

STATE OF SOUTH CAROLINA

[In The Supreme Court]

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

APPELLATE CASE NO.

2019-000400

State of South Carolina.....Respondents

v.

Jody Lynn Ward, #300644.....Appellant

S.C.A.C.R. Rule 267
BRIEF OF APPELLANT
Writ of Certiorari
S.C.A.C.R. Rule 243(d)

Other Counsel of Record:

Jody Lynn Ward, #300644

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Respectfully Submitted,

LSJ Jody Lynn Ward, #300644

Jody Lynn Ward, #300644

ISSUE ON APPEAL

1) Did the Post Conviction Relief Judge "commit a error of Law" in summarily dismissing the juror misconduct allegations without appointment of counsel and a evidentiary hearing, to require a remand for appointment of counsel (j)
to satisfy Rule 243 SCACR explanation as to why this honorable should appoint counsel and allow Writ of Certiorari to proceed. McCoy v. State. 737 S.E.2d 623 (2013).

Foot Note(1)

ON Oct. 28, 2014 Applicant filed a pro se Motion for a new trial based upon after discovered evidence pur to Rule 29(b) SCRCRIMPro based upon juror misconduct.

This Rule 29(b) was based on Juror Marissa Cooper (#19) concealed a personal relationships between her and witnesses Judge Larry Hyman dismissed the Rule 29(b) and this Rule 29(b) appeal is now pending briefing in the SC Court of appeals. With Tristian Shaffer (esq) as appeal counsel.

STATEMENT OF CASE

The Pro Se Applicant was found guilty in Georgetown General Sessions on March 18, 2004 and sentence to Life for Murder 2003-GS-22-01030,01031- Hon. Paula Thomas.

Applicant Direct Appeal a Anders Brief filed by Robert Dudek (Esq) and denied State v. Ward 2007-UP-048 (Jan. 26, 2007) Applicant first PCR was denied by May 19, 2008 and Rule 59(e) SCRPC denied August 13, 2008.

Applicant filed Certiorari denied by SC Supreme Court Ward v. State Aug. 20, 2009.

Applicant filed two other PCR Applications both held to be successive

And a Federal Habeas Petition that was denied and appealed to Fourth Circuit and to US Supreme Court.

A Rule 29(b) SCRCRIM PRO. was filed in 2012 State V. Ward and denied 2014-UP-402 SC Court of Appeal.

None of the above are relevant to this PCR.

1st JUROR MISCONDUCT PROCEEDING

During the proceedings incident to the above Rule 29(b) on Juror #19 Marrison Cooper Concealing, Intentionally, her personal relationship to witness in Voir dire applicant discovered Juror #19 Marissa Cooper while concealing personal relationship to state witnesses she also intentionally failed concurrently disclose she had a long term Rent-Landlord Tenant Business Relationship with (7) seven of State witnesses

The applicant asserted under oath pur to Rule 11 SCRPC He discovered within one year of the filing of the PCR upon further review investigation Juror #19 Marissa Cooper was in a Business relationship with 7 State witnesses as Landlord of Green Acres Mobile Home Park to whom 7 witnesses paid her rent every month. A business relationship.

The PCR Court Initially signed a order named as a Conditional Order of Dismissal stating PCR did not meet the (5) prongs of newly discovered evidence Hayden v. State 278 SC 610,611.(1983)

When applicant objected to the error of Law in failure of PCR Court to address issue under McCoy v. State 737 SE2d 623(2013)

In final order the PCR found McCoy v. State did in fact apply to this case, but held "pg.2: Even under McCoy applicant is not entitled to a evidentiary hearing.

As the Supreme Court in McCoy noted the claim must be timely raised. As applicant sought relief , on this ground in October 2014 and a Judge Hyman rejected that effort finding applicant knew about the New Evidence prior to and at the time of trial in 2004, he cannot now achieve a hearing based upon the information.

First, the Juror misconduct issue referred to addresses a "separate and distinct ground, to wit juror #19 Marissa Cooper Intentionally concealed personal relationship to witnesses. The denial of a evidentiary hearing on that issue is on appeal in SC Court of Appeals.

The Juror misconduct issue in case sub judice raises allegation, that within one year of filing the instant application he discovered Juror #19 Also concealed a Landlord Tenant Business Relationship with (7) witnesses, her intentional concealment is self-evident in her conduct by not disclosing (7) state witnesses, (who testimony state relies upon as overwhelming evidence of guilt in several pleadings), Juror #19 Marissa Cooper concealment and intentional non disclosure of her business relationship to seven (7) state witnesses were not known to applicant, not disclosed by solicitor and certainly not (even now) Disclosed by this malfeasant juror #19 Marissa Cooper, at time of previous Rule 29(b) before Judge Hyman (on appeal) as, again, that hearing dealt with her concealing personal relationships, this is a horse of a whole different color Juror misconduct based upon intentional non disclosure of business relationship pur. to Rule 243 based upon the allegation raised in the PCR sub judice Rule 12(b)6 Rule 56 SCRPC control this court analysis.

Did Applicant allegations, If True, would entitle him to relief pursuant to: McCoy v. State (2013) *Foot Note (2)

A material factual dispute exists as

1) He alleged he discovered the Business Relationship between #19 Marissa Cooper a (7) State witnesses within one year of the filing of PCR 17-27-45(c) Rule 11(a) Good Faith Belief. * Applicant affidavits, Proof and Verification are sufficient evidence proceed to a evidentiary hearing with appointment of counsel.

2) He has alleged "Juror Misconduct" of a juror #19 previously alleged to intentionally conceal personal relationships has now within the last year been discovered to be in a Landlord-Tenant Relationship to 7 of State key fact witnesses showing Habit or Routine of Juror Misconduct. Pur to Rule 243 the court holding Applicant offers nothing to actually show the juror intentionally concealed this information but rather merely repeatedly insists on this conclusion. Is error of Law.

The facts themselves , 7 of her tenants being state witnesses watching them testify and remaining silent is clear and convincing evidence probative and relevant of seeing a red-light and driving thru the intersection-a fact finder could reasonably find that act intentional this juror drove thru 7 red lights and court does not credit that a intentional acts to warrant a evidentiary hearing 17-27-80 is abuse of discretion.

Foot Note (2) Anderson v. Liberty Lobby, U.S. Supreme Court;
Rule 56 SCRPC; State v. Kelly, 331 S.C. 132 (1998)
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S.C.A.C.R. RULE 243(c)-EXPLANATION REQUIRED

Explanation as to why this determination was improper And sufficient facts, Argument and citation to legal Authority to show that there is an Arguable basis for Asserting that the determination by the Lower Court was improper.

see: Trial Handbook for South Carolina Lawyers 4th Ed.

§6:3-Right of accused to challenge Potential Jurors in Criminal cases

In a criminal case, the Sixth (6th) and Fourteenth (14th) Amendments to the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors. State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003). In order to fully safeguard this protection, it is required that the jury render its verdict free from Outside influences of whatever kind and nature. 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. State v. Bryant, supra

Juror #19 Marisa Cooper- has never been brought before a Court an Questioned why she remained Quiet during the 2004 Trial that she has a Business Relationship to 7 witnesses names that where called during Voir Dire of his March 2004 Trial.

CONCLUSION

The defendant/appellant would respectfully ask this court to grant certiorari in this case because it clearly violates McCoy v State, supra and since there has never been a Court Evidentiary Hearing so that the Juror #19 Marisa M. Cooper can be properly questioned both about her personal & business relationships to various witness questioned in Voir Dire of 2004 March 15th Trial v/s today.

Respectfully Submitted,

s/ Jody Lynn Ward, #300644
Jody Lynn Ward, #300644