STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Georgetown County
Court of Common Pleas
William H. Seals, Jr. Circuit Court Judge

C/A 2018-CP-22-0488
C/A 2019-000400

Jody Lynn Ward — Appellant

V.

STATE — Respondent

APPENDIX AND RECORD OF LOWER COURT PROCEEDINGS IN SUPPORT OF RULE 243 SCACR FOR PETITION FOR WRIT OF CERTIORARI

SCACR RULE 267

Jody Lynn Ward
McCormick CI
386 Redemption Way
McCormick, SC 29899

/s/ Jody Lynn Ward, #300644

Jody Lynn WARD, #300644
Appellant Prose

INDEX

Exhibit A 1.

FORM 5

STATE OF SOUTH CAROLINA County of GEORGETOWN Jody L. Ward, #300644 Full name and prison number (if any) of Applicant v. State of South Carolina	IN THE COURT OF COMMON PLEAS **APPLICATION FOR** **POST-CONVICTION RELIEF** Pursuant to 17-27-45(C) JUROR MISCONDUCT

FILED GEORGETOWN COUNTY, S.C. 2010 MAY 21 ALMA Y. WHITE CLERK OF COURT

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Georgetown County Courthouse.
3. Name(s) of co-defendant(s) (if any) Was Charged Under Hands of One the Hands of all of Brian Elliott Never-charged
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Murder - 2003-GS-22-1030
   (b) Murder - 2003-GS-22-1031

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) §17-27-45(c) Newly Discovered Evidence See: Attached sheets / Juror Misconduct

(b) McCoy v. State

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) §17-27-45(c) Newly Discovered Evidence See: Attached sheets / Juror Misconduct

(b) McCoy v. State

(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? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(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? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

19. State clearly the relief you seek in filing this application:

See: Attached sheet / Reverse Remand for a New Trial pursuant to McCoy v. State, Juror Mis Conduct.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
County of GEORGETOWN)

VERIFICATION

I, Jody Lynn Ward, #300644, 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.

FILED
GEORGETOWN COUNTY, S.C.
2010 MAY 22 A 10:22
ALMA BELL
CLERK OF COURT

/s/ Jody Lynn Ward

SWORN to and subscribed before me this 11 day of May, 2018.

(L.S.)
Notary Public

My Commission Expires: 12-16-2019

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN Jody Lynn Ward, #300644 Applicant pro se, -vs- State of South Carolina Respondent	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT Attached Sheet From Questions 10. (a); 11. (a) pg. 3; 19. of pg. 6 Docket Number: _____ Application For post Conviction Relief pursuant & 17-27-45 (C) Newly discovered Evidence/ Juror Misconduct

The Applicant Herein submits this Application for P.C.R. pursuant to S.C. Code Ann § 17-27-45 (C) provides that if a PCR applicant discovers material facts Not previously presented or heard that require vacation of his Conviction and Sentence, and he is filing it within one (1) year after the date of actual discovery or after within one (1) year of when the facts could have been ascertained by the exercise of reasonable diligence.

See: McCoy v. State, 401 S.C. 363, 737 S.E. 2d 623 (2013)

See: Affidavit Attached, as Exhibit A & B

See: ~~Affidavit~~ Trial Transcripts & McCoy Case Law

8.

South Carolina

Affidavit of

County of Georgetown

Cliffton Rogers JR.

RE: Jody Ward (Trail 3/2004)

Personally, appeared before me the undersigned Notary Public, the affiant.

Cliffton Rogers Jr. who being duly sworn Stated as follows:

1. My name is Cliffton Rogers Jr. and I am over the age of eighteen years old.

2. I am a resident of Georgetown, South Carolina

3. That this affidavit is true and accurate, and it is based on my own personal knowledge provided by these persons named.

4. I am Jody Wards older brother.

5. I lived with my girlfriend Patty Weatherford in Greenacres mobile home park in the years 1997-2000. We rented from Mrs. Marissa and Mr. James David Cooper. I knew Mrs. Marissa Cooper from paying rent to her every month and that is also how she knows me. I don't know why she failed to disclose this information to the Judge/Court that I knew her as well as she knew me through this business relationship.

6. Marissa Cooper was a juror in my brother's case. She failed to disclose important information to the court and she should have never been allowed to be seated in on his trial.

7. I have no idea why Mrs. Marissa Cooper could be seated in my brother's jury trial, as we had a long business relationship as well as a long personal relationship prior to his March 2004 trial.

(PLEASE TYPE OR PRINT CLEARLY)

JUROR INFORMATION FORM

FOR TERM BEGINNING WEEK OF: 3/15/2004

JUROR NUMBER: 19

CITY, COUNTY, STATE OF BIRTH	AGE	DATE OF BIRTH	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDREN
Georgetown, SC	34	[redacted]	☑	☐	☐	☐	2

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	NAME OF SPOUSE
Not Employed	The Dentist Office	1	James David Cooper
SPOUSE'S OCCUPATION	**SPOUSE'S PRESENT OR FORMER EMPLOYER**	**YEARS**	If the name and/or address information below is incorrect, please write in the correct information in the space provided below.
Managing / Owner	Greenacres MHP	15	COOPER MARISA M POB993 GEORGETOWN SC 29442

I HAVE PREVIOUSLY SERVED ON A ☐ CIVIL OR ☐ CRIMINAL JURY.	IF SO, WHEN?	HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO	FORMAL EDUCATION COMPLETED: High School

NOTE: THE FURNISHING OF FALSE OR MISLEADING INFORMATION OR THE FAILURE TO FURNISH INFORMATION TO THE COURT MAY SUBJECT YOU TO PENALTIES AS PRESCRIBED BY LAW.

PLEASE NOTE NAME AND ADDRESS CORRECTIONS ABOVE

(PAGERS, CELL PHONES, ETC. NOT ALLOWED IN COURTROOM)

8. I make these true and accurate statements on my own free will, and that I am not under the influence of any type of drugs or alcohol, neither prescribed over the counter nor illegal.

Clifton Hwey Rogers JR.

Clifton Huey Rogers JR.

Furthermore, the affiant sayeth not

Sworn to and subscribed before me
This 19 day of April 2018
Notary public of South Carolina- State of South Carolina
My commission ends 5-15-2025
Signed _____

JULIANNE H. TEMLIN NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 05-15-2025

1

McCoy v. State

Supreme Court of South Carolina

November 1, 2012, Submitted; February 6, 2013, Filed

Opinion No. 27214

Reporter
401 S.C. 363 *; 737 S.E.2d 623 **; 2013 S.C. LEXIS 14 ***; 2013 WL 441549

John Curtis McCoy, Petitioner, v. State of South Carolina, Respondent.

Prior History: [***1] Appeal from Spartanburg County. Appellate Case No. 2010-178927. J. Derham Cole, Post-Conviction Relief Judge.

Disposition: REVERSED AND REMANDED.

Core Terms

juror, juror misconduct, newly discovered evidence, summary dismissal, new trial, one year, concealment, discovery, sufficient reason, material fact, voir dire, allegations, untimely, inmate's, genuine

Case Summary

Procedural Posture
Petitioner inmate brought a post-conviction relief (PCR) petition against respondent State. The Spartanburg County trial court (South Carolina) summarily dismissed the application. The inmate appealed.

Overview

This was a second PCR petition. The inmate alleged recently discovered juror misconduct. The trial court summarily dismissed the petition, finding that the claim was untimely because it was not filed within one year of trial. The trial court also found that the claim was successive because it could have been raised in the first PCR application and that the inmate failed to prove a claim based on newly discovered evidence. The appellate court found that summary dismissal was error. Under S.C. Code Ann. § 17-27-45(A), the one-year period began the date the remittitur was sent by the appellate court-not the date of conviction. Further, the discovery rule in § 17-27-45(C) allowed one year after the discovery of material facts not previously presented and heard that required vacation of the conviction or sentence to file a PCR application. The inmate argued he did not discover the misconduct until November 2009, and he promptly filed his second PCR application after making that discovery. Because this claim was not conclusively refuted by the record, summary dismissal was error. There was also find a fact issue as to whether the claim was successive under S.C. Code Ann. § 17-27-90.

Outcome
The judgment was reversed and the case was remanded for an evidentiary hearing.

LexisNexis® Headnotes

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN1[] **Criminal Law & Procedure, Postconviction Proceedings**

A post-conviction relief (PCR) application ordinarily must be filed within one year after a conviction or, if a direct appeal is taken, one year after the remittitur is sent to the trial court. S.C. Code Ann. § 17-27-45(A) (2003). However, § 17-27-45(C) provides that if a PCR applicant discovers material facts not previously presented and heard that require vacation of his conviction or sentence, he may file a PCR application within one year after the date of actual discovery or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

THE COURT: Are there any additional requests? Anything from the State?

MR. HEMBREE: No additional requests from the State, Your Honor.

THE COURT: All right, anything from the Defendant?

MS. KNEECE: Nothing from the Defense.

THE COURT: All right, now to those individuals who have been excused from this particular trial I'm going to excuse you at this time as we begin this process. I ask you to call in after six o'clock this evening, call in after six o'clock this evening and follow those instructions. If you have been excused from hearing this particular case you may leave at this time, call in after six.

Okay, go get her then. If there's one that left that was not supposed to bring her back in.

Bear with us. I think somebody slipped away on us. I'm sure you all had the urge.

Let's have order and let me go ahead and -- yes.

MS. KNEECE: May we approach?

THE COURT: Yes, you may. Wait just a moment. The strikes are five and ten, Madam Clerk, five and ten.

(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury venire.)

THE COURT: All right, as you hear your name and

(No response.)

THE COURT: All right, very well, if we could then hear from the Defendant.

MR. LOCKLAIR: In addition to those witnesses, these are the other potential witnesses: Michael Abner; John Evans; Susan Evans; Don Girnst [spelled phonetically]; Tony Harper; Julius Inman; Kenny Johnson; Mark Johnson; Neil Johnson; Willie Lambert; Dr. Hal Morgan; Investigator Don Myers; Jerry Oldham; Chris Parsons; Mike Rodan; Carol Ward; Lynn Ward; and Rondie Ward.

THE COURT: Is there any member of the jury panel who is related by blood or marriage or business or personal acquaintance with any of these potential witnesses; if so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is aware or conscious of any bias or prejudice for or against the State or for or against the Defendant? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who for any reason whatsoever feels that they could not be fair and impartial to both the Defendant and the State? If so, please stand.

(No response.)

Elliott; Melissa Elliott; John Elliott; Lieutenant Ernest Hampton, Georgetown County Sheriff's Office; Agent Ivan Holden, Georgetown County Sheriff's Office; Shane Prince; Agent Frank Preston, Alcohol, Tobacco and Firearms; Clifton Rogers, Jr.; Carter Weaver, Assistant Sheriff, Georgetown County Sheriff's Office; Arthur Young; Alice Newman; Deputy Kevin Holt, Georgetown County Sheriff's Office; Coroner Kenny Johnson; Louis Bazen; Officer Earl Graham, Charleston Police Department; Deputy Chris Doerr, Georgetown County Sheriff's Office; Special Agent Jeff Crooks, SLED; Special Agent Jim Hickman, SLED; Special Agent Michelle Dixon, SLED; Lieutenant Matthew Grayson, Georgetown County Sheriff's Office; Officer Danny Watson, Georgetown Police Department; Investigator Jonathan Lambert, Georgetown County Sheriff's Office; Roger Cox, Jr.; Tracy Collins; Jody Owens; Olin Hewitt; Kevin Cooper; Roger Dale Ackerman, Sr.; Roger Dale Ackerman, Jr.; Jason Poston; Investigator Gary Todd, Georgetown County Sheriff's Office; Special Agent Rod Greene, SLED; Senior Agent Dan DeFreese, SLED; Cecil Bradstreet, SLED; Officer Richard Cote, Myrtle Beach Police Department; and Special Agent Rhett Holden, SLED.

THE COURT: All right, is there any member of the jury panel who is related by blood or marriage or friends or business acquaintance with any of these potential witnesses? If so, please stand.

THE COURT: All right, very well. I'm going to turn now to Solicitor Hembree for a list of potential witnesses. Listen very carefully. These are the individuals who may be called in the trial of the case and I need to ask you about these individuals.

Yes, sir.

MR. HEMBREE: Thank you, Your Honor.

I would like to note for the record that this is an extensive list of 63 witnesses. We will -- I would like to state for the benefit of the Court and for the benefit of the jury that we do not intend to call all 63 witnesses, but just to -- didn't want to scare anybody about this long list.

THE COURT: Thank you, Mr. Hembree.

MR. HEMBREE: Barry Watford; Detective Jimmy Burke, Georgetown Police Department; Candy Cox; Billy Wilson; Senior Agent Steve Lambert from SLED; Denise Langston Cox; Latrese Rutledge; Reverend Elton Rutledge, Sr.; Indria Brown; Nadine Brown; Beverly Ward; Sean Savery; Officer Danny Cooper, Georgetown Police Department; Officer Eddie Dingle, South Carolina Department of Natural Resources; Walker Bone; Charles Lamb; Eric Grantham; Agent Stacy Brown of the Alcohol, Tobacco and Firearms Department; Josh Ackerman; Jason Ackerman; Paula Lamb; Buffy Lynn Parsons; Curtis Fields; Wade Jones; Rhonda Cook; Brian Alston; Brian

STATE V. JODY WARD

03-GS-22-1030, 1031

Juror No.	Name		State	Defense	Court
133	Barbara Wilson	BF	X		
1	Myra Alston	BF		X	
88	Robert Myers	WM			
48	Judy Harper	WF			
44	Derrick Grove	BM	X		
87	Glenda Munnerlyn	WF		X	
107	Barbara Smith	BF		X	
141	Paul Griffin	WM			
2	Ronald Altman	WM			
100	Reta Simpson	WF		X	
79	Mart Mihalakis	WM			
98	Daphne Ray	WF		X	
130	Norman Wilcox	WM		X	
34	Jeffery Fisher	BM			
19	Marisa Cooper	WF		X	
76	Theodis McGee	BM		X	
69	Rochelle Leary	BM		X	
59	Sandra Johnson	BF			
145	Sydney O'Neil	WF			
112	Virgil Spivey	BM			
150	David Williams	WM	X		
93	Kelly Polen	WF			
16	Carl Chatman	BM			
74	Carol McCann	WF			
ALT. 1					
121	Antonio Thompson	BM	X		
68	Julie Nance	BF			
ALT. 2					
64	Jefferson Kirby, III	WM	X		
39	Bernadette Gardner	BF			

Juror Complain Against Juror Misconduct

discovered evidence standard, as it does not lend itself to properly evaluating a claim of juror misconduct. In addition, the Clark framework is not conducive for determining whether a PCR applicant is entitled to a hearing where intentional juror concealment is alleged. The standard test governing newly discovered evidence is properly applied when relief is sought based on evidence discovered post-trial that is material to the accused's guilt or innocence. However, juror misconduct discovered post-trial is not properly considered "newly discovered evidence"; rather, it is a separate basis for a new trial. Because juror misconduct is a separate basis for a new trial, it is governed by a separate standard. Provided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information, and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Criminal Law & Procedure > Juries & Jurors > Jury Deliberations > Juror Misconduct

HN8[] **Criminal Law & Procedure, Postconviction Proceedings**

Evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

HN9[] **Criminal Law & Procedure, Postconviction Proceedings**

In the context of post-conviction relief allegations involving juror misconduct, the standard five-pronged newly discovered evidence test, as set forth in Clark, has no application and should not be used as the basis for summary dismissal. Rather, juror concealment claims are governed by the analysis set forth in Woods, and such case-by-case determinations are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed.

Counsel: Appellate Defender Robert M. Pachak, of Columbia, for Petitioner.

Attorney General Alan M. Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Suzanne H. White, all of Columbia, for the State.

Judges: JUSTICE KITTREDGE. TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

Opinion by: KITTREDGE

Opinion

[*366] [**625] **ON WRIT OF CERTIORARI**

JUSTICE KITTREDGE: Petitioner John Curtis McCoy appeals the summary dismissal of his second post-conviction relief (PCR) application, which alleged recently discovered juror misconduct, on the grounds it was successive, untimely, and failed to prove a newly discovered evidence claim. We reverse and remand this matter for an evidentiary hearing. Further, for the benefit of the bench and the bar, we clarify the proper legal standard for claims involving juror misconduct.

I.

Petitioner was indicted for first-degree burglary and assault and battery with intent to kill. Petitioner's case was called to trial on June 14, 2005. During *voir dire*, at defense counsel's request, the trial [***2] judge asked the potential jurors if they were related by blood or marriage to any person employed in the Seventh Circuit Solicitor's office. Seven potential jurors responded affirmatively; however, Juror 84, who ultimately served on the final jury panel, did not respond or disclose that her cousin was married to the Seventh Circuit Solicitor. The defense exercised only four of its ten peremptory strikes during the jury selection process. At the conclusion of his trial, Petitioner was convicted of both offenses.

[*367] Following the dismissal of his direct appeal and first PCR application, Petitioner reviewed a fellow inmate's case in November 2009 and discovered the inmate's trial took place the day after Petitioner's. The inmate's trial was before a different trial judge but in the same courthouse. During voir dire for the inmate's trial, Juror 84—the same juror who served on the final panel in Petitioner's trial—advised the court that her cousin

Criminal Law & Procedure > Postconviction Proceedings > General Overview

HN2[] **Criminal Law & Procedure, Postconviction Proceedings**

A post-conviction relief (PCR) applicant must allege all available grounds for relief in his original application; any ground not raised in the original application may not be the basis for subsequent applications unless the court finds a ground for relief asserted which, for sufficient reason, was not raised in the original application. S.C. Code Ann. § 17-27-90.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

HN3[] **Criminal Law & Procedure, Postconviction Proceedings**

A post-conviction relief (PCR) court may grant a motion by either party for summary disposition of the PCR application when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. Code Ann. § 17-27-70(c). 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. 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 not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN4[] **Criminal Law & Procedure, Postconviction Proceedings**

The time limitation in S.C. Code Ann. § 17-27-45(A) provides that, where a defendant appeals his conviction, the one-year period for a post-conviction relief (PCR) petition begins the date the remittitur is sent by the appellate court-not the date of conviction. Further, § 17-27-45(C) allows one year after the discovery of material facts not previously presented and heard that require vacation of the conviction or sentence to file a PCR application.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

HN5[] **Criminal Law & Procedure, Postconviction Proceedings**

S.C. Code Ann. § 17-27-90 permits an applicant to file a subsequent post-conviction relief (PCR) petition application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

HN6[] **Criminal Law & Procedure, Postconviction Proceedings**

Summary dismissal of a post-conviction relief application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Criminal Law & Procedure > Juries & Jurors > Jury Deliberations > Juror Misconduct

HN7[] **Criminal Law & Procedure, Postconviction Proceedings**

Where a post-conviction relief (PCR) applicant alleges juror misconduct, the Supreme Court of South Carolina rejects application of the Clark five-pronged newly

was not raised in the original application. S.C. Code Ann. § 17-27-90.

HN3[↑] "The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c). When considering the State's motion for summary dismissal, where [***7] 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 v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80). 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 not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. *Cf.* Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977).

As to the timeliness issue, we conclude the PCR judge misconstrued section 17-27-45(A) in finding Petitioner was required to file his claim within one year after his trial, rather than one year after the remittitur was sent from his direct appeal. HN4[↑] The time limitation in § 17-27-45(A) provides that, where a defendant appeals his conviction (as Petitioner did), the one-year period begins the date the remittitur is sent by the appellate court—not the date of conviction. Further, the PCR judge apparently overlooked the discovery rule in section 17-27-45(C), [***8] which allows one year after the [**627] discovery of "material facts not previously presented and heard that require[] vacation of the conviction or sentence" to file a PCR [*370] application. Petitioner argued he did not discover the juror's misconduct until November 2009, and he promptly filed his second PCR application after making that discovery. Because Petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner's claim.

We also find a genuine issue of fact exists as to whether Petitioner's claim is successive under HN5[↑] section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted therein were not asserted previously. Petitioner avers he has demonstrated sufficient reason why his claim was not included in his first PCR application in that the juror's misconduct was not discovered until after his first PCR application was dismissed. However, the State contends the juror's misconduct could have been discovered earlier through the exercise of due diligence and, therefore, Petitioner has failed [***9] to state a "sufficient reason." Based on this factual dispute, a hearing is necessary to resolve this critical issue.

Although Petitioner's PCR claim may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits, the PCR judge erred in granting the State's motion for summary dismissal because genuine issues of material fact exist as to whether Petitioner's PCR claim is successive or untimely. *See* Leamon, 363 S.C. at 434, 611 S.E.2d at 495 (citing S.C. Code Ann. § 17-27-70(b)-(c)) (noting HN6[↑] summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the face of the application that (1) there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief).

B.

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 PCR claims involving juror misconduct. HN7[↑] Where a PCR applicant alleges juror misconduct, we reject application of the Clark five-pronged newly discovered evidence standard, as it does not lend itself to properly evaluating a claim of juror misconduct. [*371] In addition, the *Clark* framework [***10] is not conducive for determining whether a PCR applicant is entitled to a hearing where intentional juror concealment is alleged.

The standard test governing newly discovered evidence is properly applied when relief is sought based on evidence discovered post-trial that is material to the accused's guilt or innocence. *See, e.g.*, State v. South, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993) (noting that to obtain a new trial based on newly discovered evidence, the evidence must be material to the issue of guilt or innocence). However, juror misconduct discovered post-trial is not properly considered "newly discovered evidence"; rather, it is a separate basis for a new trial. *See, e.g.*, State v. Sheppard, 155 Vt. 73, 582 A.2d 116, 118 (Vt. 1990) (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).

Because juror misconduct is a separate basis for a new trial, it is governed by a separate standard. Provided a

was married to the Seventh Circuit Solicitor.

A few days after making this discovery, Petitioner filed his second PCR application, arguing he was denied his *Sixth Amendment* right to a trial by an impartial and objective jury. In support of his claim, [***3] Petitioner submitted an excerpt of the voir dire transcript wherein Juror 84 revealed her relationship to the Solicitor and a copy of defense counsel's requested *voir dire* from his own trial, which included the specific question to which Juror 84 failed to respond. Petitioner argued that Juror 84'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 an impartial jury. Petitioner averred that, if he had been aware of the juror's relationship to the Solicitor at trial, his use of peremptory challenges would have been different. Petitioner further argued he could not have previously raised this issue because the juror's concealment of her relationship to the Solicitor, in and of itself, rendered the information unavailable to him until four years after trial when he discovered the information in a fellow inmate's case file. As noted, this occurred after both his direct appeal and first PCR application were dismissed. Petitioner further contended his claim fell within the "discovery rule" exception to the one-year limitation period and was therefore timely.

The State filed [***4] a motion to dismiss Petitioner's PCR application, arguing it was successive and barred by the statute of limitations. Regarding successiveness, the State claimed Petitioner failed to present sufficient reason why he could not have raised the current allegations in his previous PCR application. Further, the State contended the application was untimely because it was not filed within the one-year limitation period applicable to PCR actions. The State also contended Petitioner's claim "that he has discovered evidence that he was not tried by a fair and impartial jury lack[ed] merit" because [*368] Petitioner failed to provide any corroborating information or demonstrate how his allegations satisfied the five-pronged test for newly discovered evidence. [1]

[**626] The PCR judge granted the State's motion for summary dismissal, finding Petitioner's claim was untimely because it was not filed within one year of trial. The PCR judge also found Petitioner's claim was successive because it could have been raised in his first PCR application and failed to prove a claim based on newly discovered evidence. Specifically, the PCR judge found that, because Petitioner failed to "offer any detail as to how this information would have affected his trial had it been known at that time, or how and when it was discovered," Petitioner failed to establish "sufficient reason" why the current allegations could not have been raised in his previous PCR application. We granted certiorari to review the PCR judge's summary dismissal of Petitioner's claim.

II.

A.

Petitioner argues his second PCR application should not have been summarily dismissed and asks this Court to reverse and remand this matter for a hearing. We find summary dismissal was error because genuine issues of material fact exist as to whether Petitioner's claim is successive or barred by the statute of limitations.

HN1[↑] A PCR application ordinarily [***6] must be filed within one year after a conviction or, if a direct appeal is taken, one year after the remittitur is sent to the trial court. S.C. Code Ann. § 17-27-45(A) (2003). However, section 17-27-45(C) provides that if a PCR applicant discovers "material facts not previously [*369] presented and heard that require[] vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

HN2[↑] A PCR applicant must allege all available grounds for relief in his original application; any ground not raised in the original application may not be the basis for subsequent applications unless the court finds a ground for relief asserted which, for sufficient reason,

---

[1] *See, e.g.*, Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). *Clark* provides:

> To obtain a new trial based on after discovered evidence, the party must show that the evidence:
>
> (1) would probably change the result if a new trial is had;
>
> (2) has been discovered since trial;
>
> (3) could not have been discovered before trial;
>
> (4) is material to the issue of guilt or innocence; and
>
> (5) is not merely cumulative or impeaching.

Id. at 387-88, 434 S.E.2d at 267 [***5] (citing Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror [***11] intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *See State v. Woods, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001)* (finding that a juror's intentional failure to disclose a relationship gives rise to an inference of bias and rejecting the State's argument that a new trial should be warranted only where an individual shows he was prejudiced by the juror's failure to disclose information); *State v. Kelly, 331 S.C. 132, 145-46, 502 S.E.2d 99, 106-07 (1998)* (recognizing that trial judges and attorneys cannot fulfill their duty to screen out [**628] biased jurors without accurate information and finding that the first inquiry in the juror disqualification analysis is whether the juror intentionally concealed information during *voir dire*). Further, *HN8*[] evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing. *See State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)* [*372] ("Whether a juror's failure to respond [during *voir dire*] is intentional is a fact intensive determination [***12] that must be made on a case-by-case basis.").

Therefore, *HN9*[] in the context of PCR allegations involving juror misconduct, the standard five-pronged newly discovered evidence test, as set forth in *Clark*, has no application and should not be used as the basis for summary dismissal. Rather, juror concealment claims are governed by the analysis set forth in *Woods*, and such case-by-case determinations are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed.

III.

For the reasons stated above, we find the PCR judge erred in summarily dismissing Petitioner's application because genuine issues of material fact exist as to whether his claim is successive or time-barred. Thus, we reverse the dismissal of Petitioner's second PCR application and remand the matter for a hearing. If, upon remand, the court determines Petitioner's claim is not untimely or successive, the court shall consider the merits of the second PCR application.

REVERSED AND REMANDED.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

End of Document

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Jody Lynn Ward, #300644, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

/s/ Jody Lynn Ward
Applicant

SWORN or affirmed to and subscribed before me this 11 day of May, 2018.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

FILED
CIRCUIT COURT
2018 MAY 21 AM 9:22
ALMA Y. WHITE
CLERK OF COURT

24

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Jody L. Ward, #300644
Applicant

vs.

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-22-00488

CERTIFICATE OF SERVICE

FILED
GEORGETOWN COUNTY, S.C.
2019 JAN 16 AM 11:24
ALMA Y. WHITE
CLERK OF COURT

I Jody L. Ward, SCDC #300644 Does hereby Cerify that a True & Correct copy of Applicants(1). Letter to Honorable William H. Seals Jr. (2.) Objections to Proposed Final Order and Applicants Motion to Strike Proposed Final Order from Record violative of Rule11, SCRCP & Motion for Counsel. I did forward a copy to the below named parties By placing Same in the U.S. postal mail; Postage Prepaid On This 6th day of January, 2019. to the below named parties This certifies that all the Parties Has Been Served

1. Office of Georgetown County
Clerk of Court Common Pleas
Attn: Alma Y. White, Clerk
P.O. Box 479
Georgetown, S.C. 29442

2. Office of the Attorney General S.C.
Attn: Johnny E James, JR. Esq.
P.O. Box 11549
Columbia, S.C. 29211-1549

3. Chief Judge for Common Pleas
Attn: Honorable William H. Seals, JR.
15th Judicial Circuit
103 North Main Street
Marion, S.C. 29571

Respectfully Submitted,
/S/ Jody Lynn Ward, #300644
Jody Lynn Ward, #300644
Applicant

Jody L. Ward, #300644
McCormick Corr. Inst. F-3-A-276
386 Redemption Way
McCormick, S.C. 29899

4 copies
2 Applicants Copy
To Be Clock-stamped & Returned.

January 6, 2019

Georgetown County Clerk of Court
Court of Common Pleas
Attn: Alma Y. White, Clerk
P.O. Box 479
Georgetown, S.C. 29442

RE: Filing Objections to Proposed Order And Applicant Motion to Strike Proposed Final Order From Record Violative of Rulell, S.C.R.Civ.P. Case No. 2018-CP-22-0488 & Letter to Honorable William H. Seals Jr.

Deares Ms. White,

Please find here Enclosed a true and Correct copy & Original Courts Copy for filing. Please send me a Clock-Stamp copy to me for my files. I thank you for all your time & Help with this matter. May God Bless you all Abundantly.

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

cc. File
Honorable William H. Seals Jr.
Johnny E. James, Esq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

Jody Ward, #300644)
☐ Plaintiff) CASE NO.
) 2018-CP-22-0488
v.)
) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
State Of South Carolina)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Jody Ward, #300644, Bar No. Address: McCormick CI 386 Redemption Way, SC 29899 phone: fax: e-mail: other:	Johnny E. James Jr., Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: JJames@scag.gov other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Johnny E. James Jr. August 20, 2018
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/23 3 (11-03)

27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Jody Lynn Ward, S.C.D.C. No. 300644,	)	Case No.: 2018-CP-22-00488
Applicant,	)	**CONDITIONAL ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Jody L. Ward (Applicant) on May 21, 2018. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the July 2003 term of the Georgetown County Grand Jury for two counts of murder (2003-GS-22-01030, -01031). Margaret Ann Kneece, Esq., and J. Wesley Locklair, III, Esq. represented Applicant. J. Gregory Hembree, Esq., and Robert B. Bryan, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 15, 2004, Applicant proceeded to trial before the Honorable Paula H. Thomas and a jury. The jury found Applicant guilty as indicted on March 18, 2004. Judge Thomas sentenced Applicant to imprisonment for concurrent terms of life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Dudek, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Ward,

Op. No. 2007-UP-048 (S.C. Ct. App. filed Jan. 26, 2007). Applicant thereafter filed a petition for writ of certiorari in the Supreme Court of South Carolina, but thereafter requested to withdraw the petition by letter dated June 29, 2007. The Remittitur was issued on July 6, 2007.

First PCR Application: 2007-CP-22-00915

Applicant filed his first application for post-conviction relief on July 11, 2007 (2007-CP-22-00915). He broadly alleged ineffective assistance of counsel in the original application, but ultimately proceeded on the following grounds by amendment filed April 9, 2008:

1. Ineffective assistance of counsel, in that:
    a. Counsel failed to object to the solicitor's comments on lack of remorse in his closing argument;
    b. Counsel failed to object to the solicitor's vouching for the State's witnesses and injecting his personal opinions;
    c. Counsel failed to object to the solicitor's comments regarding the Applicant's credibility and the defense's theory; and
    d. Counsel failed to request jury instructions on manslaughter and involuntary manslaughter

Respondent made its return on October 5, 2007, and an evidentiary hearing into the matter was convened on May 1, 2008, before the Honorable Steven H. John. Applicant was present at the hearing and represented by Bobby G. Frederick, Esq. Christina J. Catoe, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf; J. Wesley Locklair, Esq., and Margaret Ann Kneece, Esq. also testified. By written order dated May 15, 2008, and filed May 19, 2008, Judge John denied and dismissed the application. Applicant timely filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, which was denied by order filed August 13, 2008.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Robert M. Pachak, Esq. on Applicant's behalf, who raised the following issues:

1. Whether defense counsels were ineffective in failing to object to numerous errors in the solicitor's closing arguments such as to render petitioner's trial being unfair?
2. Whether defense counsels were ineffective in failing to request or put on the record requests to charge on the lesser included offenses of voluntary and involuntary manslaughter.

Respondent filed its Return on February 13, 2009. On August 20, 2009, the Supreme Court of South Carolina denied the petition by letter order. Ward v. State, S.C. Sup. Ct. filed Aug. 20, 2009. The Remittitur was issued on September 8, 2009.

Second PCR Application: 2009-CP-22-01074

Applicant filed his second application for post-conviction relief on July 13, 2009 (2009-CP-22-01074). He alleged the following grounds for relief in his application:

1. Ineffective assistance of counsel, in that:
   a. Counsel failed to convey a plea offer.

Applicant argued the allegation arose from the then-recent decision in Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (decided March 9, 2009). Respondent made its return and motion to dismiss on August 12, 2009, arguing Davie was inapplicable. On October 9, 2009, the Honorable Benjamin H. Culbertson issued a Conditional Order of Dismissal, and then a Final Order on January 13, 2010, dismissing the matter with prejudice.

Applicant filed a timely notice of appeal and a *pro se* petition for writ of certiorari, which raised the following issues:

1. "Did the lower court [err] by determining in its Final Order of Dismissal that the Petitioner's post-conviction relief action was barred by the statute of limitations and impermissibly successive when the Respondent's waived / abandoned / relinquished any such known legal right as a matter of law?"
2. "Did the lower court [err] by determining in its Final Order of Dismissal that the Petitioner's post-conviction relief action was barred by the statute of limitations and impermissibly successive, where court's findings and facts and conclusions of

> law in the conditional order of dismissal wasn't barring Petitioner as to [the] statute of limitation and being impermissibly successive?"

The Supreme Court of South Carolina dismissed Applicant's appeal on March 15, 2010, for failure to show an arguable basis the lower court determination was improper. Ward v. State, S.C. Sup. Ct. Order filed March 15, 2010. The Remittitur was issued on March 31, 2010.

Third PCR Application: 2010-CP-22-00733

Applicant filed his third application for post-conviction relief on May 4, 2010 (2010-CP-22-00733). He alleged the following grounds for relief in his application:

1. "Seeking relief based on New Rule of Law[;] See [State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)]"
    a. "The jury instructions in my case are unconstitutional under Belcher's opinion."

Respondent made its return and motion to dismiss on June 1, 2010, arguing Belcher did not have retroactive applicability. On June 15, 2010, the Honorable Benjamin H. Culbertson issued a Conditional Order of Dismissal, and then a Final Order on July 29, 2010, dismissing the matter with prejudice.

Applicant filed a timely notice of appeal and a *pro se* petition for writ of certiorari which raised the following issues:

> "Did the circuit court err in holding that Petitioenr was not entitled to the benefit of Francis v. Franklin, [471 U.S. 307 (1985)]; and Sandstrom v. Montana, [422 U.S. 510 (1979)] on collateral review to invalidate his conviction due to improper burden-shifting instruction at his trial on malice charge?"

Respondent filed its return on August 17, 2010. On August 18, 2011, the Supreme Court of South Carolina denied the petition by letter order. Ward v. State, S.C. Sup. Ct. Order filed Aug. 18, 2011. The Remittitur was issued on September 7, 2011.

Federal Habeas Petition: 0:11-3277-RBH-PJG

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on February 2, 2012 (C.A. No. 0:11-3277-RBH-PJG). In his Petition, Applicant set forth the following grounds for relief, as restated in the Report and Recommendation:

1. "The Trial Court and subsequent reviewing court's erred in ruling Petitioner waived his right to counsel when Weaver interrogated Petitioner, after Law Enforcement knew Petitioner was attempting to contact his attorney prior to Petitioner meeting with the Assistant Sheriff Weaver. Law enforcement also was aware that Petitioner had invoked his right to counsel upon his arrest and therefore under the facts of the case the statements should have been suppressed."
2. "The State Courts erred in failing to find defense counsels ineffective in failing to object to numerous errors in the solicitor's closing argument that such argument rendered Petitioner's trial as being unfair and a denial of due process?"
3. "The PCR Court and subsequent reviewing court's erred in failing to find counsels rendered ineffective assistance of counsel, when counsel(s) failed to convey plea offers to Petitioner prior to trial?"
4. "The State PCR Court and subsequent reviewing courts erred in failing to find Petitioner's jury instructions were unconstitutional under State v. Belcher?"
5. "The State PCR Court erred in failing to find counsel ineffective for failing to object to the solicitor's improper closing that denied Petitioner his right to a fair trial."
6. "The State Supreme Court erred in failing to find counsel rendered ineffective assistance when counsel improperly told the jury if any mistakes are made a 'higher court' will take care of the error and thus counsel's improper argument tipped the scales in favor of the State and lessened the State burden of proof."
7. "The State Supreme Court erred in failing to find counsel ineffective for failing to object to the unconstitutional burden shifting jury instructions given during trial. This decision as unreasonable and contrary to clearly established federal law."

Respondent filed its Return and Motion for Summary Judgment on May 11, 2012. The Honorable Paige J. Gossett, United States Magistrate Judge, issued on February 15, 2013, a Report and Recommendation that Respondent's motion for summary judgment be granted. Ward v. Warden of Lieber Corr. Inst., 0:11-3277-RBH-PJG, 2013 WL 1187133 (D.S.C. 2013). Applicant timely objected. The Honorable R. Bryan Harwell, United States District Judge,

denied Applicant's Petition on March 20, 2013 and accepted the Report and Recommendation for summary judgment. Ward v. Warden of Lieber Corr. Inst., 0:11-03277-RBH-PJG, 2013 WL 1187112 (D.S.C. 2013). Applicant gave timely notice of his appeal to the Fourth Circuit Court of Appeals, which dismissed Applicant's appeal on August 14, 2013, for want of a certificate of appealability. Ward v. Warden of Lieber Corr. Inst, 538 Fed.Appx. 257 (4th Cir. 2013). Applicant thereafter filed a petition for writ of certiorari in the Supreme Court of the United States, which denied the petition on March 24, 2014. Ward v. McCabe, 134 S.Ct. 1543 (2014).

Motion for New Trial of May 16, 2012

On May 16, 2012, Applicant filed *pro se* a "Motion for New Trial Based on After Discovered Evidence" pursuant to Rule 29(b), SCCrimP. Applicant filed the motion based upon a purported letter from another person claiming to have hired the victims to kill Applicant. By Order dated and filed July 31, 2012, the Honorable Benjamin H. Culbertson denied the motion for a new trial.

Applicant timely filed a notice of appeal and a *pro se* brief, which raised the following issues, as restated in the Initial Brief of Respondent:

1. Whether the court erred by denying appellant's Motion for New Trial based on After Discovered Evidence S.C.Crim.R 29(b), Motion for Appointment of Counsel, and Motion for Private Investigative, and expert Funds/Expenses, Under Due Process and Equal Protection of Law, U.S. Const. Amend. xIV § 1., and Ake v. Oklahoma, 470 U.S. 68 (1985)?

2. Whether the court erred by denying appellant's Motion For Reconsideration, And Motion To Arrest of Judgment Of Order denying Motion For New Trial, In a violation of Due Process And Equal Protection of Law, U.S. Const. Amend. XIV §1, And in a violation of Ake v. Oklahoma, 470 U.S. 68 (1985) Since appellant Is a Mental Health Patient, And IT being a Conflict of Interest Within the Clerk of court's Office, and since the Lieber Mailroom held the Affidavit Of Rondie J. Ward that Clearly supported the Motion For New Trial?

3. Whether the court erred by denying Motion For New Trial, based on After Discovered Evidence S.C.R.Crim.P Rule 29(b); Motion For Appointment Of

counsel; Motion For Private Investigative and expert Funds/Expenses; Motion For Reconsideration And Motion To Arrest of Judgment that resulted in an abuse of discretion amounting to an error of Law? ; as the abuse of discretion is both error of the rulings and resulting prejudice as well as denial of access of courts just because Appellant is an indigent status and pro se litigant for clerk to misabuse [her] authority, and correctional mailroom to hold affidavit?

4. WHETHER THE COURT ABUSED ITS DISCRETION AMOUNTING TO AN ERROR OF LAW: BY FAILING TO GRANT AN EVIDENTIARY HEARING WHICH AMOUNTED TO A DEPRIVATION OF LEGAL RIGHTS OF APPELLANT,BY DENYING HIM FULL ACCESS TO THE COURTS JUST BECAUSE HE IS AN INDIGENT PRO SE LITIGANT, AND MENTAL HEALTH PATIENT, THE RULING WAS AN ERROR AND APPELLANT WAS/DID RESULT IN PREJUDICE TO DENYING MOTION FOR NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.CRim.P. 29 (b), MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR INVESTIGATIVE AND EXPERT FUNDS/EXPENSES, UNDER DUE PROCESS AND EQUAL PROTECTION OF LAW, U.S. CONST. AMEND. XIV §1, is for all?

5. WHETHER APPELLANTS DUE PROCESS AND EQUAL PROTECTION WAS VIOLATED BY COURT DENYING APPELLANTS MOTION FOR NEW TRIAL, M01'ION FOR APPOINTMENT OF COUNSEL,AND MOTION FOR PRIVATE INVESTIGATIVE, AND EXPERT EXPENSES, WHICH RESULTED IN AN ABUSE OF DISCRETION AND APPELLANT WAS THEREBY PREJUDICE BECAUSE IT WAS-CLEAR AND CONVINCING EVIDENCE THAT WAS SUBMITTED TO SUPPORT AN EVIDENTIARY HEARING, AND MOTION FOR NEW TRIAL BECAUSE THE AFFIDAVITS OF APPELLANT, LETTER MICHAEL ABNER, AND SWORN AFFIDAVIT OF RONDIE J. WARD, AND AFFIDAVIT OF ASHTON WARD SUPPORTED NEW TRIAL MOTION U.S CONST. AMEND. XIV §1, IS FOR ALL?

6. WHETHER THE COURT ABUSED ITS DISCRETION BY DENYING APPELLANT['S] MOTION FOR RECONSIDERATION, AND ARREST OF JUDGMENT, DUE TO CONFLICT OF INTEREST WITHIN CLERK OF COURT AND A DENIAL OF ACCESS OF COURT DUE TO INDIGENT MENTAL HEALTH PATIENT WHO CANNOT AFFORD LEGAL COUNSEL AND AFFIDAVIT OF RONDIE J. WARD BEING DENIED TO FILE THAT SAYS "MICHAEL ABNER DID TELL ME THAT HE PAID THEM BOYS TO KILL JODY,"?

Respondent filed its initial brief on August 7, 2013. On September 22, 2014, attorney Natasha M. Hanna, Esq., moved for leave to file a new motion for a new trial based on after discovered evidence and to suspend the appeal, arguing new evidence regarding juror bias and concealment

was discovered during the course of the proceedings. Respondent filed its return in opposition to the motion on September 29, 2014. The South Carolina Court of Appeals denied the motion on October 8, 2014, indicating the appeal would not prohibit the lower court from proceeding with matters not affected by the appeal. The Court of Appeals thereafter affirmed by unpublished opinion the denial of the motion for a new trial. State v. Ward, Op. No. 2014-UP-402 (S.C. Ct. App. filed Nov. 12, 2014). Applicant thereafter moved for rehearing *en banc*, which was denied by order filed January 23, 2015. State v. Ward, S.C. Ct. App. filed Jan. 23, 2015. The Remittitur was issued March 3, 2015.

Motion for New Trial of October 28, 2014

On October 28, 2014, Applicant filed *pro se* a "Motion for New Trial Based on After Discovered Evidence" pursuant to Rule 29(b), SCCrimP. Applicant filed the motion based the alleged discovery of juror misconduct. The State filed its response in the form of a motion to dismiss on September 8, 2017. Applicant proceeded to a hearing on his motion on October 2, 2017. Applicant was represented at the hearing by Tristan Shaffer, Esq., and Scott Hixson, Esq., of the Fifteenth Circuit Solicitor's Office, represented the State. By Order dated and filed December 7, 2017, the Honorable Larry B. Hyman, Jr. granted the State's motion to dismiss and denied the motion for a new trial, finding in pertinent part:

> The alleged new evidence cited in the Defendant's motion was known to the defendant and counsel or could have been ascertained by the exercise of reasonable diligence prior to and at the time of trial in 2004 and certainly within one year after conviction. The claims are based on common last names with extended family relatives or based on personal relationships with named individuals the Defendant or Defendant's family knew personally prior to trial. Juror background information and the State's witness list was provided to the Defense during *voir dire* which occurred prior to jury selection. That information continued to remain unchanged and available for one year after conviction and is not new "evidence" as to the defendant's guilt.

Order Granting State's Motion to Dismiss at 3.

Applicant timely appealed the order of the lower court. That appeal remains pending before the South Carolina Court of Appeals. See App. Case No. 2018-000402.

II. CURRENT APPLICATION

In his fourth and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Newly-discovered evidence of juror misconduct, in that:
    a. Seven witnesses rented a lot from Juror #19, Marissa Cooper.

In support of the above allegation, Applicant additionally cites to McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013).

Before this Court are the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final orders of Applicant's previous PCR and federal habeas actions, the orders dismissing Applicant's motions for a new trial in general sessions, and the records of this current PCR action

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Res Judicata

The Court finds the application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his motion for a new trial filed October 28, 2014. Applicant's allegations as to juror Marissa Cooper, among two other jurors, were raised to, considered, and rejected by Judge Hyman after a hearing on the merits of the motion. The finality of the previous Court rulings should be respected, and the Court shall summarily dismiss the application as barred by the doctrine of *res judicata*.

Newly-Discovered Evidence

The Court finds Applicant's assertion that his juror misconduct allegation constitutes newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed 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. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, or could have been, discovered before his trial. As noted above in the excerpted portion of Judge Hyman's order, the relationships of the jurors to other members of the community, including those related to Applicant, were known or knowable to Applicant at the time of trial. Furthermore, as the juror misconduct allegation formed the basis of the motion for a new trial filed October 28, 2014, even if the Court generously applied the after-discovered evidence time provision in S.C. Code Ann. § 17-27-45(C), and assumed Applicant knew nothing of the allegations before that date, the present application was filed well beyond one year from that filing.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the Court shall summarily dismiss the matter with prejudice.

Statute of Limitations

The Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was convicted on March 18, 2004, and the remittitur from his direct appeal issued on July 6, 2007. The current application was not filed until May 21, 2018—well after the one-year statutory filing period expired. Furthermore, as noted above, even if the Court generously applied the time provision set forth in section 17-27-45(C), such that the appropriate starting point was October 28, 2014, the application was filed well beyond one-year from that date, as well. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must also be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally

> adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall dismiss the appliaction as successive to Applicant's previous PCR application.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMM ON PLEAS
COUNTY OF GEORGETOWN) 2018-CP-22-04488

JODY LYNN WARD) OBJECTIONS to PROPOSED
Applicant,) ORDER AND APPLICANT
V/S.) MOTION TO STRIKE PROPOSED
) FINAL ORDER FROM RECORD
STATE) VIOLATIVE OF Rule 11, SCRCP
Respondent.) & MOTION FOR COUNSEL

The Pro se Plaintiff OBJECTS to the FRAUDULENT AVERMENT VIOLATIVE OF SCRCP Rule 11, AS PROPONENT IS CLEARLY Relying on Representation that is DESIGNED to MISLEAD the COURT and to omit, AND MISREPRESENT Relevant FACTS & PROCEDURAL HISTORY." (AND RE-submits AS A APPLICANT EXHIBIT #1 - ORIGINAL Filed - clock STAMP 3RD SEPT. 2018) AS REASON FOR to Rule 11 STATE FRAUDULENT ~~REMARK~~ AVERMENT Should be STRICKEN FROM the RECORD, which is PROPOSED FINAL ORDER (submitted on December 28, 2018)

ISSUE II.

APPLICANT should be APPOINTED COUNSEL AS he has ALLEGED ALLEGATIONS IF TRUE WOULD ENTITLED him to Relief ANDERSON v. Liberty Lobby (US Supreme Court 1986) Rule 12 (b)6, Rule 56 SCRCP.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Georgetown County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 15th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Georgetown County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this _____ day of _____, 2018.

_____
WILLIAM H. SEALS, JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

_____, South Carolina

AND THEREFORE COGNIZABLE PUR 17-27-45(C) SC CODE OF LAWS (1976) AND timely FILED. AND thus COURT MUST by STATUTE 17-27-20 APPOINT COUNSEL.

#3 AT the TIME of Rule 29(b) hearing OCTOBER 2, 2017 PLAINTIFF DID NOT KNOW OR HAVE REASON to SUSPECT that NOT ONLY DID JUROR have PERSONAL RELATION to WITNESS (NOT DISCLOSED) but she had A ALSO SEPARATE ISSUE that 7 of HER TENANTS WERE ON the JURY, PEOPLE who LIVED in HER TRAILER PARK, WERE ON the JURY PANEL AND she KEPT SILENT ABOUT it JUROR MISCONDUCT AS she DID NOT DISCLOSE the BUSINESS RELATIONSHIP.

LIKEWISE SECOND ISSUE ARISES, @ time of 29(b) hearing BEFORE Judge HYMAN PLAINTIFF WAS NOT AWARE OF BUSINESS RELATIONSHIP OF JUROR NOT DISCLOSING 7 OF JURORS WERE her TENANTS (1)

2 of 9.

(FN)

(1) IT IS FUNDEMENTAL VIOLATION OF SCRCP Rule 11 to posit this AS justifiable CONDUCT OF A JUROR

But Greg Hembree KNEW At the time of TRIAL this constitutes BRADY VIOLATION to EnCOMPASS scott Hixson CONTINUED withholding FACT from Rule 29 (b) COURT JUDGE HYMAN AND DEFENDANT (OCT 2, 2018) I object to them doing Final Order Pursuant to Case V. Nebraska, United States Supreme Covet case explains this practice NOW DONALD ZELENKA, in A CONTINUED Attempt to MISCONSTRUE the RECORD

JUROR (At time of Rule 29(b) Still DID NOT DISCLOSE her business Relationship, AND scott Hixson Still did NOT DISCLOSE her business RELATIONSHIP

The DISPOSITIVE QUESTION OF this CASE is A MATERIAL FACTUAL DISPUTE that WARRANTS A EVIDENTIARY HEARING 17-27-70-80

PCR ISSUE

DID Applicant KNOW that JUROR At time of Rule 29 (b) hearing, which was held to be timely Filed, AND IS LAW OF the CASE, HAD 7 tenants called as WITNESSES AND She DID Intentionally CONCEAL this INFO. FACT At VOIR DIRE?

This is Not A ISSUE for 27(b) APPEAL AS it WAS not RAISED @ 28b hearing AS it WAS not KNOWN to DEFENDANT At time OF that hearing

The "FRAUDELENT" PROPOSED FINAL ORDER VIOLATIVE of Rule 11, Judical Ethics is Attempting to STATE SINCE JUROR AND Solicitor Scott Hixson were SUCCESSFUL At concealing this JUROR MISCONDUCT

The APPLICANT Should be procedurally BARRED FROM RAISING ISSUE. That is PATENTLY ~~Ridic~~ FRAUDULENT - AND PREPOSTUREOUS - Ridiculous AND SICKENING to CONSCIENCE OF A REASONABLE JURIST

This COUNSEL Should be APPONTED AND EVIDENTARY HEARING CONDUCTED ON BLATANT JUROR MISCONDUCT / PROSECUTORIAL MISCONDUCT

There's 2 seperate Complaints filed on 15th Cir. Solicitor Scott Hixson @ this time.

Rule 11 (b), 1) 2, 3) 4) By PRESENTING to COURT, ... A pleading by AN ATTORNEY, is CERTIFYING that to best OF His Knowledge Info. AND belief AFTER A INQUIRY REASONABLE UNDER CIRCUMSTANCES

(1) it is NOT being PRESENTED FOR ANY IMPROPER PURPOSE ...

(2) the CLAIMS defenses AND other LEGAL CONTENTIONS ARE WARRANTED by EXISTING LAW or by NON FRIVOLOUS ARGUMENTS ...

(3) the ALLEGATIONS AND other FACTUAL CONTENTIONS HAVE EVIDENTIARY SUPPORT

4) the DENIAL OF FACTUAL CONTENTIONS ARE WARRANTED ON the EVIDENCE ... ARE REASONABLY BASED UPON LACK OF INFORMATION.

The PROPOSED ORDER PURPOSELY IS MAKING DEFENSES NOT WARRANTED by EXISTING LAW @@ Rule 11, b)2.

AS DISPOSITIVE ISSUE IS JUROR FAILURE to DISCLOSE INTENTIONALLY her BUSINESS Relationship to 7 SEVEN STATE Witnesses who RENTED her TRAILERS And the Statute of Limitations / Successive P.C.R. Arguments or Res Judicata pur to Rule 27(b) has no Legal Support Rule 11(b)2)

IN violation of Rule 11, (b) 1) the FALSE Averment is DONE for A IMPROPER BASIS => to cover the JUROR MISCONDUCT FAILURE to DISCLOSE AND Solicitor @ OCT 2019 27(b) hearing FAILURE to DISCLOSE FACTS this JUROR INTENTIONALLY concealed 7 Witnesses for STATE LIVED in her TRAILER PARK PAID HER RENT EVERY month. A The PROPOSED FINAL ORDER seeks to cover this JUROR MISCONDUCT AND Subsequent Prosecutorial MISCONDUCT

thus amounts to a Improper basis

Rule 11, (b) 1)

The Proposed Final order violates Rule 11 b) 3,4) has no factual or evidentiary support and no defense that is legal or proper under any basis but was filed to mislead, misconstrue and rely upon assumptions not supported by law and Donald Zelenka (et al) @ SC Attorney General has filed a false averment per Rule 11 (b) 1, 2, 3, 4 and the Final order must be stricken.

and PCR counsel appointed.
and evidentiary hearing conducted.
as material factual dispute exists
that allegations in PCR if true
would entitle petitioner to Relief
Anderson v. Catholic Lobby (1984)
Rule 12, (b) 6, Rule 56 SCRCP

PLAINTIFF objection to FINAL ORDER IS based upon Rule 11, b)1-4 AND FURTHER AS SET FORTH in Sept 3, 2018 BRIEF EXHIBIT (A)

AND BASED upon SUMMARY Judgment would be IMPROPER

(1) APPLICANT Alleged that BUSINESS Relationship to JUROR WAS DISCOVERED After OCT 2017 Rule 2? (b) held on SAME JUROR PERSONAL Relationship which is DIFFERENT ISSUE, DIFFERENT FACTS, DIFFERENT ELEMENTS and DIFFERENT time of DISCOVERY of FACTS pur 17-27-45 (c)

See: Case V. Nebraska, U.S. Supreme Court.

TRUE. it does DEAL W/ SAME JUROR but it DEALS NOT with her PERSONAL RELATIONSHIP to WITNESS, but her BUSINESS RELATIONSHIP to (7) STATE WITNESSES.

Its APPLES AND ORANGES.

STATE ORDER pretends to ARGUE SINCE PLAINTIFF KNEW OF PERSONAL RELATIONSHIP HE SHOULD HAVE KNOWN ABOUT BUSINESS RELATIONSHIP

This is NONSENSICAL NOT SUPPORTED BY ANY EVIDENCE.

CONCLUSION

COUNSEL BE APPOINTED FINAL ORDER STRUCKEN FROM RECORD AND EVIDENTIARY HEARING BE CONDUCT PER MCCOY V. STATE

I VERIFY, Respectfully Submitted

date Jan. 6, 2019

S/ Jody Lynn Ward

9. of 9, Jody Lynn Ward, #300644

2018-CP-22-00488

50

Exhibit A

Applicants Objection to State proposed Order of Dismissal Conditional Order & Motion to Dismiss Motion For Evidentiary Hearing

EXHIBIT (A)
51

STATE OF SOUTH CAROLINA)
County of Georgetown)

IN THE COURT OF COMMON PLEAS

JODY LYNN WARD
APPLICANT

C/A No. 2018 - CP - 22 - 00488

V/S.

STATE RESPONDENT

APPLICANTS objection to STATE PROPOSED ORDER OF DISMISSAL CONDITIONAL ORDER & MOTION TO DISMISS MOTION FOR EVIDENTIARY HEARING

The APPLICANT WOULD OBJECT to STATE CONDITIONAL ORDER OF DISMISSAL, submitted to Clerk of COURT AUGUST 20, 2018. AND submits he is Entitled to A EVIDENTIARY HEARING UNDER TWO PRONG tests ENUNICATED IN MCCOY V. STATE 737 SE2d 623 (2013)

RELEVANT PROCEDURAL HISTORY

APPLICANT ASSERTS that the PROCEDURAL HISTORY OF the CASE AS STATED by RESPONDENT IS FOR the MOST PART IS CORRECTLY STATED, however the ~~STATED~~ RESPONDENT HAS ASSERTED that BECAUSE HE HAD PREVIOUSLY Filed in GENERAL SESSIONS A MOTION FOR A NEW TRIAL BASED UPON JUROR MISCONDUCT OF, INTER ALIA, JUROR # 19 MARISSA COOPER, WAS At the time OF TRIAL RELATED to ONE OF the WITNESSES by MARRIAGE to ONE OF WITNESSES AND FAILED to DISCLOSE her both FAMILY AND PERSONAL

LEGAL MAIL
MAIL ROOM

~~PCR~~ RELATIONSHIP to COUNT DURING VOIR DIRE.
SEE 2014 OCT. 30 MOTION FOR A NEW TRIAL
BASED ON AFTER DISCOVERED EVIDENCE Filed
by NATASHA M. HANNA (ESQ.) this IMPACTS this PCR.
The COUNT OF GENERAL SESSIONS Judge LARRY HYMAN
ON DEC 7. 2017 SIGNED A ORDER GRANTING
STATE MOTION to DISMISS. ~~PCR~~
THAT ORDER STATES// The CLAIMS ARE BASED UPON
the COMMON LAST NAMES with EXTENDED FAMILY
RELATIVES OR BASED UPON // PERSONAL RELATIONSHIPS//
with NAMED INDIVIDUALS OF the DEFENDANT OR
DEFENDANTS FAMILY KNEW PERSONALLY PRIOR to
TRIAL".
BASED UPON the OCT 28. 2014 MOTION FOR A
NEW TRIAL, the EXHIBITS SET FORTH, the
TRANSCRIPTS ON that HEARING AND Judge HYMAN
ORDER it is OBVIOUS that APPLICANT IN that
MATTER had ALLEGED PRIOR PERSONAL AND/OR
FAMILY RELATIONSHIPS to SEVERAL JURORS, including
19 MARISSA COOPER, BASED UPON their FAILURE
to DISCLOSE these FAMILY OR PERSONAL RELATIONSHIP
~~DCS~~ DURING VOIR DIRE, that NON DISCLOSURE WAS
INTENTIONAL AND had TRUTHFUL DISCLOSURES been
MADE OF PERSONAL AND FAMILY RELATIONSHIPS
been DISCLOSED he would have EXERCISED
PEREMPTORY STRIKES to ENSURE his 6th
AMENDMENT RIGHT to A IMPARTIAL JURY.
MCCOY V. STATE 737 SE2d. 623 (2013)

However Judge Hyman did not evaluate case under McCoy on these personal and family Relationships not being disclosed he rather states the claims must be reviewed under (5) prong test of State v. Spann 334 SC 618(1999) and denied motion for new trial.

Based upon this clear "Error of Law", inter alia, the Oct 28. 2014 motion for new trial and the order relying upon State v. Spann rather than McCoy v. State is now pending in SC Court of Appeals.

Applicant assents absolutely no evidence exists in the record that Marissa Cooper failure to disclose her family / personal Relationships to (witnesses) touched upon the allegations raised in the current P.C.R. that she failed to disclose "Business Relationship."

That Marissa Cooper # 19 had Business Relationship with potential/witnesses @ trans pg 253, 254 that these State witnesses 7 (seven) of them had [redacted] rented property from juror (1) Billy Wilson 2) Denise Lansford Cox 3) Josh Ackerman 4) Jason Ackerman 5) Clifton Rogers 6) Tracy Collins 7) Roger Dale Ackerman Jr.

IN OTHER WORDS MARISSA COOPER #19 HEARD (7) SEVEN OF her PROPERTY TENANTS NAMES CALLED OUT during VOIR DIRE AND When ASKED IF ANY OF JURORS HAD A "Business Relationship" She INTENTIONALLY FAILURED to DISCLOSE this "Business Relation" to (7) Seven OF the STATE Witnesses, this Defies "ANY SENSE OF Belief that YOU HEAR (7) OF YOUR TENANTS NAMES CALLED who YOU Rent PROPERTY FROM AND YOU DON'T DISCLOSE this this IS BLATANT JUROR MISCONDUCT UNDER MC COY V. STATE"

MORE COGENTLY, APPLICANT HAS SET FORTH FACTUAL ALLEGATIONS that if true WOULD Entitle him to, Relief AND he MUST be Given A HEARING upon - 17-27-90.

(1) It DISCOVERED within the PAST YEAR that pur. to MCCOY V. STATE MARISSA COOPER #19 INTENTIONALLY FAILURE to DISCLOSE "Business Relationship" to SEVEN (7) ~~JURORS~~ STATE Witnesses

2) He submitted AFFIDAVIT OF witness Clifton Rogers He had a Business Relationship to MARISSA COOPER AS he RENTED property FROM her SEE EXHIBIT A SWORN AFFIDAVIT OF Clifton Rogers JR. (@ Green ACRES MHP)

3) He submitted EXHIBIT JUROR INFO FORM showing MARISSA COOPER OWNER/ MANAGER OF Green ACRES MHP FOR 15 YEARS

4) He submitted TRANSCRIPT OF VOIR DIRE SETTING FORTH these (7) witnesses She HAD A "Business Relationship" with - AND Her INTENTIONAL FAILURE to DISCLOSE She KNEW ANY of these (7) WITNESSES

5) He submitted COPY OF MCCOY V. STATE that SET FORTH the TWO PRONG TEST OF INTENTIONAL JUROR MISCONDUCT

Her previous INTENTIONAL CONCEALMENT OF FAMILY Relationship IS ONLY Relevant AS it goes to her Habit, Routine OF INTENTIONAL CONCEALMENT pur to SCRE 406

Run to 17-27-90 AND ANDERSON V. Liberty Lobby 1984 US Supreme Court he has Alleged FACTS that IF TRUE would ENTITLE him to Relief therefore HE MUST UNDER DUE PROCESS CLAUSE be GIVEN A EVIDENTIARY HEARING. 17-27-90. That is BLACK Letter LAW.

TO ADDRESS the "PATENTLY FRIVOLOUS AND OBVIOUS Decietful SET Forth in the FALSE AVERMENT VIOLATIVE OF SCRCP 11 IN STATE CONDITIONAL ORDER

(1) Application is BARRED by RES JUDICATA

How? IN 2014 MOTION FOR A NEW TRIAL Applicant Alleged MARISSA COOPER FAILED to DISCLOSE PERSONAL | FAMILY Relationships to the ~~JURORS~~ WITNESSES

AND thus " HE HAD A FULL OPPORTUNITY to Litigate All his ALLEGATIONS in his MOTION FOR A NEW TRIAL FILED OCT 28, 2014

(AND) APPLICANT ALLEGATIONS AS TO JUROR MARISSA COOPER, AMONG TWO other WITNESSES WERE RAISED, CONSIDERED AND Rejected by Judge HYMAN. THIS WORD PLAY [redacted] IS DECIETFUL.

THIS IS RESPONDENT Attempt to Mix "APPLES AND ORANGES" NOTHING in JUDGE HYMAN ORDER ADDRESSES the "BUSINESS RELATIONSHIP between # 19 MARISSA COOPER AND (7) [redacted] STATE WITNESSES.

AS the BUSINESS RELATIONSHIP ASPECT OF "SEPARETE AND DISTINCT ISSUE" WAS NOT DISCOVERED by the APPLICANT UNTIL APRIL 18, 2018 SOME (5) MONTHS AFTER HEARING ON FAMILY / PERSONAL RELATIONSHIP ASPECTS had been held.

So the Res Judicata theory FAILS on SEVERAL POINTS A) there is a LEGAL FACTUAL DIFFERENCE between JUROR MISCONDUCT ON ONGOING BUSINESS RELATIONSHIP to [redacted] AND EXTENDED FAMILY / PERSONAL RELATIONSHIP.

DIFFERENT ELEMENTS AND CASE LAW DEFINITIONS.

B) There is Absolutely NO probative evidence in the RECORD that the Applicant WAS AWARE of the Business Relationship between MANISSA COOPER AND (7) SEVEN OF the ~~others~~ STATE Witnesses until April 18, 2018

Applicant ASSERTS he CAN PROVE he DID NOT KNOW of the Business Relationship ASPECT of JUROR MISCONDUCT Claim until WELL AFTER the Dec. 2017 HEARING on the FAMILY / PERSONAL ASPECT JUROR MISCONDUCT ISSUE, until April 18, 2018.

The RES JUDICATA is both "FRIVOLOUS FRAUDULENT AND borders upon Felonious" AS A FALSE AVERMENT of Rule 11 SCRCP.

This ISSUE HAS NOT been RAISED.

This ISSUE HAS NOT been Ruled upon

JUST BECAUSE this JUROR has been EXPOSED her INTENTIONAL FAILURE to DISCLOSE FAMILY / PERSONAL Relationships IN VOIR DIRE HAS Absolutely NO NO Relevance to her AISO FAILING

TO DISCLOSE her Business Relationship
Except that pur to SCRE 406 She HAS
A HABit, Routine OF INITENTIONAL NON
DISCLOSURE OF "Relationships" to
~~SEVERAL~~ Witnesses;
The STATE Res Judicata ~~ISSUE~~ DEFENSE
is because She ~~FAILED~~ INTENTIONALLY FAILED
to DISCLOSE FAMILY Relationships then that
constitutes A "Ruling" FROM COURT She
FAILED to DISCLOSE Business Relationships
The Res JUDICATA DEFENSE FAILS.
pur to LAWLOR v. NATIONAL SCREEN SERVICE 349 US 322 (1955)
NEXT. The RESPONDENT STATES APPLICANT
CANNOT MEET (5) PRONE TEST OF
NEWLY DISCOVERED EVIDENCE pur to
HAYDEN V. STATE 299 SE2d. 854 (1983).
TO RELY ON STATE CONDITIONAL ORDER, IS ERROR OF LAW.
AS The APPLICANT IS NOT REQUIRED to MEET
(5) PRONE HAYDEN V. STATE TEST, his
burden IS to Show pur to MCCOY V. STATE
MARISSA COOPER (1) INTENTIONALLY FAILED to
DISCLOSE A Business Relationship to (7)
~~OTHERS~~ (2) HAD HE KNOWN She
Witnesses

HAD A BUSINESS Relationship to (7) OF STATE Witnesses HE WOULD HAVE EXERCISED HIS STRIKES ON MORE to HAVE HER EXCUSED FOR CAUSE. AND RESPONDENT KNOWS this

So obviously that portion of STATES position is CONTRARY to MCCOY V. STATE.

NEXT the STATE SEEMS to RELY upon Judge HYMAN Ruling on (FAMILY Relationships) to Show the BUSINESS Relationship WAS Somehow "KNOWABLE" to APPLICANT AT TIME OF TRIAL "

This is "NONSENSICLE" AND borders upon FRAUD upon COURT; he has ASSERTED upon OATH the BUSINESS Relationship WAS DISCOVERED in LAST YEAR (4/18/18) this MUST be DEEMED AS TRUE FOR PURPOSE of SUMMARY DISMISSAL ANDERSON V. LIBERTY LOBBY (1984) 17-27-90.

NEXT, STATE Relies "FRAUDULENTLY" upon the STATUTE of Limitations 17-27-45 A

HE HAS ASSERTED upon his OATH he DISCOVERED the "BUSINESS Relationship" on 4-18-18 Within the PAST YEAR pur 17-27-45(C)

AS A MATTER OF LAW, this ALLEGATION MUST BE DEEMED to be TRUE AND is SUPPORTED by AFFIDAVIT OF Clifton Rogers Jr ON April 18, 2018 that is when the EVIDENCE, (NOT RUMOR OR SPECULATION) WAS DISCOVERED. FACT. SO STATE STATUTE OF Limitation ~~ARGUMENT~~ ARGUMENT IS NOT SUPPORTED BY ANY EVIDENCE. JUST BECAUSE MARISSA COOPER (AND JUDICIAL OFFICALS) HAVE been SUCCESSFUL IN CONCEALING her business RELATIONSHIP DOES NOT REFLECT upon APPLICANTS ~~DUE~~ Diligence but Rather her CONDUCT. AND RESPONDENTS, IF ANYTHING At Dec. 2017 HEARING the STATE OF SC Should have DISCLOSED this JUROR FAILURE to DISCLOSE her "Business RELATIONSHIP" AND the FAILURE to do SO is ADDITIONAL MISCONDUCT IF they DIDNT KNOW About how COULD APPLICANT KNOWN". FINALLY, RESPONDENT ARGUES it is SUCCESSIVE that ARGUMENT is ALSO FRIVOLOUS." SUFFICIENT REASONS" have been STATED why he has NOT RAISED the JUROR CONCEALMENT ISSUE. IN 20K1 MOTION FOR A NEW TRIAL

IT WAS NOT RAISED BECAUSE it WAS CONCEALED DEFINATELY BY JUROR MARISSA COOPER AND MOST PROBABLY by Solicitor, ATTORNEY GENERAL AND GEORGETOWN POLICE. (SCRE 406)

IT WAS NOT RAISED BECAUSE it WAS NOT DISCOVERED until APRIL 18, 2018. FACT.

IN BANKS V. DRETKE. 504 US 540 (2005) OUR US SUPREME COURT SAID "A Rule that PROSECUTION MAY HIDE, AND DEFENDANT MUST SEEK IS, INCOMPATIBLE with DUE PROCESS

THIS REASONING EQUALLY APPLIES to JUROR MISCONDUCT JUST BECAUSE She SUCCESSFULLY CONCEALED her "BUSINESS RELATIONS" TO (7) WITNESSES DOES NOT MEAN STATE CAN PROFIT FROM her CONCEALMENT OF BUSINESS Relationship during LITIGATION upon her CONCEALMENT OF FAMILY / PERSONAL Relationships She ALSO FAILED to CONCEAL. RESPONDENT seeks to PROFIT FROM AND BASE A DEFENSE upon FACT OF HER CONCEALMENT - INTENTIONAL FAILURE

TO DISCLOSE HER BUSINESS RELATIONSHIP to ~~(7)~~ (7) WITNESSES IS "SUFFICIENT REASON" pur to ALICE V. STATE 409 SE2d 392 (1981) to ALLOW "SUCCESSIVE PCR"

THUS HE HAS ESTABLISHED "SUFFICIENT REASON" WHY HE COULD NOT HAVE RAISED this JUROR MISCONDUCT ISSUE - IT WAS DISCOVERED within the LAST YEAR ON April 18, 2018 (AFTER EARLIER JUROR MISCONDUCT HEARING SAME JUROR ALSO FAILING to DISCLOSE FAMILY Relationships) that She ALSO has NOW been EXPOSED ON INTENTIONAL CONCEALMENT OF BUSINESS Relationships with (7) ~~JURORS~~ witnesses

This is NEW EVIDENCE, DISCOVERED ON April 18, 2018, "NOT PREVIOUSLY KNOWN OR DISCOVERABLE thru DUE Diligence to be RAISED AT EARLIER PCR because JUROR MARISSA COOPER AND Georgetown

Solicitor's and S.C. Attorney General has been successful at Concealing this Juror misconduct as part of overall pattern of Prosecutorial misconduct. see: (SCRE Rule 404).

The State Conditional Order of Dismissal must be denied as a matter of Law. And be placed on the Docket to be heard at next term of P.C.R. for the following reasons.

In a criminal case, the 6th & 14th Amendments to the U.S. Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent Jurors.
see: State V. Bryant, 354 S.C. 390, 581 S.E. 2d 157 (2003)
Trial Handbook for S.C. Lawyers 4th Edition 2006 pg. 330 §6:3 Right of accused to challenge Potential Jurors in Criminal cases.

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 Jurors impartiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual Juror Bias.

Therefore, by that established this Court should appoint counsel asap. see: S.C.R.Civ.P. Rule 71.1(d) - Thereafter, the Court must appoint counsel promptly if the applicant is indigent,
see: S.C. Code Ann § 17-27-90: not asserted or was inadequately raised

The Law in S.C. is clear see: Finkley V. State, 273 S.C. 157, 255 S.E. 2d 447 (1979) Our Post-Conviction Act is designed to incorporate all Rights available under Federal Habeas Corpus.
see: Accardi V. U.S., 599 F. 2d. 423 (Fed. Cir. 1979) U.S. Supreme Court clearly states the South Carolina (States must abide by Laws of these States,

As this issue of "Juror Miscowduct Test" has been met here the applicant meets. McCoy V. State, supra.

Furthermore, The United States Supreme Court explained more than 50 years ago in see: Lawlor V. National Screen Service Corp., 349 U.S. 322 (1955)

Res Judicata does not bar a claim, even if it involves the same Course of Wrongful conduct as alleged earlier, so long as the claims alleges New Facts or a worsening of the earlier Conditions.

This issue has never been raised as Business Relationship on Jury Miscowduct Juror #19 Marissa Cooper owned a mobile Home Park where 7 tenants paid her rent and she failed to disclose that to the Court therefore McCoy V. State, supra has been met, this has just recently discovered and could not be discovered, see: Affidavit attached.

Furthermore, this Juror #19 Marissa Cooper husband cousin was a States Main witness, is clearly different alleged facts as thats a "Personal Relationship" which has clearly New facts and clearly worsening of the earlier Conditions.

So Res Judicata not applicable and theres only a (2) Two Prong Test under McCoy V. State, supra not a (5) prong Test as alleged by Respondents, clear Error of Laws.

Wherefore, the applicant respectfully ask this Court to Order an Evidentiary Hearing and appointment Counsel A.S.a.p.

Respectfully Submitted,

Jody Lynn Ward, #300644

Jody Lynn Ward, #300644

2018-CP-22-00488
65

FOR TIOR EXHIBIT

Affidavit of Jody Ward

Applicant to Case# 2018-CP-22-00488

§17-27-45 (C)

SOUTH CAROLINA

COUNTY OF GEORGETOWN

Affidavit of Applicant

RE: Jody Ward (Trial 3/2004)

Jody Lynn Ward

Personally, appeared before me the undersigned Notary Public, the Affiant.

1. My name is Jody Lynn Ward, and I am over the age of eighteen years old.

2. I went to Trial on March 15th/18th, 2004, and My Juror #19 Marisa Cooper; see: T, Tr. page 208 also was the Owner/Managing Greenacres Mobile Home Park in Georgetown, South Carolina.

3. I've Retained 10-4 Private Investigation services & Premier Investigations and after a Through Investigation it has been determined that Marissa Cooper had a Total of 9 potential witness; 1 being Denise Langston Cox Jones to pay her rent for Mobile Home Lot Rent therefore triggering a Business Relationship that Could not have been discovered through the exercise of due Diligence, prior to trial; and she fail to disclose to courts

(67)

,along with 6 other people being 7 people Paid Juror #99 Rent

4. On or about April 22, 2018 I recieved in the U.S. postal mail of Evidence of Juror Misconduct where my brother gave a Sworn Affidavit that he paid rent to Marissa Cooper of Green Acre mobile home park as a Business Relationship that she failed to disclose at the Voir dire that would need a Hearing Pursuant to McCoy Vs State, 401 S.C. 363, 737 S.E. 2d 623 Also herein Attached.

5. This issue has never been raised before and has been discovered within the last year, On or about April 1, 2018. /S/ Judy Lynn Ward
Affiant/Applicant
Judy Lynn Ward, #300644

SWORN to and subscribed before me
This 11 day of May, 2018
J C Arnold
Notary Public

MY COMMISSION EXPIRES: 12-16-2019

FORTIOR

EXHIBIT

page 8 of Investigator Notes

proves the following named lived togetter @ Green Acres Mobile Home Park in a Business Relationship to Marissa Cooper

Juror #19

1.) Billy Wilson
2.) Tracy Collins
3.) Roger Dale Ackerman Jr.
4.) Jason Ackerman
5.) Josh Ackerman

Re-contacted on 11/18/2003 and served subpoena. States at the time of the incident Denise was using her cell phone

Has retained Billy Jenkinson, Attorney of Kingstree as of 10/2. He wants my notes of her interview

John William Wilson aka Billy **Served at Residence 12/2** **Has moved to new residence on 12/2 off Hwy 17 s**

Lives with Roger. His girlfriend was Tracy Collins and was living with her at time of incident.

Both victims came by his house in Green Acres on daily basis.

Recalls Jody calling him Sun evening wanted to know about Willfred and the SK. Jody told him reported it stolen that day. It was taken on Sat by Willfred and Elton.

He and Tray were interview 3-4 x **Heard Elliott had a polygraph.**

Recalls phone call from Jody late at night wanting a ride home from Gapway Rd dirt – Didn't go. Jody called back. Didn't ans. Next morning Tracy did pick him up, smoked a blunt together. Tracy did go to see an attorney. Jody told her he sank the Firebird.

Says W always has $$ and crack

Roger Dale Ackerman, Jr **DOB** 8/28/1978 SSN 250-49-4139 **SERVED 12/3/2003**
608 Blue Gill
Georgetown SC

Now lives with father

Previously resided on Duke St.

Was released by GCJ on or about 11/8/2003

Contacted at the Georgetown county Jail on 9/23/2003

Lives in Green Acres Trl Park. Brothers are Jason 22 and Josh 19 all live @ Green Acres.

Jody was frequent visitor to his house. Drug related – Also knows Wilfred but not Elton.

Brian Elliott and Jody worked together "crabbin" and did some drugs together – Brian on crack – lived out of his car Sleeps on W. Va Rd

Denise and Jody involved in dealing drugs together.

Jody had called his brother Billy Sat night and said their had been some "drama" Billy told him he thought the victims were both dead at this time.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-22-00488

Jody L. Ward, #300644
Applicant

v.

State of South Carolina
Respondent

CERTIFICATE OF SERVICE

I Jody L. Ward, S.C.D.C. #300644 swears that a True & Correct copy of Applicants. 1) Objection to States Proposed Order of Dismissal & Conditional Order & Motion to Dismiss & Motion for Evidentiary hearing by placing a copy in the U.S. postal mail postage prepaid On this 3rd day of September, 2016 On this Allowing named Parties.

1.) Office of Georgetown County
Clerk of Court Common Pleas
Attn: Alma V. White, Clerk
P.O. Box 479
Georgetown, S.C. 29442

2.) Office of the Attorney General
Attn: Johnny E. Jones, Jr.
P.O. Box 11549
Columbia, S.C. 29211-1549

3.) Chief Judge for Common Pleas
Attn: Honorable William H. Seals, Jr.
Fifteenth Judicial Circuit
103 North Main Street
Marion, S.C. 29571

LEGAL MAIL
MAIL ROOM

Respectfully Submitted,
Jody Lynn Ward, #300644

Jody Lynn Ward, #300644
Applicant

ALAN WILSON
ATTORNEY GENERAL

February 1, 2019

Barton J. Vincent, General Counsel
Attn: Jonathan Eckstrom
South Carolina Department of Corrections
4444 Broad River Road
Columbia SC 29221-1787

Re: **Jody Lynn Ward, #300644 v. State of South Carolina**
2018-CP-22-0488

Dear Mr. Eckstrom:

Enclosed please find the **Final Order of Dismissal** in the above-captioned inmate's post-conviction case. Please serve the inmate, **Jody Lynn Ward, #300644** with the order and provide me with an affidavit of service (enclosed).

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/mm
Enclosure

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Sgt D Kelley (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF McCormick)

AFFIDAVIT OF PERSONAL SERVICE

On this 7 day of Feb 2018, I served the **Final Order of Dismissal**, on *Inmate* **Jody Lynn Ward, #300644** by delivering personally and leaving a copy of the same at *McCormick Correctional Institution,* McCormick. Deponent is not a party to this action.

s/ Sgt D Kelley
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7 day of Feb, 2019

[illegible] (L.S.)
Notary Public for South Carolina

My Commission Expires: 9.30.26

ADMISSION OF SERVICE

Service of a copy of the within **Final Order of Dismissal** is admitted at the South Carolina Department of Corrections (McCormick *Correctional Institution*), McCormick, McCormick County, SC this 7 day of Feb, *2019.*

s/ Jody Lynn Ward #300644
Inmate
SCDC *Inmate #:* _____

2018-CP-22-0488

73

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Jody Lynn Ward, S.C.D.C. No. 300644, Applicant, v. State of South Carolina Respondent.	Case No.: 2018-CP-22-00488 **FINAL ORDER OF DISMISSAL**

FILED
GEORGETOWN COUNTY, S.C.
2019 JAN -7 AM 9:10
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed May 21, 2018. Respondent made its return on or about August 20, 2018, requesting the application be summarily dismissed as untimely, successive, barred by *res judicata*, and for failing to set forth a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed August 24, 2018, and filed August 31, 2018, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 28, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a response to the Conditional Order of Dismissal on September 18, 2018. This Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Applicant contends the Court erred in applying the five-prong test for newly discovered evidence as articulated in Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)). Applicant asserts the Court should apply the test as set forth in McCoy v. State, which states that "[p]rovided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that[:]"

(1) The juror intentionally concealed information; and
(2) The information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013) (citing State v. Woods, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001)). Applicant is correct in that the five-prong test inapplicable as established in McCoy, but even under McCoy Applicant is not entitled to an evidentiary hearing. As the Supreme Court in McCoy noted, the claim must still be *timely raised.* As Applicant first sought relief on this ground in October 2014, and as Judge Hyman rejected that effort upon 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.

Applicant argues vociferously that Judge Hyman erred in rejecting his motion, but that question is appropriate for appeal, not for setting aside *res judicata* upon filing of a subsequent application for post-conviction relief. Indeed, Applicant's appeal of Judge Hyman's order remains pending now, just as it was at the time the Conditional Order was issued.

Further, the Court simply rejects Applicant's contention that failure to disclose a landlord-tenant relationship is "BLATANT Juror misconduct" as insisted by Applicant. "A prior business relationship between a juror and a party to the case does not as a matter of law disqualify a juror." Abofreka v. Alston Tobacco Co., 288 S.C. 122, 125, 341 S.E.2d 622, 624 (1986) (citing Palmetto Bank v. Rowland, 275 S.C. 38, 267 S.E.2d 426 (1980)). Returning to the prongs of McCoy, that a juror manages a mobile home park does not *per se* disqualify her from

presiding over any trial in which a denizen of that mobile home park may be called to testify, nor does it appear to be a material factor in the use of a peremptory challenge. Applicant offers nothing to actually show the juror intentionally concealed this information, but rather merely repeatedly insists that conclusion.

Applicant protests that in his motion of October 28, 2014, he challenged that the same juror failed to disclose personal and family relationships to witnesses, rather than business relationships. Applicant's protests betrays the game he attempts to play upon the Court, ferreting out new reasons well enough known to him, or which could have been known to him, throughout the process in order to try and secure new hearings as soon as the prior effort is defeated. What Applicant condemns as deceitful wordplay projects the character of his own efforts. This Court will not enable Applicant in his pattern of harassing the jurors who convicted him.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 31 day of December, 2018.

WILLIAM H. SEALS, JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

Marion, South Carolina.

TO:
HONORABLE WILLIAM H. SEALS JR.
CHIEF ADMINI. JUDGE 15TH CIRCUIT
103 N. MAIN ST. MARION SC 29571

FROM:
JODY CLINN WARD (PROSE)
MCI 388 REDEMPTION WAY
MCCORMICK SC 29835

RE JODY WARD V. STATE
2018 CP 22 0488 (PCR)

DEAR JUDGE SEALS,

THIS COURT CANNOT IN "GOOD CONSCIENCE" SIGN (OR ENTERTAIN) THE FRIVOLOUS FINAL ORDER, INTER ALIA, VIOLATIVE OF Rule 11 b)2), THAT PURPOSELY DOES NOT ADDRESS AFFIDAVITS AND EVIDENCE Filed by APPLICANT, THAT CREATE A "MATERIAL FACTUAL DISPUTE" THAT MANDATES (A) APPOINTMENT OF COUNSEL (B) EVIDENTIARY HEARING Rule 12 b)6 AND 56. ANDERSON v Liberty Lobby (US 1986)

I.

Timeliness of PCR (17-27-45(C)

(1) UNDER OATH NEITHER APPLICANT NOR his COUNSEL TRISTAN SHAFFER (ESQ) At time of OCT 2017 Rule 29 (b) HEARING OR PRIOR to ONE YEAR OF MAY 2018 PCR, SUB JUDICE, HAD KNOWLEDGE, INFORMATION OR BELIEF AS REQUIRED by Rule 11 (b) 2,3 SCRCP THAT JUROR C BESIDES her PERSONAL RELATIONSHIP to WITNESSES subject of the Rule 29 (b) ALSO FAILED to DISCLOSE 7 STATE WITNESSES PAID HER RENT MONEY EVERY MONTH.

IT IS BEYOND OBVIOUS HAD APPLICANT KNOWN OF THIS (7) X BUSINESS RELATIONSHIP

then him and his ATTORNEY TRISTAN SHAFFER would have RAISED ISSUE. APPLICANT AFFIDAVIT CREATES A MATERIAL FACTUAL DISPUTE, This is a "MATERIAL FACT" in Question FOR COURT AS A FACT FINDER to DETERMINE, being DISPOSITIVE to 1 timeliness of Filings PURSUANT 17-27-45(c) that MUST according to S.C. JURISPRUDENCE - PCR STATUTE be "Fleshed out and ADJUDICATED" at PCR EVIDENTIARY HEARING - because APPLICANT AFFIDAVIT and EVIDENCE on File with the clerk of court "IF TRUE" would mean PCR pur to MCCOY V. STATE is timely Filed 17-27-45 Rule 12(b)6, 56, ANDERSON V. C. bent Cobby US SUPREME COURT (1986) MANDATE A EVIDENTIARY HEARING for COURT to DETERMINE CREDIBILITY OF APPLICANT (1) II MERITS OF MCCOY V. STATE

AS to SECOND CRITICAL ELEMENT MERITS OF MCCOY V. STATE (2013) JUROR MISCONDUCT, the PROOF is in the Pudding, IT IS MANIFESTLY "SELF-EVIDENT"

(1) AND TRISTAN SHAFFER (ESQ) APPLICANT COUNSEL will testify He DID NOT KNOW

A) No EVIDENCE in the RECORD SUPPORTS "FRIVOLOUS - Ridiculous" AVERMENT VIOLATIVE of Rule 11 (b)1) that Business RELATIONSHIP OF JUROR with [1, 2, 3, 4, 5, 6 7] OF STATE WITNESSES WERE KNOWN OR COULD BE KNOWN to APPLICANT AT TIME OF OCT 2017 Rule 28(b) which FOCUSED ON HER ADDITIONAL SEPARATE AND DISTINCT OF A ELEMENTS OF PERSONAL RELATIONSHIP by MARRIAGE to ALL STATE WITNESS.

HOW COULD he HAVE KNOWN? She CERTAINLY DIDN'T DISCLOSE the FACT Scott Hixson, Chief Solicitor CERTAINLY DID NOT DISCLOSE the FACT HIS JUROR (Address on his FILE) KNEW 7 OF HIS WITNESSES (Address on his File) DID NOT DISCLOSE both JURORS AND WITNESSES WERE ALL FROM SAME TRAILER PARK

IF HC Solicitor DIDN'T KNOW (OCT 2017) 79
then how in World would APPLICANT KNOW
She WAS OWNER/OPERATOR OF TRAILER PARK
AND (7) OF HER TENANTS (1, 2, 3, 4, 5, 6, 7)
WERE called AS STATE WITNESSES? -
OR DID Solicitor KNOW AT trial, All
PCR'S, AND 29 (b) OF this BUSINESS
Relationship AND CONCEAL it?
* 17-27-45 PROOF OF timeliness OF PCR:
AFFIDAVIT OF APPLICANT has been submitted
he DID NOT KNOW AT Rule 29 (b)
(TRISTAN SHAFFER will be called to
testify EVEN he) DID NOT KNOW
@ Rule 29 (b) hearing of the
SEPARATE - District BUSINESS Relationship
OF JUROR AND (7) STATE WITNESS
Scott HIXSON will be called to testify -
DID HE KNOW?
IN SO ~~FAR AS~~ BUSINESS Relationship
IT WAS NOT RAISED, IT WAS NOT
Ruled upon, it WAS NOT KNOWN
AND it WAS NOT DISCLOSED by
JUROR OR SCOTT HIXSON

Thus Res Judicata, or Collateral Estoppel does not apply -

the Applicant Affidavit and Mr. Shaffer proposed testimony reflects that Frivolous Argument Violative Rule 11 (b)(1)

(c) Finally, Merits of McCoy v. State the SC Attorney General attempts to plat this Court for a fool - 11 that a Juror who manages a mobile home park does not per se disqualify her presiding over any trial in which a denizen(?) of that park may be called to testify, nor does it appear to be a material factor in use of peremptory challenge.

Thus, pur to SCRE 406 it is a Fact, she intentionally failed to disclose her Business Relationship with (7) (1,2,3,4,5,6,7) of Her Rent-paying Tenents Prestate Witnesses is 11 Circumstantial Evidence 11 which would be the whole purpose of having a PCR Hearing - So Court can discern Truthfulness etc.

ONE

SUMMATION

81

APPLICANT @ EVIDENTIARY HEARING THRU HIS APPOINTED COUNSEL WILL TESTIFY AND CALL TRISTAN SHAFFER (ESQ) to testify they DID NOT KNOW OR believe PUR to Rule 11, (b)(2) JUROR IN ADDITION to HAVING A PERSONAL RELATIONSHIP, (subject of Rule 2(b)) ALSO HAD A BUSINESS RELATIONSHIP AND HAD APPLICANT OR TRISTAN SHAFFER (ESQ) KNEW OF SUCH A RELATIONSHIP COUNSEL WOULD HAVE BEEN DUTY BOUND - ETHICALLY BOUND to RAISE ISSUE

TWO. Rule 2(b) DID NOT RAISE OR Rule UPON ANY ISSUE EXCEPT PERSONAL RELATIONSHIP Res Judicata DOES not apply.

THREE. APPLICANT AFFIDAVIT - T. SHAFFER (ESQ) will testify P.C.R Filed within ONE YEAR OF DISCOVERY of Knowledge, INFORMATION, belief. PCR is timely Filed.

FOUR NO REASONABLE JURIST WOULD FIND CREDIBLE (?) OF JUROR RENT PAYING TENANTS CALLED AS WITNESSES AND She "ACCIDENTALLY" STOOD SILENT > EVEN AFTER She SAW THEM TESTIFY > HER INTENTIONAL NON DISCLOSURE OF BUSINESS RELATIONSHIP IS REASON to hold A EVIDENTIARY HEARING, to APPOINT COUNSEL to PROVIDE DUE PROCESS PUR U.S. Constitution, SC Constitution MCCOY U-STAT

APPLICANT AT PCR thru his APPOINTED ~~BY~~ COUNSEL will CALL ALL (7) OF these WITNESSES to Question them - DID you KNOW her? DID you PAY her RENT money? WAS this business? Then WE'll CALL the JUROR, subpoena her TRAILER PARK Reciept book (UNLESS MR HIXSON (ETAL) SPOLIATED EVIDENCE) this will ESTABLISH NO REASONABLE FACT FINDER would EVER believe (OR FIND CREDible) ~~to~~ JUROR SAT SILENT while (7) of her TENANTS NAMES were called? Then AS they testify she SEES her tenants - still She SILENT 7 PROOF OF INTENTIONAL ~~CONCEAL~~ CONCEALMENT SELF-EVIDENT P.C.R Relief GRANTED 7 NEW TRIAL

SIR by OUR LAWS you SHALL APPOINT COUNSEL schedule IMMEDIATE P.C.R. Refer SCOTT HIXSON DONALD ZELENKA to OFFICE DISCIPLINARY COUNSEL.

Respectfully /S/ Jody Lynn Ward
JODY WARD #300644

cc: Chief Justice Beatty
DONALD ZELENKA (SCAG)

JAN - 12. 2019