

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 16 2018

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Appellate Case No. Case No. 2015-000731
State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423 (2017)

Luzenski Allen Cottrell, Appellant.

v.

State of South Carolina, Respondent.

Petition for Stay of Execution and Assignment of Judge

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 544, 471 S.E.2d 140 (1996), Luzenski Allen Cottrell petitions this Court for a stay of execution and an order appointing a circuit court judge so that he may pursue post-conviction relief. This petition is based on the following grounds:

1) On December 20, 2017, this Court affirmed Mr. Cottrell's conviction for murder and sentence of death. *State v. Cottrell*, 421 S.C. 622, 809 S.E.2d 423 (2017). On February 16, 2018, the Court denied Mr. Cottrell's petition for rehearing.

2) By written order dated March 7, 2017, this Court issued a stay of execution so Mr. Cottrell could file a petition for writ of *certiorari* in the Supreme Court of the United States. On October 1, 2018, the Supreme Court denied Mr. Cottrell's petition for a writ of *certiorari*. *Cottrell v. South Carolina*, No. 17-9449, 2018 WL 3055952, at *1 (U.S.S.C. Oct. 1, 2018).

3) Mr. Cottrell desires to pursue state post-conviction relief. Contemporaneously with this petition, Mr. Cottrell is filing the attached application for post-conviction relief with the Clerk of Court for Horry County alleging the following ground for relief:

Mr. Cottrell's right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, was violated when his trial attorneys failed to exercise peremptory strikes to remove two jurors whose views, expressed during voir dire, prevented or substantially impaired their ability to consider constitutionally relevant mitigating evidence.

Mr. Cottrell, therefore, respectfully requests this Court issue a stay of execution and assign a circuit court judge to preside over his application for post-conviction relief and to appoint counsel to represent him and assist him with investigating grounds for relief and amending his application. Rule 71.1(d), SCRCP; S.C. Code Ann. § 17-27-90.

IT IS SO MOVED.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
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October 12, 2018.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Appellate Case No. Case No. 2015-000731
State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423 (2017)

Luzenski Allen Cottrell, Appellant.

v.

State of South Carolina, Respondent.

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

Melody J. Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

October 12, 2018
Greenwood, South Carolina

The Grose Law Firm, LLC

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E. Charles Grose, Jr.
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E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

October 12, 2018

The Honorable Renee Elvis
Clerk of Court, Horry County
P.O. Box 677
Conway, SC 29528-5080

Re: *Luzenski Allen Cottrell v. State of South Carolina*

Dear Ms. Elvis:

Enclosed for filing, please find the original and one copy of Mr. Cottrell's application for post-conviction relief, along with a certificate of service. Please file the original and return the copy to me in the enclosed envelope.

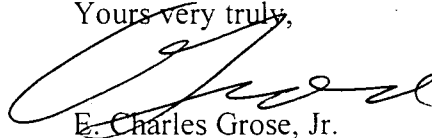
Because this action seeks post-conviction relief, I understand there is not a filing fee.

I also understand your office will forward a copy of this application to the Attorney General's Office pursuant to S.C. Code Ann. § 17-27-40; however, by copy of this letter to Ms. Brown, I am providing the Attorney General's Office with a curtesy copy.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Clerk, S. C. Supreme Court
Mr. Luzenski Allen Cottrell
Brie Russell, Esquire
Melody J. Brown, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Luzenski Allen Cottrell, SCDC# 6020,)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s))

26)

State of South Carolina,)

Defendant(s))

2018-CP - 26- _____

Submitted By: Charles Grose/Brie Russell
Address: 404 Main Street, Greenwood, SC 29646
900 Elmwood Ave, Suite 200, Columbia, SC 29201

SC Bar #: 66063/100985
Telephone #: 864-538-4466/803-227-5314
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Other: _____
E-mail: charles@groselawfirm.com
brie.russell@russelllaw.us

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-NI-_____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) | | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | |

Submitting Party Signature: 

Date: October 12, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
)	Case No. 2018-CP-26-_____
Luzenski Allen Cottrell, SCDC# 6020,)	
Applicant,)	Application for Post-Conviction Relief
)	
vs.)	
)	
)	
State of South Carolina,)	
Respondent.)	
_____)	

Pursuant to the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 *et. seq.*, Luzenski Allen Cottrell submits this application for post-conviction relief.¹

- 1) Mr. Cottrell is confined at the Kirkland R&E Center.
- 2) The Honorable Larry B. Hyman, Presiding Judge by Special Assignment of the South Carolina Supreme Court for the Court of General Sessions for Horry County imposed the sentence.
- 3) There were not any co-defendants.
- 4) The sentence was imposed on indictment number 2003-GS-26-00020 for murder.
- 5) Judge Hyman sentenced Mr. Cottrell to death on September 27, 2014.
- 6) Judge Hyman imposed the sentence following a plea of not guilty and trial by jury.
- 7) The South Carolina Supreme Court affirmed Mr. Cottrell’s conviction and sentence on December 20, 2017. *State v. Cottrell*, 421 S.C. 622, 809 S.E.2d 423 (2017). The Supreme Court of the United States denied Mr. Cottrell’s petition for writ of *certiorari* on October 1, 2018. *Cottrell v. South Carolina*, No. 17-9449, 2018 WL 3055952, at *1 (U.S.S.C. Oct. 1, 2018).

¹ This pleading is based on Form 5, Revised 3/2003, which can be found on the South Carolina Judicial Department website. Mr. Cottrell reserves the right to amend his application for post-conviction relief.

- 8) Please see response to number 7 above.
- 9) Not applicable because Mr. Cottrell appealed his conviction and sentence.
- 10) Grounds for Relief: Mr. Cottrell's right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, was violated when his trial attorneys failed to exercise peremptory strikes to remove two jurors whose views, expressed during voir dire, prevented or substantially impaired their ability to consider constitutionally relevant mitigating evidence.
- 11) Supporting Facts: During voir dire, two jurors – Juror 450 and Juror 148 – stated unequivocally that they would not regard evidence of a defendant's "background characteristics" as "relevant" in selecting an appropriate penalty for murder. Tr. 328-329; 359. Defense counsel rightly recognized these statements as conclusive indicators that each juror lacked the capacity to perceive and give effect to mitigating evidence mandated by the Eighth Amendment, and objected to the jurors' qualification on the ground that each was "mitigation impaired." Tr. 341; 365-366. However, once the trial court overruled their objections, *see* Tr. 342-343; 367, trial counsel deficiently failed to exercise peremptory strikes necessary to ensure the unqualified jurors would not be seated on the jury. As a result, both unqualified jurors were seated, and both participated in the guilt-or-innocence and penalty determinations. Because of their self-professed unwillingness to consider a broad range of constitutionally relevant mitigating evidence, it is at least reasonably probable that one or both jurors adversely affected the outcome of the penalty phase deliberations, and that, absent their participation, the result of those deliberations would have been different.

12) Prior to filing this application for post-conviction relief, Mr. Cottrell has not filed any petitions, motions, or applications in any court, regarding this conviction, other than those listed in paragraphs 7 and 8 above.

13) Not applicable because Mr. Cottrell did not answer “yes” to number 12 above.

14) None of the grounds set forth in paragraph 10 above have been presented to this or any other court because this application for post-conviction relief is Mr. Cottrell’s first opportunity to present allegations of ineffective assistance of counsel.

15) Not applicable because Mr. Cottrell did not answer “yes” to number 14 above.

16) Please see response to number 14 above.

17) Mr. Cottrell was represented by counsel during his capital jury trial and appeals to the South Carolina Supreme Court and the Supreme Court of the United States.

18) The following attorneys represented Mr. Cottrell:

a) Initially, Stuart M. Axelrod, Axelrod & Associates, P.A., 4701 Oleander Drive, Myrtle Beach, SC 29577, and Melissa J. Armstrong, 3213 Amherst Avenue, Columbia, SC 29205, represented Mr. Cottrell. Judge Hyman relieved Mr. Axelrod and Ms. Armstrong prior to trial.

b) After Judge Hyman relieved Mr. Axelrod and Ms. Armstrong, Teresa L. Norris, Charleston County Public Defender’s Office, O.T. Wallace County Office Building, 101 Meeting Street, 5th Floor, Charleston, SC 29401, and William S. McGuire, S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, SC 29211, represented Mr. Cottrell during his capital jury trial.

c) Keir M. Weyble and Sheri Lynn Johnson, both of the Cornell Law School, Myron Taylor Hall, Ithaca, NY 14853, and Robert M. Dudek, S.C. Commission on Indigent Defense, 1330

Lady Street, Suite 401, Columbia, SC 29211, represented Mr. Cottrell on his appeal to the South Carolina Supreme Court.

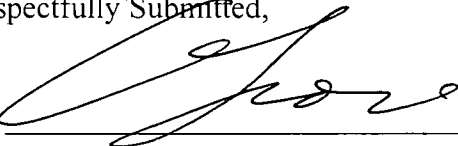
d) Mr. Weyble represented Mr. Cottrell on his appeal to the Supreme Court of the United States.

19) This Court should order a new trial. In the alternative, this Court should order a new sentencing hearing.

20) In addition to the murder conviction and sentence involved in Indictment No. 2003-GS-26-00020, Mr. Cottrell is serving ten years for grand larceny, ten years for resisting arrest, and ten years for assault with intent to kill on the same indictment. These convictions and sentences were affirmed by *State v. Cottrell*, 376 S.C. 260, 657 S.E.2d 451 (2008).

Mr. Cottrell is also serving a life sentence for murder on Marion County Indictment No. 2004-GS-33-00294. This conviction and sentence were challenged in Marion County Case Numbers 2010-CP-33-00018 and 2015-CP-33-00988.

Respectfully Submitted,

By 

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S.C. Bar Number 66063
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900 Elmwood Ave, Suite 200
Columbia, SC 29201
brie.russell@russelllaw.us
(803) 727-5314

VERIFICATION

I, Luzenski Allen Cottrell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Luzenski Cottrell
Luzenski Allen Cottrell

Sworn to and subscribed before me
this 12th day of OCTOBER, 2018

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/31/2023
[Signature]

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Luzenski Allen Cottrell,)
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Applicant,)
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vs.)
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State of South Carolina,)
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_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-26-_____

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S.C. SUPREME COURT

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Melody J. Brown, Esquire
S.C. Attorney General's Office
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October 12, 2018
Greenwood, South Carolina