

STATE OF SOUTH CAROLINA RECEIVED

IN THE SUPREME COURT MAY 16 2016

S.C. SUPREME COURT

CERTIORARI TO BEAUFORT COUNTY  
CARMEN T. MULLEN, CHIEF ADMIN. JUDGE

STATE OF SOUTH CAROLINA . . . . . RESPONDENT  
V.

JOHN DYKEMAN #245443 . . . . . PETITIONER

APPELLANT CASE NO. 2015-CP-07-1565

PETITION FOR WRIT OF CERTIORARI

5-11-16  
DATE

John Dykeman 245443

JOHN DYKEMAN 245443

LIEBER CORR. INST

PO BOX 208 CA-59

RIDGEVILLE, 29472

## EXPLANATION

WHY THE LOWER COURTS DETERMINATION WAS IMPROPER.  
THE LOWER COURT MISCONSTRUED APPLICANTS P.C.R.  
APPLICATION AS BEING NEWLY-DISCOVERED EVIDENCE WHEN  
IN FACT IT WAS FILED UNDER THE DISCOVERY RULE S.C. CODE  
ANN. § 17-27-45(C) FILING PROCEDURES FOR POSTCONVICTION  
RELIEF.

NO WHERE IN APPLICANTS P.C.R. OR SUPPORTING DOCUMENTATION DID HE MAKE A CLAIM OF NEWLY-DISCOVERED EVIDENCE. HIS CLAIM IS BASED SOLELY ON THE DISCOVERY RULE § 17-27-45(C) WHICH STATES: 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.

FURTHER, APPLICANT CONTENDS THAT IT IS APPARENT THAT THE PCR JUDGE OVERLOOKED THE DISCOVERY RULE IN SECTION § 17-27-45(c).

APPLICANT CONTENDS THAT, HAD THE LOWER COURT REVIEWED HIS PCR UNDER THE DISCOVERY RULE SC. CODE ANN. § 17-27-45(c) IT WOULD HAVE NOTED THAT THIS CASE IS LIKE THAT OF MCCOY V. STATE, 737 S.E.2d 623, 628 (2013). IN THAT (" [E]VALUATING THE MERITS OF A JUROR MISCONDUCT CLAIM IS A FACT-INTENSIVE INQUIRY, WHICH IS MOST APPROPRIATELY CONDUCTED AFTER A HEARING."); STATE V. BRYANT, 581 S.E.2d 157, 160 (2003) (" IN CASES WHERE A JUROR'S IMPARTIALITY IS QUESTIONED AFTER TRIAL, IT IS APPROPRIATE TO CONDUCT A HEARING IN WHICH THE DEFENDANT HAS THE OPPORTUNITY TO PROVE ACTUAL JUROR BIAS").

WHEN CONSIDERING THE STATE'S 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 LEAMON VS STATE 611 S.E.2d

494, 495 (2005) (CITING SC. CODE ANN. § 17-27-80) (P.C.R. ACTIONS ARE GOVERNED BY USUAL RULES OF CIVIL PROCEDURES); WILSON V. STATE, 559 SE2d 581 (2002); AL-SHABAZZ VS STATE, 537 SE2d 742, 747 (2000).

WHERE AN APPLICANT ALLEGES FACTS THAT WOULD ESTABLISH AN EXCEPTION TO EITHER THE STATUTE OF LIMITATIONS OR THE PROHIBITION AGAINST SUCCESSIVE P.C.R. APPLICATIONS AND THOSE FACTS ARE NOT CONCLUSIVELY REFUTED BY THE RECORD BEFORE THE P.C.R. COURT, A QUESTION OF FACT IS RAISED WHICH CAN ONLY BE RESOLVED BY A HEARING. SEE MCCOY VS. STATE, 737 SE2d 623 (2013), CITING DELANEY VS. STATE, 238 SE2d 679 (1977).

ATTACHED TO THIS PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED HEREIN BY REFERENCE ARE THE EXHIBITS PETITIONER SUBMITTED WITH HIS APPLICATION FOR POST-CONVICTION RELIEF. EXHIBIT (F) TITLED OFFICE OF THE CLERK OF COURT ROLL CALL LIST FOR PANEL - APR. 16, 2007, WHICH CLEARLY SHOWS THAT JUROR #292 JAMES H. RATHAN AND JUROR #293 STEPHANIE S. RATHAN NOT ONLY SHARE THE SAME LAST NAME BUT ALSO RESIDE AT THE SAME ADDRESS.

EXHIBIT D TITLED VOIR DIRE SHOWS WHERE JUROR # 292 JAMES H. RATHAN WAS SELECTED AND ACCEPTED AS A JUROR AND WHERE JUROR # 293 STEPHANIE J. RATHAN WAS SELECTED AND ACCEPTED. IN PETITIONERS NOTICE OF MOTION AND MOTION IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION FOR A CONDITIONAL ORDER OF DISMISSAL. PETITIONER SUBMITTED ANOTHER EXHIBIT THAT CLEARLY SUPPORTED HIS CLAIM THAT THERE WAS IN FACT A MARRIED COUPLE SERVING ON THE JURY. THIS EXHIBIT COMES BY WAY OF A NEWS PAPER ARTICLE WRITTEN IN THE BEAUFORT GAZETTE.

FURTHER MORE, PETITIONER CAN SHOW BASED ON DOCUMENTATION FILED BY THE CLERK OF COURT TIME STAMPED 2015 SEPT-21, THAT THIS MATTER WAS BROUGHT BEFORE THE LOWER COURT BY WAY OF NOTICE OF MOTION AND MOTION IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION FOR A CONDITIONAL ORDER OF DISMISSAL. PURSUANT TO S.C. CODE ANN § 17-27-45(C) (DISCOVERY RULE) NOWHERE IN ANY DOCUMENTATION FILED BY PETITIONER DOES HE CLAIM RELIEF BASED ON NEWLY-DISCOVERED NIE AFTER DISCOVERED EVIDENCE. HIS CLAIM FOR AN EVIDENTIARY HEARING IS BASED ON THE DISCOVERY RULE § 17-27-45(C) SEE EXHIBIT A.

IN McCoy vs STATE, 737 S.E.2d 623 (2013). THIS COURT STATED "FOR THE BENEFIT OF THE BENCH AND BAR, WE ADDRESS THE FREQUENT BUT ERRONEOUS APPLICATION OF THE STANDARD NEWLY-DISCOVERED EVIDENCE FRAMEWORK IN SUMMARILY DISMISSING P.C.R. CLAIMS INVOLVING JUROR MISCONDUCT. WHERE A P.C.R. APPLICANT ALLEGES JUROR MISCONDUCT, WE REJECT APPLICATION OF THE CLARK-FIVE-PRONGED NEWLY-DISCOVERED EVIDENCE STANDARD, AS IT DOES NOT LEAD ITSELF TO PROPERLY EVALUATING A CLAIM OF JUROR MISCONDUCT. IN ADDITION, THE CLARK FRAMEWORK IS NOT CONDUCTIVE FOR DETERMINING WHETHER A P.C.R. APPLICANT IS ENTITLED TO A HEARING WHERE INTENTIONAL JUROR CONCEALMENT IS ALLEGED".

... HOWEVER, JUROR MISCONDUCT DISCOVERED POST-TRIAL IS NOT PROPERLY CONSIDERED "NEWLY-DISCOVERED EVIDENCE"; RATHER, IT IS A SEPERATE BASIS FOR A NEW TRIAL, SEE; EG. STATE VS SHEPPARD, 502 A.2d 116, 118 (Ct. 1986) (NOTING EVIDENCE OF JUROR MISCONDUCT IS NOT PROPERLY CONSIDERED NEWLY-DISCOVERED EVIDENCE BECAUSE IT HAS NO BEARING ON THE ISSUE OF INNOCENCE OR GUILT AND DOES NOT CONCERN THE SUBSTANCE OF THE STATE'S CASE OR AN ACCUSED'S DEFENSE)".

## STATEMENT OF FACTS

ON JULY 16, 2013, WHILE STANDING IN THE PILL LINE HERE AT HIEBER CORR. INST. I OVERHEARD A CONVERSATION DEALING WITH VARIOUS CASES AND CASELAW THAT WAS APPLIED. I ASKED SEVERAL QUESTIONS ABOUT JUROR MISCONDUCT AND WHAT TO LOOK FOR. SO I WENT BACK TO MY HOUSING UNIT AND STARTED GOING THROUGH MY CASE, WHERE I DISCOVERED TWO (2) JURORS WITH THE SAME LAST NAME AND LIVING AT THE SAME ADDRESS. I THEN STARTED LOOKING FOR ANY PAPER WORK THAT I COULD OBTAIN THAT WOULD IN FACT PROVE THAT THESE TWO (2) JURORS WERE IN FACT MARRIED AT THE TIME OF MY TRIAL AND THAT THESE SAME JURORS WITH HELD THIS INFO. NOT ONLY FROM THE COURT BUT FROM THE DEFENSE AS WELL. THESE JURORS HAD AMPLE TIME AND OPPORTUNITY TO DISCLOSE THIS FACT TO THE COURT AND REFUSED TO DO SO.

## DOCUMENTATION OF MATERIAL FACTS

THE FOLLOWING DOCUMENTATION VITS INCLUDED IN MY APPLICATION FOR P.C.R.:

EXHIBIT C. A COPY OF TITLE TO REAL ESTATE PURCHASED BY JUROR #292 JAMES H. RATHAN AND JUROR #293 STEPHANIE J. RATHAN, JOINTLY FOR THE SUM OF THREE HUNDRED TWELVE THOUSAN FIVE HUNDRED AND NO 100 DOLLARS (312,500.00) WHICH IS A MATTER OF PUBLIC RECORD FILED IN THE BEAUFORT COUNTY TAX OFFICE AND IS HEREBY KNOWN AS EXHIBIT C.

EXHIBIT D. A COPY OF THE VIOR DIRE FORM, WHICH WAS USED TO RECORD ALL SURORS SELECTED FOR TRIAL. SIGNED BY THE PRESIDING JUDGE JOHN M. MILLING, PROSECUTOR DUFFY STONE, SEAN THORTON, DEFENSE ATTORNEYS GENE G. HOOD, SCOTT LEE, AND DAPHNE HELMS THE COURT REPORTER. JUROR #292 JAMES H. RATHAN WAS THE 7<sup>TH</sup> JUROR SELECTED AND JUROR #293 STEPHANIE J. RATHAN WAS THE 10<sup>TH</sup> JUROR SELECTED THIS DOCUMENT IS HEREBY KNOWN AS EXHIBIT D.

EXHIBIT F. IS A COPY OF PAGE 25 OF 34 OF THE ROLL CALL LIST FOR PANEL - APR 16, 2007 OFFICE OF THE CLERK OF

OF COURT. HEREBY KNOWN AS EXHIBIT 2

EXHIBIT 1 IS A COPY OF A NEWS PAPER CLIPPING FROM THE FRONT PAGE OF THE BEAUFORT GAZETTE WHICH CLEARLY STATES THAT THE JURY SELECTED FOR DYKEMAN'S TRIAL CONTAINED A PANEL OF NINE (9) MEN AND THREE (3) WOMEN, INCLUDING A MARRIED COUPLE. HEREBY KNOWN AS EXHIBIT 1

EXHIBIT 2 A COPY OF PAGE 3 OF THE PCR APPLICATION STATING TO THE COURT THAT HIS CLAIM IS JUROR MISCONDUCT AND A VIOLATION OF 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS OF THE UNITED STATES CONSTITUTION.

## AUTHORITIES

COATS V STATE 575 SE2d 557 (2003)

[HOLDING PETITIONER'S CLAIM FELL WITHIN RULE PROVIDING WHEN THERE IS EVIDENCE OF MATERIAL FACT NOT PREVIOUSLY PRESENTED, P.C.R. APPLICATION WAS TO BE FILED WITHIN ONE YEAR AFTER ACTUAL DISCOVERY OF FACTS AND DID NOT HAVE TO BE FILED WITHIN ONE YEAR AFTER CONVICTION].

TILLEY V. STATE 511 SE2d 689 (1999)

[HOLDING INMATES FOURTH P.C.R. APPLICATION WAS NOT SUCCESSIVE]. STATING ["HE COULD NOT HAVE RAISED THIS CLAIM IN A PREVIOUS P.C.R. APPLICATION BECAUSE HE DID NOT KNOW OF THE CLAIM UNTIL OCTOBER 26, 1995"].

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## CONCLUSION

ATTACHED TO THIS MOTION FOR WRIT OF CERTIORARI AND INCORPORATED HEREIN BY REFERENCE AS MATERIAL DOCUMENTATION IN SUPPORT OF HIS CLAIM OF JUROR MIS CONDUCT.

FOR THE FORE GOING REASONS THIS ~~CASE~~ SHOULD BE REMANDED TO THE LOWER COURT FOR AN EVIDENTIARY HEARING TO BE HELD

PETITIONER ALLEGES THAT JUROR #292 AND JUROR #293'S CONCEALMENT DEPRIVED HIM OF INFORMATION MATERIAL TO HIS INTELLIGENT USE OF PEREMPTORY CHALLENGES, WHICH, IN TURN, DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO TRIAL BY IMPARTIAL JURY.

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