

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Robin B. Stilwell

RECEIVED

NOV 04 2015

Appellate Case # NO. 2015-002139

S.C. SUPREME COURT

The State
Larry N. Gambrell

✓

Respondent,
Appellant.

PROOF OF SERVICE

I certify that I have served the Explanation to Rule 243(c) on the Attorney General and Clerk of Court in Pickens County also Clerk of Court for the South Carolina Supreme Court by depositing a copy of it
(1)

in the United States Mail on Oct. 28, 2015
from Lieber C.I., P.O. Box #205, Ridgeville S.C. —
29472 to:

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box # 11330
Columbia, S.C. 29211

Clerk of Court
Pickens County
P.O. Box # 215
Pickens, S.C. 29671

Office of the Attorney General
Alan Wilson
P.O. Box # 11549
Columbia, S.C. 29211

Oct. 28, 2015

Larry N. Gambrell #209770
Lieber C.I. Stono-B-14
P.O. Box # 205
Ridgeville, S.C. 29472
x Larry Gambrell
DATE: Oct. 28, 2015

(2)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Larry N. Gambrell, Appellant

v.

State of South Carolina, Respondent.

Appellate Case No.* 2015-002139

RECEIVED

NOV 04 2015

S.C. SUPREME COURT

Explanation Required Rule 243(c)

Appeal from Pickens County
Robin B. Stilwell, PCR Judge

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the following is true and correct.

*Larry Gambrell

DATE: Oct 28, 2015

The Appellants PCR Case # 2015-CP-39-172 was summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

The Appellant states that this determination is improper, and upon proof, will show this court an arguable basis

(1)

for asserting that the determination by the lower court was both unreasonable and improper.

On the facts.

On Feb. 5. 2015, Appellant filed his third PCR labeled Case No. # 2015-CP-39-172 and in conjunction with this pleading the "Applicant respectfully requests this court to grant leave to amend PCR application according to additional information which is revealed through discovery." See (Exhibit A, attachment pg. #4).

On Aug. 6. 2015, Appellant received from an outside source, a portion of his records, while investigating the actual dates of appointed counsel. (See Exhibit B, cover)

The Appellant found a court filed copy from Oliver A. Nealy, Pickens County Clerk of Court to Mr. Matthew McGuire, Assistant Attorney General regarding Appellants PCR appointed counsel was in fact the prosecuting attorney at his trial.

(e.)

The same document shows that Appellants first appointed trial counsel Cheryl Aaron secretly quit the case and Appellant was subsequently appointed Bill Godfrey. (See Exhibit B, pg.#2)

This document was filed nine (9) months after Cheryl Aaron was appointed to represent a former client she helped prosecute. (See Exhibit B, pg.#1)

On Aug. 3. 2015 Appellant was given (20) twenty days to show why the Conditional Order of Dismissal should not become final. (See Exhibit C, pg.#7)

On Aug. 13. 2015 Appellant timely responded to Conditional Order of Dismissal and in it showed the court sufficient evidence not to dismiss this matter in its entirety. (See Exhibit D)

Appellant states for the record that he was never notified his trial attorney quit her representation and then began to prosecute his case. (See Exhibit B, pg.#5)

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On the Law

The Appellant contends that he has shown evidence sufficient to pass the Clark v. State five prong test for a new trial based on after discovered evidence. (See Clark v. State, 315 S.C. 385, Id at 387-88, 434 S.E. 2d 266, Id at 267, (1993)).

The Appellant contends "that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence". See S.C Code Ann § 17-27-45 (c) (2014). In conjunction with this pleading he, in fact, requested the PCR court to grant leave to amend additional information which was revealed through discovery. The after discovered evidence will defeat the time bar and successiveness.

See Jordan v. State, 406 S.C. 443, 752 S.E. 2d 538 S.C. (2013). (holding In order to establish a violation of the Sixth Amendment, a defendant must show that an

actual conflict of interest adversely affected his lawyers performance.)

Appellant's first PCR counsel basically sat unnoticed for nearly (13) thirteen months before identified as prosecuting attorney leaving newly appointed counsel less than (60) days to investigate case.

In Jordan supra (that a criminal defendant is entitled to reversal of his conviction whenever he makes "some showing of a possible conflict of interest or prejudice however remote....") (See Exhibit A, pg #3), attachment.

See Chewing v Ford Motor Company, 354 S.C 72, 579 S.E. 2d 605 (2003) (holding court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations. Id at 80.

Appellant's first trial counsel secretly quit and went to work as a prosecuting attorney against her former client. ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.") Chewing supra. Id at 83.

Appellant contends that after discovered evidence supports fraud upon the court which is in conjunction with pleading. (See Exhibit A, pg #1.) attachment.

See McCoy v. State, 401 S.C 363, 737 S.E 2d 623 (2013). (holding "When considering the States motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.) Id. at 369.

Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.

Appellant contends his PCR application was basically dismissed (rubber stamped) without any [emphasis] consideration into the facts of this case.

In conclusion

The Appellant in this case has been set adrift in a sea of misconduct, where trial counsel turned prosecutor, in which prejudice is presumed. The same counsel was appointed in his PCR. This case is in need of a hearing in the interest of justice.

Therefore, Appellant is requesting this court grant him relief in this matter.

x Larry Gambrell

DATE: Oct 28, 15