of such goods.

Against the peace and dignity of the State, and contrary to the statute in such case made and pro-
vided.

(3) William B. [Signature]

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?

April 28, 1997

1 THE COURT: Mr. Larry Norman Gambrell. Is that
2 your name?

3 MR. GAMBRELL: Yes, sir.

4 THE COURT: All right. Ms. Brady, are you ready to
5 go?

6 MS. BRADY: Yes, sir.

7 THE COURT: Call your first witness.

8 MS. BRADY: Your Honor, our first order of business
9 is to amend Mr. Gambrell's post-conviction relief
10 application. I believe it is implicit in the application
11 that effective assistance of counsel would include a
12 selection of jurors. However, it is not specifically recited
13 in his application. That is one of the primary concerns in
14 this case. Mr. Gambrell has a warrant from 1982 from the
15 City of Central. The affiant and the victim in that case was
16 a John R. Head. John R. Head was juror number 39 that was
17 presented by the State and accepted by Mr. Godfrey.

18 The clerk's office has located all of the witness
19 lists for 1984, and there are about, I believe Carolyn said
20 three or four months missing. The date of trial for Mr.
21 Gambrell is one of the months that is missing. So we are
22 unable to confirm that John R. Head in this warrant is the
23 same John R. Head that was seated on Mr. Gambrell's jury. So
24 this is a two part motion. One of course is to amend his
25

(5)

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 |
|-----|---------------------------|--|-----|

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.

VOIR
DIRECT!

(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

(8)

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?

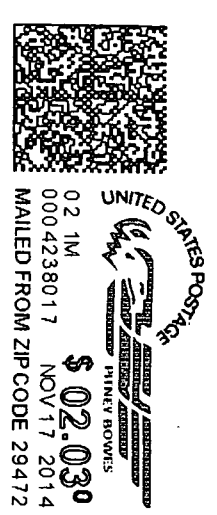
24 A. Two sisters and two brothers, but I talk to them on
25 the phone, but that's about it.

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