



2015 AUG 3 AM 11 04

CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 SOUTH CAROLINA ) 2015-CP-39-0172  
 COUNTY OF PICKENS )  
 )  
 Larry Norman Gambrell, )  
 S.C.D.C. No. 209770, )  
 )  
 Applicant, )  
 ) **CONDITIONAL ORDER OF DISMISSAL**  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 5, 2015. 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 30 years for first-degree CSC, 30 years for assault with intent to commit first-degree CSC, 10 years for each

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count of kidnapping, 10 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.

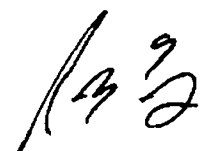
In an "Amendment to Application for Post-Conviction Relief" filed July 12, 1996, the Applicant made the following allegations:

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.

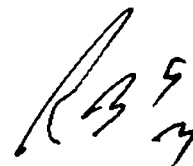
The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 12, 2003, the Court of Appeals dismissed the appeal because it was not timely filed.

### **2014-CP-39-0063**

The Applicant filed a PCR application on January 15, 2014 (2014-CP-39-0063). The Applicant raised the following issue:

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 made 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 made the following allegation:

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

The Honorable Letitia H. Verdin issued a conditional order dismissing the case that was filed July 10, 2014. Though the Applicant filed a response to the conditional order, Judge Verdin issued a final order of dismissal on October 1, 2014.

The Applicant filed a timely notice of appeal. The South Carolina Supreme Court required the Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated December 30, 2014, the Supreme Court found the Applicant failed to meet his burden in this regard. The remittitur was issued January 15, 2015.

## II.

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

1. Denial of a fair trial "due to the intentional concealment of facts by an officer of the court."
  - a. "During the sentencing phase the prosecutor intentionally omitted prior conviction in which is directly connected to juror misconduct."
2. Denial of a fair trial "by an impartial and objective jury consisting of twelve jurors."
  - a. "When trial court instructed prospective jurors during voir dire to stand up regarding prior legal issues, juror who had applicant arrested and convicted for grand larceny did not stand."
  - b. "Juror who was in direct contempt of court was impaneled and

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participated through all phases of trial was prejudicial and unreasonable.”

3. Denial of effective assistance of counsel at the first PCR hearing.
  - a. “Counsel was denied time to investigate, develop, and present all available, relevant and admissible evidence.”
  - b. “Counsel was woefully unfamiliar with case requested time to investigate missing court documents was ignored by PCR judge.”

### III.

This Court finds this matter should be summarily dismissed because the Applicant has 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 as follows:

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 the Supreme Court denied the subsequent appeal on October 5, 1995. This application was filed on February 5, 2015, which was several 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

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successive to the previous applications 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 PCR applications, the application is dismissed.

V.

This Court finds the Applicant’s contention that he received ineffective assistance of counsel on his prior PCR application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not

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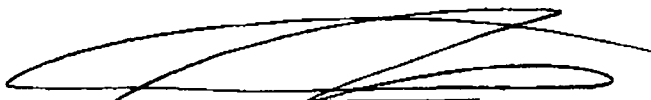
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PICKENS COUNTY  
SOUTH CAROLINA

extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

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 30 day of JULY, 2015.



Robin B. Stilwell  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenwood South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS )

2015 AUG 3 AM 11 04 )

Larry Norman Gambrell, 209770 )

Plaintiff )

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA )

CASE NO.

2015-CP-39-0172

v.

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

State Of South Carolina

Defendant.

*✓ Mailed AB ✓ emailed*

Plaintiff's Attorney: Larry Norman Gambrell, 209770, Bar No. Address: Lieber Cl PO Box 205 Ridgville SC 29472 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Sadag, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>Karen C. Ratigan</i> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 28, 2015 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____ Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	



State of South Carolina  
The Circuit Court of the Thirteenth Judicial Circuit

2015 AUG 3 AM 11 04

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

Robin B. Stilwell  
Judge

Greenville County Courthouse  
305 East North Street, Suite 315  
Greenville, SC 29601-2113  
Phone: (864) 467-8406  
Fax: (864) 235-3625  
rstilwellj@sccourts.org

July 31, 2015

The Honorable Pat Welborn  
Pickens County Clerk of Court  
Post Office Box 215  
Pickens, SC 29671

RE: Larry Norman Gambrell v. State  
Willie Jerome Lopez v. State

Dear Mr. Welborn:

Enclosed herewith please find two Orders which have been executed by Judge Stilwell in connection with the above-referenced matters. The Judge has asked me to send them to you for filing and distribution to the interested parties. Please let me know if you should need anything else regarding these matters.

Thank you very much for your assistance.

With kindest regards,

A handwritten signature in cursive script, appearing to read "Carole O. Ring".

CAROLE O. RING  
Secretary to the Honorable Robin B. Stilwell

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Enclosures