

IN The Supreme Court of South Carolina

Appellant Case No. 2015-000651,
Lower Court Case No. 2013-CP-11-00181

Ricky Brannon — — Petitioner / Appellant.

RECEIVED

MAY 20 2015

VS.

SC SUPREME COURT

STATE of South Carolina, — — Respondent

Appellant's pro se, Appeal

S/ Ricky Brannon
Ricky Brannon #179051
Perry Corr. INST. Q2.A-207
430 Oaklawn Rd.
Pelzer S.C. 29669

MAY 12. 2015.

Issues ON Appeal.

- (1) Failure of The Honorable Judge J. Derham Cole to Recuse himself from the Appellants current PCR, ~~also~~ Application / matters, upon The Appellants Timely Request, when Judge Cole, previously presided over Appellants initial PCR hearing and matters within and relevant to that initial PCR hearing, set the grounds now raised in The current Application. Plus The matter belong to Judge Roger L. Couch. Thus a Conflict
- (2). That The Honorable Judge Cole, has improperly sat in on Tribunal STATE over another Judges (The Honorable Roger L. Couch es.). "proposed Order" Thus improperly undertaken and presided over the Appellants current PCR matter and improperly issuing rulings over the matter which belonged to Judge Couch, Such Acts by Judge Cole, constitutes a structural error and violates Judicial ethics.
- (3). That The Respondent, did commit ethical misconduct by intentionally and improperly "Judge shopping" to obtain another Judge. (The Honorable J. Derham Cole) signature on their proposed Final Order of Dismissal, when they failed to obtain a final ruling from The Honorable Judge Roger Couch, Dismissing the Appellants Applications, Thus it was a "Tactical Advantage", plus an improper Conflict.
- (4). The Court erred in dismissing the Appellants Application when at the time of his current Application was filed. He qualified for the "exception" to the Successive Application / Statute of Limitations Criteria as set out under S.C. Code §17-27-90. For he raised his claim under S.C. .

code § 17-27-45 (b), which waives the mandated criteria of § 17-27-90, "That he provide sufficient reasons" as to why his application should not be dismissed as successive and untimely." For here the Court improperly applied Kelly v. STATE 745 S.E. 2d 377 (2013) retroactively, to this Appellant's application and used § 17-27-90, "sufficient reasons standard" to dismiss his application, when at the time that his application was filed Washington v. State 478 S.E. 2d 833 (S.C. 1996) was the controlling case, which allows an applicant to bring a claim of ineffective assistance of PCR counsel in a PCR application.

(5). Also, the Court erred in dismissing the Appellant's current application as successive and in violation of the statute of limitation under the criteria as set out in S.C. code § 17-27-90, when such is "not applicable" to the Appellant's current PCR allegations. For he has neither raised or argued for any grounds of relief of his conviction or sentence in his current application. But has ~~er~~ only challenged the grossly inadequate procedural due process handling of his initial PCR matters by his PCR counsel, on his initial collateral review of his claims of ineffective assistance of Trial, and Appellate Counsel, which rendered his initial PCR hearing fundamentally unfair and denied him "Due process" to a fair hearing.

(6). Conflict of interest. Because The Respondent Not The Court drafted proposed orders, despite, the Appellants, objection That The Respondents were Adversary's to Appellant And also The prosecutor's over his case at Trial, And Further a Conflict because the Respondents "Judge shopped" and Thus pick a different Judge, To help obtain a dismissal of The Application.

(7). That The Court erred in not granting the Appellant an evidentiary hearing on the merits of his claim of PCR Counsel's prejudicial inadequate representation, which denied him his fundamental Due process Right, to a full and fair hearing at his initial PCR hearing of his claims of Ineffective Assistants of Trial and Appellate Counsel's. which was his initial collateral attack of such claim's.

R. B.

History of The Case

Here The Appellant partially concurs with The Respondent's history of The Case, But herein will AMEND Relevant facts to The History of the Case AS follows.

- (1) That The Honorable Judge Roger L. Couch, upon the Appellant's motion at his initial PCR. hearing "granted" the motion to Recuse himself from the PCR. matter and further granted a continuence of the matter
- (2) That The Respondent's original drafted proposed conditional Order of dismissal was presented to, and signed by the Honorable Judge Roger Couch on December 16, 2013. Thus giving Appellant 20 days to present sufficient reasons as to why his Application should not be dismissed.
- (3) That the Appellant did timely file his Response to the Conditional Order of dismissal Dated December 30, 2013. But "No Final Ruling" on the matter was ever done by Judge Couch.
- (4) Therefore the Respondent drafted and prepared a another proposed "final Order" of dismissal. But this time submitted it to a different Judge (The Honorable J. Derham Cole). For his signature, on December 19, 2013.
- (5) That in Response to The Respondent's preparing and submitting another proposed Order to a different Judge, (Judge Cole). The Applicant submitted a timely reply titled "Opposition AND Reply To The Respondent prepar-

...ing a proposed Final Order." "AND ~~a~~ "Notice of Motion AND Motion For (Judge Cole) To Recus himself For Good cause shown." both. Dated September 4, 2014. (Note) The Motion for Recusal of Judge Cole, was based upon the fact, that Judge Cole was improperly sitting IN an Tribunal State over another Judge's (The Honorable Roger J. Couch) proposed "Conditional Order of Dismissal." AND second, that Judge Cole, had previously presided over the Appellant initial PCR. hearing. Thus a Conflict.

- (6). That without a ruling on the Appellants Recusal ... Motion. The Honorable Judge J. Durham Cole, some 50. fifty days later on November 24, 2014, still went and signed the proposed "Final Order" dismissing the Appellants Application with prejudice.
- (7). In Response the Appellant Timely filed and served a 59(e) 52(b) SCRP Motion, Seeking to have Judge, rule upon the Recusal Motion and to have him re-consider signing the Final Order of Dismissal.
- (8) ON March 5, 2015. Judge Cole, denied the Appellants 59(e) 52(b). motions without issuing a ruling on the matters therein.
Thus the Appellant Timely file his Notice of Appeal.

Prof. Brennan
#178051

In The instant matter. The Applicant Filed a Second Post Conviction Relief Application under S.C. Code §17-27-45 (b), under The UNITED STATES Supreme Court holdings in MARTINEZ V. RYAN 132 S.C.T. 1109 (2013). Raising The claim of INEFFECTIVE ASSISTANCE OF PCR. COUNSEL.

Here the claim was the result of PCR Counsel (Rodney W. Richey) gross mishandling, prejudicial representation of The Appellant, on his initial PCR Application and hearing. Here PCR. Counsel's conduct wholly denied the Appellant, his due process Right to a fair and Just PCR. hearing of his "initial collateral review" of his claims of INEFFECTIVE ASSISTANCE OF Trial Counsel AND Appellate Counsel, See, within the Record Appellants allegations raised Against PCR Counsel Rodney Richey.

Brief of Issues on Appeal

Issue No. 1

Failure of The Honorable Judge J. Derham Cole To Recuse himself From the Appellant current PCR Matter. Upon Good Cause shown, Thus a Conflict.

This Appellant, Asserts, That The Honorable Judge J. Derham Cole's failure to "Recuse" himself from the Appellant's current PCR. matter; Upon the Appellant's Motion, with "Good Cause shown" which was filed and served on Judge Cole, on September 4, 2014. which was about 50. days prior to his signing of The Respondent's proposed Final Order of Dismissal, on November 24, 2014, was Reversible error, For it violates the code of Judicial Conduct, and Judicial ethics. For him to not disqualify himself,

Here, The Appellant Filed such motion, Requesting That Judge Cole Recuse himself, and therefore "not" sign the proposed Final Order of Dismissal, almost two months prior to his signing of The Final Order of Dismissal anyway.

Judge Cole never issued any ruling on the Motion to Recuse himself, though he had ample time to do so prior to his signing of the said Final Order. Here incorporated within this Appeal as Exhibit #(1) is a True and Correct Copy of The herein Reference Motion of Recusal, For "Good Cause shown" therein. See also incorporated herein as Exhibit #(2), which was file and served conjunctively with Recusal Motion, The "Applicant's Opposition AND Reply To The STATE preparing a proposed Final Order"

Here The Appellant also gave supporting cause, For Judge Cole To Recuse himself from

The matter, AND does hereby AMEND These grounds as set out in Exhibits (1) AND (2), within the basis of This Appeal. For here The Appellant complains. That Judge Cole, had previously presided over The Appellants prior initial PCR hearing case no 2009-CP-11-0555, which formed the basis of several issues complained of in the current PCR matter, AND Thus the Appellant believes there is a potential or actual conflict, AND or ~~a~~ question of Judge Cole ability to be impartial of the matter. Further the Appellant asserts That Judge Cole, is improperly sitting in on "Tribunal STATE" over another Judges, (The Honorable Roger J. Couch). proposed "Conditional Order of Dismissal" of The Appellants current PCR matter. When Judge Couch has "Not" issued ANY Order Recussing himself, or an Order Transferring The matter to a Nother Judge. Thus, The Honorable Judge J. Derham Cole failure To disqualify himself AND not signe The Respondents proposed Final Order, dismissing the Appellants current application, is reversible error and Thus Applicants application should be granted and a hearing with the appointment of Counsel granted. See Floyd v. STATE 400, S.E.2d 195, (1991).

* Further Judge Cole should have Recused himself, because * he would have been a potential witness For the Appellant on the issues raised in the current application, Plus it ave the Look of an improper relationship between himself AND The Respondent.

ISSUE NO. 2.

Error, OF The Honorable Judge J. Derham Cole For improperly sitting in an "Tribunal STATE" over another Judges. (The Honorable Judge Roger L. Couch). "proposed Conditional Order of Dismissal."

Here The Appellant asserts, That the Honorable Judge Cole, knowingly and improperly sat in an "Tribunal STATE" over The Honorable Judge Roger L. Couch's, proposed "Conditional Order of Dismissal."

The proposed Conditional Order of Dismissal was submitted too AND signed by Judge Couch, on _____ granting the Appellant, 20 days, to show sufficient reasons as to why his application should not be Dismissed. The Appellant, timely submitted his Response, as the Record clearly reflects, But The Honorable Judge, Couch, never issued a final Ruling either granting or denying the Conditional Order of Dismissal.

Here The Respondents drafted A "Final Order of Dismissal" AND submitted it not to Judge Couch, But instead to The Honorable Judge, J. Derham Cole, For his signature.

Judge Cole, improperly signed The Final Order, knowing That the matter was under the Judicial discretion -

of The Honorable Judge Couch, and despite the Appellants opposition. AND Request That Judge Cole Recuse himself from the matter as is shown in Exhibits (1) and (2), herein. AND also with full knowledge, That NO Orders from Judge Couch, was issued either recusing himself or Transferring the matter to a different Judge, went ahead and signed the Final Order ANYWAY.

This Appellant asserts, That Judge Cole's conduct was improper and violate Judicial ethics as well as common sense. That he had no Judicial authority over another Judges Conditional Order, without first having proper "Due process" to transfer the matter to himself; Thus, based upon the above said the Final Order dismissing the Appellants, Application with prejudice, should be reversed with prejudice, For Judge Cole lack proper Judicial discretion over the matter. and he violated Due process.

ISSUE NO. 3,

That The Respondents committed "ethical misconduct" by intentional and improperly "Judge shopping" to obtain another Judges signed signature on their proposed "Final Order of Dismissal," as a tactical advantage to obtain a Dismissal of The Appellants Application,

Here The Respondent, having full knowledge, which it elected to ignore, That the matters concerning the Appellants, current PCR. Application, was under the Judicial Authority and discretion of the Honorable Judge, Roger L. Couch, whom did so signed the proposed Conditional Order of Dismissal,

Did so elect to improperly draft a proposed Final Order of Dismissal and thus did Judge show for a different favorable Judge, that being the Honorable, J. Derham Cole. To submit the said Final Order and obtain his signature on the said Order. Thus dismissing the Appellants, PCR. Application.

Here The Respondents improperly failed to move with a Motion, to have The Honorable Judge Couch issue a ruling on the Appellants Response, to The proposed Conditional Order of Dismissal, either granting or dismissing his Application, But instead moved for a tactical advantage, By intentionally drafting and submitted a New Final Order of Dismissal, to Judge, J. Derham Cole, whom the Respondents knew did not have proper "Judicial discretion over the matter" and whom they knew had previously presided over and Dismissed the Appellants initial Application,

Further The Respondents was aware, that some issues raised in the current Application was a direct result of issues raised in the initial Application. In All, The Action of the Respondent was

very improper and totally unfair. Thus the Appellant is entitled to have his case reversed with "prejudice" and a hearing scheduled with Counsel appointed.

Issue NO. 4.

The Court erred by improperly using the South Carolina Supreme Court holdings in Kelly v. STATE 745 S.E.2d 377 (2013). Retroactively as the bases to dismiss the Appellants Application under S.C. Code § 17-27-70(b) "Sufficient Reason" Criteria. When the Applicant timely filed his current Application under S.C. Code § 17-27-45(b) based upon the holdings in Martinez v. Ryan 132 S.Ct. 1309 (2012). earlier before "Kelly" was decided. And under such filing he did not have to meet the "Sufficient Reason" criteria of § 17-27-70, thus the Court erred. Because at the time, a claim of "Ineffective Assistance of PCR Counsel" was contrabated by Washington v. STATE 478 S.E.2d 833 (S.C. 1996).

Here not relinquishing any other issues on appeal. The Appellant asserts that the Court committed reversible error. By relying on the South Carolina Supreme Court holdings in Kelly v. STATE, which was decided in 2013. And retroactively applying it to this Appellants current Application, which was filed on March 15, 2013 under S.C. Code § 17-27-45(b) based upon the . . .

News holding by The United State Supreme Court in the case of Martinez v. Ryan. 132. S.Ct. 1309. 2012.

Here. The Court improperly used Kelly v. State. Retraactively as a means to negate the appellants filing of his Application under S.C. code §17-27-45 (b). And used the "Sufficient Reason". Criteria as set out under S.C. code §17-27-90. to improperly dismiss the Application.

First, This Appellant asserts. That At The Time That he filed his Application on his claim of Ineffective Assistance of PCR Counsel. Washington v. State 498 S.E.2d 833 (S.C. 1996) was the controlling Law on the issue, ~~not~~ But as clearly seen here the Court did "No" determination on the merits of the claim. (Note) The Final Order of Dismissal was drafted by The Respondents. Not The Court. And was improperly submitted too and signed by The Honorable Judge. J. Derham Cole. See Issue's (2) and (3). herein,

Second. The "Sufficient Reason" standard as pursuant to S.C. code §17-27-90. should not have been used by the Court as a determination factor. ~~For~~ To dismiss the Appellants Application. For he was exempt from having to overcome such burden by virtue that he filed his Application under the South Carolina Post Conviction procedure Act of Code §17-27-45 (b). Based upon numerous Due process violations committed by his former PCR Counsel, during and after his initial PCR hearing which Robbed him of a fair and proper hearing of his claims. Resulting in a fundamentally unfair PCR proceedings. Simply put, the Appellants Application as

It was filed automatically over came any Successive Application / Statute of Limitation, violations. And exempt him from having to present "Sufficient Reasons" to overcome such violations.

Third, The Court improperly applied The Holdings in Kelly v. STATE 745 S.E. 2d 377. Retroactively" against the Appellant. When at the Time of his filing of the current Application, "Kelly" had not been decided AND Washington v. STATE 478 S.E. 2d 833 (S.C. 1996) which is recognized by The (4th Cir) Court of Appeal In Ivey v. Catoe 36 Fed Appx 718 4th Cir (2002) at 10. Was the controlling Law, on a claim of Ineffective Assistants of PCR. Counsel, raised in a successive PCR. Application.

Conclusion, base upon The above said The Final Order of Dismissal should be Reversed and hearing held.

ISSUE NO. 5

The Court erred in dismissing The Appellants Application under S.C. Code §17-27-90. "Sufficient Reason" Standard. When §17-27-90. Was Not applicable, to The issues raised in The Application. For The Appellant neither raised or ar ued For "any grounds for Relief" of his Convict and Sentence. Which he could have raised in his initial Application. But simply raised The prejudicial inadequate Representation of his Former State appointed PCR. Counsel in his initial PCR. matter. Which denied him his Right To a full and Fair PCR. hearing on his claims of -

Ineffective Assistants of Trial and Appellate Counsel.

Here clearly as The Record of This matter on Appeal before This Court, reflects. The Appellant in his current Application, Raised NO NEW grounds for relief of his conviction and sentence. Thus The Court committed Reversible error, applying an dismissing The Appellants Application under The Sufficient Reason standard as pursuant to S.C. Code § 17-27-70. (b). Here such requirements should not have been applied To The Appellant, given The Type of issue he raised in his current Application. Further The issue raised could not have been raised in his initial Application. For The issue of PCR. Counsel's inadequate prejudicial representation only materialized during and after his initial PCR. hearing, and substantially effected not only his PCR hearing of his claims. But also his issues and Record on Federal Habeas Corpus Review

ISSUE NO. 6.

Conflict of interest because The Court failed To draft its own proposed orders, including The Final Order of Dismissal. But allowed and Relied Completely on

The Respondent own "self serving" proposed order's, despite The Appellants earlier objection in which he informed The Court, That Not only were The Respondents the adversary in the matter. But they also were the prosecutor's over his case and Trial. Cutler v. Sullivan 466. U.S. 335. (1984), Holloway v. Ark 435. U.S. 475. (1978).

The Court erred in allowing The Respondents to draft and submit proposed order's, in which the Court did place its signature, when The Court should drafted its own proposed order's especially in light of The fact That the Court knew The Respondent's were the Appellants adversary in the matter and had a interest in seeing the Appellant Application dismissed. Thus any drafted version of a proposed order, would only be self serving to The Respondent.

Further The Appellant Timely raised his objection to The Respondent's drafting proposed orders for the Court and also informed the Court That the Respondents were also the prosecutor's in his Trial, See. ~~Defen~~ Defense No. (2). which The Appellant raised in his Pro Se, Response To The Conditional Order of dismissal. on Pg. 5. . . See also incorporated herein as Exhibit No. (2) which is the Applicants second opposition to The Respondents drafting another proposed order for The Court.

Clearly these proposed orders drafted by the Respondent were improper, due to the interest they had in the...

matter. AND second it improperly showed an actual or somewhat a suspicious improper relationship between the Court and Respondents. * For it was the Respondents themselves who improperly "Judge shopped" for a different Judge. (The Honorable J. Derham, Cole) To assist them in dismissing the Appellant, Application.

This constitutes an actual or potential conflict of interest. And The Appellant is entitled to a reversal with prejudice. of the dismissal of his Application.

ISSUE NO 7.

The Court erred in not granting The Applicant an evidentiary hearing on the merits of his claim that his former PCR. Counsel in violation of Rule 71.1. SCRCP.. Rendered Representation so inadequate AND prejudicial To The Appellant as described in his Application. That it not only denied him his Due process Rights under state and Federal Constitutional Law. To a fundamentally full and fair hearing of his claims in STATE Court. But it also further prejudiced him on his Federal Habeas Corpus Review. For numerous claims were defaulted, due to PCR. Counsel's failure to raise them or timely file a 59(e) Motion. to get them ruled upon. And whair PCR. Counsel's failure to properly call witnesses to the PCR, hearing or obtain critical Discovery . . .

evidence even after The PCR Court allowed the Record of the proceedings to remain open for 2 months so that PCR Counsel could obtain and present the evidence before the Court, it left the factual Record incomplete. And The Record as a whole undeveloped, especially on his claims of "ineffective assistance of both Trial Counsel and Appellate Counsel." which was Appellant initial attack of such claims. See Evitt v. Lucy, 469 U.S. 387. (1985)

Clearly The Appellant believes he would have potentially obtain Relief in STATE Court if not for his PCR Counsel's inadequate representation, for he was entitled too But denied a full and fair collateral hearing see Townsend v. Sain 372 U.S. 293., Further a hearing of The matter should have been granted in the interest of Justice and Fairness. For The allegations raise in The Application are "supposed to be assumed as True." by The Court. Pelzer v. STATE 662 S.E.2d 618. (S.C. 2008).

Here clearly The Courts Order of Dismissal should be reversed with prejudice and a hearing with ~~Counsel~~ Counsel Appointed Granted.

Dated May 12, 2015

C.C. To. Suzanne White, Esquire
Assistant Attorney General.
(Respondent).

Respectfully Submitted
S/ Ricky Brennan
Ricky Brennan #179051
(Appellant).

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Pelzer S.C. 29669.

RECEIVED
MAY 20 2015
SC SUPREME COURT

To The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court.

Re. Ricky Brannon v. STATE of South Carolina.
Appellate case No. 2015-000651
Lower Court case No. 2013-CP-11-181

In re, Filing pro se Appeal Brief.

Dear Mr. Shearouse,

Sir please find inclosed herein The following documents,

- (1) The undersigned "pro se Appeal Brief", To The South Carolina Supreme Court.
- (2) Including inside both Lower Court orders on Appeal.
- (3) The Certificate of Service on The Respondents
- (4) AND (2) Exhibits. Marked Exhibit (1) AND Exhibit (2).

Sir, please file the above said "Appeal". And i respectfully
Thank you for your cooperation in this matter

Dated May 12, 2015

Respectfully
S / Ricky Brannon
Ricky Brannon #179051

* Mr. Shearouse could you please *

Forward a copy of this Appeal
To The Respondents. because at "
The current moment i am being denied" copies by The Dept of Corr. /
OR have The Court grant me a "second extention" to write copy. (RB)

Certificate of Service.

Please take notice, That the undersigned do hereby certify, that he has served a True and correct copy of The herein attached Appeal AND brief on the Respondents At, Suzanne White, Assistant Attorney General Post office box 11549, Columbia S.C. 29211.

By placing same in an envelope, properly addressed, with U.S. postage pre-paid, sealed and deposited in the U.S. mail, at The Perry Corr. INST. mail Room on This 12th day of May 2015

"Original" mailed To The
Honorable Daniel E. Shearouse,
Clerk of The South Carolina
Supreme Court,

Respectfully

S / Ricky Brannon ✓
Ricky Brannon #179051
Perry Corr. INST.
430. Oaklawn Rd
Pelzer S.C. 29669

Sworn before me This 8th day
of May 2015

Nancy C. Murchant
Notary Public for South Carolina

1-23-2023
my commission expires.

RECEIVED

MAY 20 2015

SC SUPREME COURT

Ricky Brennan #179051
Perry Corr. INST. Q2A-207
430. Ocklawaha Rd.
Pelzer SC 29969

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court,
Post Office Box 11330,
Columbia South Carolina 29211.

RECORDED

MAY 14 2015

P.C.I. MAILROOM