

STATE of SOUTH CAROLINA
COUNTY of BEAUFORT

JOHN DYKEMAN # 205443
APPLICANT

v.
STATE of SOUTH CAROLINA
RESPONDENT

2015 SEP 21 PM 4:26
IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
2015-CP-07-1565
SOUTH CAROLINA COURT S.C.

NOTICE OF MOTION AND MOTION
IN OPPOSITION TO THE ATTORNEY
GENERAL'S MOTION FOR A CONDITIONAL
ORDER OF DISMISSAL

THIS MATTER IS BEFORE THE COURT BY WAY OF AN APPLICATION FOR POST-CONVICTION RELIEF (PCR) FILED BY JOHN DYKEMAN (APPLICANT) ON JUNE 19, 2015. APPLICANT IS MAKING A RETURN MOTION IN OPPOSITION TO THE STATE'S REQUEST FOR A CONDITIONAL ORDER OF DISMISSAL FILED AUGUST 24, 2015.

APPLICANT CONTENDS THAT THE RESPONDENT FAILED TO LEAD THE APPLICANT'S APPLICATION AND EXHIBITS IN THEIR ENTIRETY, HAD THEY DONE SO THEY WOULD HAVE FOUND MATERIAL FACTS WHICH MEETS THE GUIDELINES SET OUT IN THE S.C. CODE ANN § 17-27-45(C) AS WELL AS S.C. CODE ANN § 17-27-90(C)(5). APPLICANT CLEARLY MEETS THE STANDARDS IN BOTH SECTIONS AND SHOULD BE AFFORDED AN EVIDENTIARY HEARING.

APPLICANT HERE IN PROVIDES SPECIFIC REASONS, FACTUAL AND LEGAL, WHY THE APPLICATION SHOULD NOT BE DISMISSED.

MATERIAL FACTS.

ATTACHED HERE WITH AND INCORPORATED HERE IN ARE MATERIAL FACTS, LEGAL AUTHORITIES, AND EXHIBITS THAT WERE FILED IN THE BEAUFORT COUNTY CLERK OF COURT, COURT OF COMMON PLEAS, CASE NO. 2015-CP-07-1565 DATED JUNE 19, 2015.

D. OBJECTIONS TO SUCCESSIVENESS:

A). APPLICANT CAN SHOW WITH MATERIAL FACTS THAT HIS APPLICATION SHOULD NOT BE CONSTRUED AS SUCCESSIVE BASED IN PART BY AN ORDER RECEIVED FROM THE SOUTH CAROLINA SUPREME COURT. (SEE EXHIBIT 1A).

B). APPLICANT CAN SHOW PURSUANT TO MCCOY V. STATE, 737 SE 2d 623, 2013.

IN THE INSTANT CASE APPLICANT CAN SHOW MATERIAL FACTS WHICH MIRROR THOSE USED IN MCCOY. FOR THE SAME REASONS USED IN MCCOY, JUROR MISCONDUCT IS A SEPERATE BASIS FOR A NEW TRIAL. AS IN MCCOY, APPLICANT DISCOVERED THE ISSUE OF JUROR MISCONDUCT WELL AFTER HIS 1ST AND 2ND PCR'S WERE FILED. AS NOTED IN THE RECORD APPLICANT FIRST FILED HIS MOTION FOR JUROR MISCONDUCT IN THE WRONG COURT. (SEE EXHIBIT 1A). ALSO (SEE NOTICE OF MOTION FOR A HEARING WHERE JUROR'S IMPARTIALITY IS QUESTIONED AFTER DEFENDANTS TRIAL PURSUANT TO STATE V. BRYANT, 354 S.C. 390, 581 SE 2d 157 (2003). FILED DECEMBER 9, 2013.

C) APPLICANT HAS PRESENTED SEVERAL REASONS WHY HE COULD NOT HAVE SUFFICIENTLY RAISED THIS ISSUE IN HIS PREVIOUS PCR APPLICATIONS. (SEE PCR APPLICATION AND ATTACHMENTS CASE NO. 2015-CP-07-1565). ALSO (SEE AFFIDAVIT MARKED AS EXHIBIT G IN NOTICE OF MOTION AND MOTION FOR A HEARING WHERE JUROR'S IMPARTIALITY IS QUESTIONED) AFTER DEFENDANT'S TRIAL PURSUANT TO STATE VS. BRYANT, 354 S.C. 390, 581 SE 2d 157 (2003), THEREFORE, THIS COURT SHOULD NOT FIND THIS PRESENT APPLICATION AS BEING BARRED AS SUCCESSIVE.

2) OBJECTIONS AS TO STATUTE OF LIMITATIONS:

A). AS TO THE TIMELINESS ISSUE, THE ATTORNEY GENERAL MISCONSTRUE SECTION 17-27-45 (A) (2003) IN FINDING APPLICANT WAS REQUIRED TO FILE HIS CLAIM WITHIN ONE YEAR AFTER HIS TRIAL, RATHER THAN ONE YEAR AFTER THE REMITTAR WAS SENT FROM HIS DIRECT APPEAL. FURTHER, THE ATTORNEY GENERAL APPARENTLY OVERLOOKED THE DISCOVERY RULE IN SECTION 17-27-45 (C) WHICH ALLOWS ONE YEAR AFTER THE DISCOVERY OF "MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRE [] VACATION OF THE CONVICTION OR SENTENCE". APPLICANT HAS PROVIDED AN AFFIDAVIT (SEE EXHIBIT G INCLUDED IN HIS APPLICATION FOR PCR AS WELL AS HIS STATEMENT OF FACTS).

BASED ON THE HOLDING IN MCCOY, APPLICANT FALLS UNDER THE SAME GUIDELINES USED IN MCCOY. ACCORDING TO THE SOUTH CAROLINA SUPREME COURT IT WOULD BE AN ERROR TO SUMMARILY DISMISS APPLICANT'S CLAIM WITHOUT AN EVIDENTIARY HEARING. APPLICANT CLAIMS THAT HE IS ENTITLED TO THE BENEFIT

OF THE DISCOVERY RULE SINCE IT IS NOT CONCLUSIVELY REFUTED BY THE RECORD, (SEE MCCOY VS. STATE, 737 S.E.2d 623 (2013)).

3). SINCE FILING THE CURRENT PCR APPLICATION APPLICANT HAS SINCE RECEIVED ADDITIONAL "MATERIAL FACTS" WHICH HE IS INCLUDING IN THIS MOTION OF OPPOSITION TO THE ATTORNEY GENERAL'S CONDITIONAL ORDER OF DISMISSAL. (SEE EXHIBIT 1 B).

CONCLUSION

PURSUANT TO S.C. CODE ANN. § 17-27-45(C) WHICH STATES AS FOLLOWS:

IF THE APPLICANT CONTENDS THAT THERE IS EVIDENCE OF "MATERIAL FACTS" NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE.

PURSUANT TO S.C. CODE ANN. § 17-27-90 (1985) UNDER THIS STATUTE APPLICANT HAS SHOWN "SUFFICIENT REASONS" WHY THIS APPLICATION IS NOT SUCCESSIVE AND THE COURT SHOULD NOT DISMISS THIS APPLICATION WITHOUT AFFORDING THE APPLICANT AN EVIDENTIARY HEARING BASED ON ALL OF THE MATERIAL FACTS HE HAS PRESENTED TO THE COURT.

APPLICANT CONTENDS THAT THE "MATERIAL FACTS" HE HAS PRESENTED TO THE COURT ARE SUFFICIENT TO AFFORD HIM AN EVIDENTIARY HEARING.

BASED ON THE APPLICANT'S CONSTITUTIONAL RIGHTS UNDER THE 6TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION WHICH GUARANTEES HIM THE FUNDAMENTAL RIGHT TO A TRIAL BY FAIR AND IMPARTIAL JURORS.

9-14-15

John Dykeman 245943
JOHN DYKEMAN 245943

3
10/27
Wily
585

EXHIBIT C

BEAUFORT COUNTY SC - ROD
BK 01849 PG 0300
FILE NUM 2009078224
10/02/2003 10:00:41 AM
REC'D BY V GARVIN RCPT# 188174
RECORDING FEES 10.00
County Tax 349.75
State Tax 812.60
Transfer Tax 781.25
RECORDED
2003 Oct -10 03:11 PM
Sharon O. Bunn
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOWN ALL MEN BY THESE PRESENTS, THAT WE, RICHARD ALEX FELDMAN and ANNE E. FELDMAN, in the State aforesaid for and in consideration of the sum of Three Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$312,500.00), to us in hand paid at and before the sealing of these presents by JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN of 6 Sarah Court, Hilton Head Island, South Carolina 29926, in the State aforesaid for which the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN, as joint tenants, with rights of survivorship, and not as tenants in common their heirs and assigns, forever, in fee simple, the following described property, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, south Carolina, more particularly described as LOT NUMBER NINETY (90) SARA COURT, PARCEL JJ SUBDIVISION in HILTON HEAD PLANTATION; said property having dimensions, metes and bounds as shown on the plat thereof recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Plat Book 50 at Page 165.

DIST R510 - MAP 4 - SUBMAP C - PARCEL 591

ADD DMP Record 10/7/2003 03:33:04 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	004	00C	0591	0000	00

Said property is conveyed subject to all obligations, restrictions, limitations and covenants contained in the Amended and Restated Declaration of Covenants and Restrictions for Hilton Head Plantation as recorded in the Register of Deeds Office for Beaufort County, South Carolina in Deed Book 367 at Page 656 and the Amendments recorded in Deed Book 388 at Page 26, Deed Book 393 at Page 1421, Deed Book 477 at Page 18, Deed Book 477 at Page 929, Deed Book 484 at Page 1473, Deed Book 502 at Page 1903, and as may be further amended.

Said property further is conveyed subject to all obligations, restrictions, limitations, covenants, etc., contained in the Class "A" Covenants for Single Family Detached Areas of Hilton Head Plantation as recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Deed Book 211 at Page 1470, and the Amendments recorded in Deed Book 223 at Page 2054, Deed Book 224 at Page 1012, Deed Book 376 at Page 1437, Deed Book 451 at Page 759, re-recorded in Deed Book 475 at Page 1870, and as may be further amended.

This being the same property conveyed to the within Grantors by Deed of Gary M. Bruno and Maryann Bruno, as recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Records Book 1071 at Page 2319 on August 4, 1998.

THE within Deed was prepared in the law offices of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head Island, SC 29938.

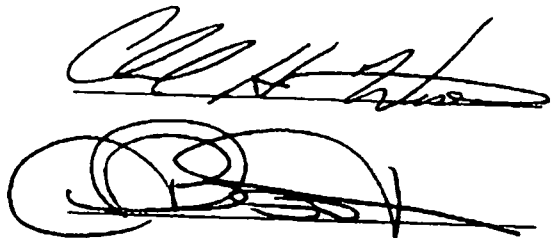
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

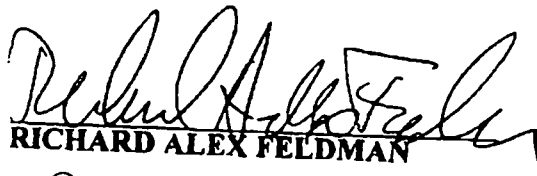
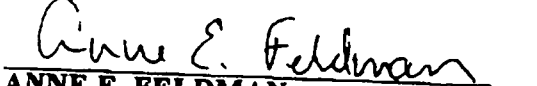
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN**, as joint tenants, with rights of survivorship, and not as tenants in common their heirs and assigns, forever, in fee simple.

AND we do hereby bind ourselves and our Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN**, their Heirs and Assigns, against ourselves and our heirs, and all persons whomsoever now and hereafter lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals, this 30 day of September in the year of our Lord Two Thousand Three in the Two Hundred and Twenty-Eighth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF




RICHARD ALEX FELDMAN

ANNE E. FELDMAN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Richard Alex Feldman and Anne E. Feldman personally appeared before me this 30 day of September, 2003, and acknowledged the due execution of the foregoing instrument.

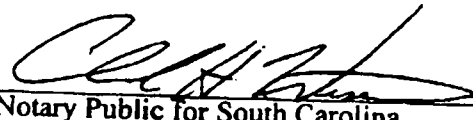

Notary Public for South Carolina
My Commission Expires: 12/28/02

EXHIBIT D

County: Beaufort
Date: 4-16-67

Case No: 04-65-07-834-836

VOIR DIRE

Judge: John Milling

Pl. / State: State

State/Pl's. Atty: Duffy Stone

Sean Thornton

Defendant: John Dykeman

Defense Atty: Gene Hood

Scott Lee

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
345	William Smoot	m	W				✓
226	Mikel Macey	F	W			✓	
158	Judgy Hartnett	F	W				✓
333	Wesley Siau	m	W			✓	
106	Charles Ellis	m	W		✓		
363	Dayle Thomas	F	W			✓	
34	Francis Booth	m	W				✓
52	Lyaane Campanero	F	W				✓
317	James Rothnie	m	W			✓	
302	Mary Riley	F	W			✓	
78	Henry Curtis	m	W				✓
344	Thomas Smoll	m	O				✓
292	James Rathaw	m	W				✓
373	Alan Judeau	m	W				✓
62	Michael Clark	m	W				✓
117	Ella Fields	F	B			✓	

* For the Court column, indicate who made the motion to strike the jurors "for cause."
C-Court, P-Plaintiff, D-Defense

County: Beaufort
 Date: 4-16-07

VOIR DIRE

Case No: 04-65-07-834-836 Judge: Milling
 Pl. / State: State State/Pl's Atty: Stone
 Defendant: John Dykeman Defense Atty: Thornton
Hood
Lee

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
21	Bruce Belisle	m	W			✓	
293	Stephanie Rathan	F	W				✓
213	John Lentz	m	W				✓
16	Wallace Barnes	m	W				✓
Alternates:							
207	Matthew Lawrence	m	W		✓		
86	Florence Davis	F	B	(first alternate)			✓
204	Debra Laurich	F	W	(second alternate)			✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
 C-Court, P-Plaintiff, D-Defense

Office of the Clerk of Court **EXHIBIT F**
 ROLL CALL LIST FOR PANEL - APR 16, 2007

WILEAGE JUROR #	STATUS	NAME	ADDRESS	RACE/SEX/DOB	OCCUPATION
291		Rashed, Hasan	90 WIMBEE CREEK RD SEA BROOK 29940	B M 4/2/1927	RETURNED
* 292		Rathan, James H	6 SARACT HILTON HEAD ISL 29926	W M 3/28/1942	RETIRED
* 293		Rathan, Stephanie J	6 SARACT HILTON HEAD ISL 29926	W F 10/31/1952	ADMIN ASSIST
294		Reed, Anne A	16 BEAR ISLAND RD HILTON HEAD ISL 29926	W F 6/13/1947	SERVED 2005
295		Reo, Rosa J	35 SAVANNAH TRL HILTON HEAD ISL 29926	W F 12/6/1940	AGE-EXCUSED
296		Resanowitch, Roxanne /	6 DOE DR BEAUFORT 29907	W F 3/13/1960	RETURNED
297		Reusch, Teresita D	10 STANLEY FARM RD BEAUFORT 29906	A F 12/22/1946	LOWES
298		Richards, William G JR	56 DOLPHIN HEAD DR UNIT 28 HILTON HEAD ISL 29926	W M 4/29/1960	EXCUSED
299		Richardson, Allen L	4 CHINA COCKLE WAY HILTON HEAD ISL 29926	W M 3/6/1941	AGE-EXCUSED
300		Rickenbach, Richard C	26 SHELDON LN HILTON HEAD ISL 29926	W M 4/16/1949	RETIRED
301	Transferred Out	Riedmayer, David W	207 ANCHORAGE DR BEAUFORT 29907	W M 8/16/1955	TRANS 6/18/07
302		Riley, Mary J	10 ADVENTURE GALLEY LN HILTON HEAD ISL 29926	W F 3/31/1960	ASSOC ARCHITE Not Good

04/16/2007
8:05:19AM

File: Rollcall.rpt

EXHIBIT 1

Jury selected in Dykeman murder trial

By LORI YOUNT

lyount@beaufortgazette.com

843-986-5531

A jury of nine men and three women, including a married couple, was selected Monday to decide whether John Dykeman Jr. murdered a brain-damaged and physically disabled man in May 2004.

Opening statements are scheduled to begin this morning.

Jury selection took more than five and a half hours as Circuit Court Judge John Milling asked the larger than usual panel of potential jurors a battery of questions, including relationships to all parties in the case and media exposure.



Dykeman

Please see TRIAL on 5A

EXHIBIT 2

- (b) NIA
(c) NIA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) JUROR MISCONDUCT (SEE ATTACHMENT)
(b) VIOLATION OF 6TH & 14TH AMENDMENTS US. CONST.
(c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS
(b) SEE ATTACHMENTS
(c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES, BUT NOT ON THIS ISSUE
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES, BUT NOT ON THIS ISSUE
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
(d) any other petitions, motions or applications in this or any other Court? YES, FILED IN WRONG COURT
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DIRECT APPEAL NOT ON THIS ISSUE
ii. PCR NOT ON THIS ISSUE
iii. WRIT OF CERT. NOT ON THIS ISSUE
iv. FEDERAL HABEAS NOT ON THIS ISSUE
- (b) the name and location of the Court in which each was filed:
- i. S.C. COURT OF APPEALS
ii. BEAUFORT COUNTY COURT OF COMMON PLEAS NOT ON THIS ISSUE
iii. S.C. SUPREME COURT. NOT ON THIS ISSUE